

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. __ OF 2015

[Under Article 32 of the Constitution of India]

IN THE MATTER OF :

Foundation for Media Professionals

Through its Director, Mr. Manoj MittaPetitioner

Versus

Union of India

....Respondent

(PAPER BOOK)

(KINDLY SEE INSIDE FOR INDEX)

MOHIT PAUL : ADVOCATE FOR THE PETITIONER

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PROFORMA FOR FIRST LISTING

SECTION -X

The case pertains to (Please tick/check the correct box):

- ☐ Central Act : (Title) Indian Penal Code, 1860 &
Code of Criminal Procedure, 1973
- ☐ Section : Sections 499 and 500 IPC &
Sections 199(1) and 199(2) CRPC
- ☐ Central Rule : (Title) NA
- ☐ Rule No(s) : NA
- ☐ State Act : (Title) NA
- ☐ Section : NA
- ☐ State Rule : (Title) NA
- ☐ Rule No(s) : NA
- ☐ Impugned Interim Order : (Date) NA
- ☐ Impugned Final Order/Decree: (Date) NA
- ☐ High Court: (Name) NA
- ☐ Name of Judges : NA
- ☐ Tribunal/Authority : (Name) NA

1. Nature of matter : Civil (Yes) Criminal
2. (a) Petitioner/appellant No.1: Foundation for Media Professionals
Through its Director, Mr. Manoj Mitta
- (b) e-mail ID : mohitppaul24@gmail.com
- (c) Mobile phone number : 9810841571
3. (a) Respondent No. 1 : Union of India
- (b) e-mail ID : NA
- (c) Mobile phone number : NA
4. (a) Main category classification:
- (b) Sub classification:
5. Not to be listed before : NA
6. Similar/Pending matter : W.P.(Crl) No 184 of 2014 & W.P.(Crl.) 56/2015

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7. **Criminal Matters:** ____ Yes

(r) Whether accused/convict has surrendered: Yes No NA

(s) FIR No. ____ No ____ Date : ____ No ____

(t) Police Station : ____ No ____

(u) Sentence Awarded: ____ No ____

(v) Sentence Undergone: ____ No ____

8. **Land Acquisition Matters:**

(o) Date of Section 4 notification : ____ NA ____

(p) Date of Section 6 notification : ____ NA ____

(q) Date of Section 17 notification : ____ NA ____

9. **Tax Matters :** State the tax effect : ____ NA ____

10. **Special Category (first petitioner/appellant only):**NA.....

Senior citizen > 65 years SC/ST Woman/child Disabled Legal
Aid case In custody

11. **Vehicle Number (in case of Motor Accident Claim matters):** ____ NA ____

12. **Decided cases with citation:** ____ W.P.Crl NO 274-283 of 2003 ____

Date: 15 06.2015

AOR for petitioner(s)/

(Name) ____ (MOHIT PAUL)
Registration No. ____ CC-1899
Mail :Mohitpaul24 @gmail.com
Mobil No 9810841571

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SYNOPSIS

The present petition is being filed by the Petitioner under Article 32 of the Constitution of India impugning Sections 499 and 500 of the Indian Penal Code, 1860 and Sections 199(1) and 199(2) of the Code of Criminal Procedure, 1973 as being contrary to the fundamental rights of working journalists under Articles 14, 19 and 21 of the Constitution of India. It further prays as per Article 142 of the Constitution of India for this Hon'ble Court to lay down guidelines with respect to application and operation of Sections 179; 202; 204(1); and 205 of the Code of Criminal Procedure, 1973.

The Petitioner is the Foundation for Media Professionals (FMP), a registered society made by journalists and editors of leading newspapers and the electronic media duly registered under the provisions of the Societies Registration Act 1860. The Petitioner organisation's founder members include eminent journalists, namely, Amitabh Thakur, Aniruddha Bahal, Ashutosh, Madhu Trehan, Manoj Mitta, S Srinivasan, Sanjay Pugalia, Sanjay Salil, Shashi Shekhar, Vineet Narain and Vivian Fernandes who come from the field of both print and electronic media journalism.

It is the Petitioner's contention that Sections 499 and 500 of the Indian Penal Code, 1860 which define the criminal offence of defamation and prescribe its punishment respectively, are colonial enactments which are contrary to the modern democratic, pluralistic polity of India; and further that the said provisions are contrary to the constitutional safeguards to

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freedom of speech and expression, the right to life as prescribed under the Constitution and also results in arbitrary application and a vexatious criminal trial. The present petition impugns these provisions as being contrary to Articles 14, 19 and 21 of the Constitution of India, inter alia due to the following:

- 1) The offence of defamation as contained under Section 499 of the Indian Penal Code, 1860 especially when it is alleged to arise in relation to public personalities, only requires an intent to lower the reputation, but does not contain the modern legal standard of actual malice. Due to the absence of this modern standard, the provision results in violation of the freedom of speech and expression and it also results in arbitrary applications to mere expressions of "opinion" as opposed to any assertion of facts. This results in a "chilling effect" on legitimate speech and the right of the press to inform the public in a democracy.
- 2) The defences contained as exceptions within Section 499 are inadequate and subjective. They set high thresholds and result in a chilling effect on legitimate free speech protected under the Constitution. For instance the first exception to defamation under Section 499 is a conditional defence of truth, available only when such truth is in the, "public interest". On the contrary the defence of truth should be absolute when considering the defence of defamation given that, the "public interest" in any publication which is true, can only be an ingredient of the

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purported harm against the privacy of a complainant and not a harm against reputation as under defamation. Hence the first exception to Section 499 is not only onerous but the ingredient of "public interest" does not have any reasonable link to criminal defamation. Further defences existing under Section 499 are also illusory and result in arbitrary application.

- 3) The provision for criminal defamation under Section 499 is excessive and disproportionate to the alleged act, for which adequate remedies exist under civil law. It is excessive in that it criminalises not a harm against the society per se, but against an individual. Civil remedies which contain damages as well as provisions for interlocutory orders and injunctions such as the deposit of money as well as restraint on publication are effective and harsh prohibitions to deter any defamation in the press. In the existence of such remedies the existence of Section 499 results in an unreasonable restriction on the right of the Press.

The offence of criminal defamation as contained under Sections 499 and 500 also result in procedural unfairness and arbitrary action through the application of various provisions of the Code of Criminal Procedure, 1973. These include Sections 179; 199(1); 199(2); 202; 204(1); and 205 that are contrary to Articles 14, 19 and 21 of the Constitution of India in cases of criminal defamation for the following reasons:

1) That as per the present scheme of the Code of Criminal Procedure, 1973, a single article can lead to the registration of multiple criminal cases causing a serious chilling effect on the Press. No such limitation exists under Section 199(1) which contains the process for preferring a complaint for defamation. Hence, as per a reported instance, about 125 cases for criminal defamation were filed against, "The Hindu" by the Tamil Nadu Government between 2002-2006 which were withdrawn only after an Article 32 petition was filed by its Managing Editor. This was recorded in the affidavit of the Government of Tamil Nadu in the Order of this Hon'ble Court in the case of *N. Ravi and Others vs. Union of India and Others* reported in (2007) 15 SCC 631. This not a mere isolated instance of abuse of the criminal process but a very common feature of criminal defamation trials when even "comments" are made against politicians. Similar instances substantiate this trend and are also contained in the present petition.

2) That further Section 199(1) of Code of Criminal Procedure, 1973 states that a complaint for defamation may be preferred by, "some person aggrieved". Hence an, "aggrieved person" may not be the defamed person and this provision therefore dilutes the locus standi requirement to initiate a criminal process. Though this may seem reasonable, the proviso to Section 199(1) expressly contains the power for some, "other person" to prefer such

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a complaint with the leave of the Court. Section 199(1) by stating that such a complaint can be made by, an "aggrieved person", dilutes the effect of the proviso and often leads to proxy complaints on behalf of powerful entities and high net worth individuals who then do not even have to personally participate in the criminal process as complainant.

3) Due to Section 204 of the Code of Criminal Procedure, 1973 and Section 105 of the Indian Evidence Act 1872 the exceptions to the offence of defamation contained within Section 499 are only considered after trial commences. Hence, at the time of issuance of process there is no check as to the nature of allegations and every bald statement of the complainant results in the issuance of process. The truth or the public good aspects of any journalistic publication is not even considered and journalists and editors are forced to face the rigours of criminal trial. This does not even require the consideration of any extraneous material but can be gauged from an applicability of the exceptions to criminal defamation contained under Section 499 of the Indian Penal Code, 1860 and applying them to allegations contained in the complaint itself.

4) As most press publications are now online, by reason of the provisions of Section 178 CrPC and other related provisions, criminal defamation complaints are filed in far flung and remote corners of India to further cause

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harassment to editors and journalists. Since personal attendance in such cases is in the first instance the rule, only dispensed by an application made under Section 205 of the Code of Criminal Procedure, 1973, an accused journalist has to be personally present in remote corners of India which have no connection to the place of publication or the ordinary domicile of the accused or, for that matter, even of the complainant/aggrieved person. Further guidelines on this issued by this Hon'ble Court leave the ultimate determination to the Magistrate under Section 205 where attendance is the rule and exemption from it, an exception.

POINTS OF CHALLENGE

The Petitioner sets-out herein below the essential points of challenge to the provisions of Section 499 and Section 500 of the Indian Penal Code 1860 (the "IPC") which makes defamation a criminal offence:

The definition of the crime of "defamation" as comprised in Section 499 of the Indian Penal Code does not meet the legal standards of defining a "crime"; the said definition does not meet the legal standards whereby criminal culpability can be imputed to a person;

The definition of the crime of "defamation" as comprised in Section 499 of the Indian Penal Code makes even the expression of mere "opinion" (not fact) a cause for criminal defamation, which is a position that cannot be countenanced in a modern,

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civilised democracy;

Furthermore, by reason of Section 199(1) of the Code of Criminal Procedure, 1973 (the "CrPC") the "locus standi" required for a private complaint under Section 200 CrPC stands diluted, which leads to proxy criminal proceedings being filed, which provision is therefore susceptible to such misuse as would make the provision itself untenable on Constitutional principles;

Additionally, by reason of Section 105 of the Indian Evidence Act 1872 (the "Evidence Act") and Section 204 CrPC, the "exceptions" available under Section 499 IPC are considered only once trial commences, as a result thereof the "process" itself becomes the "punishment", which is a position that again cannot be countenanced under our jurisprudence;

In the context of the all pervading on-line publications on the Internet, the territorial jurisdiction requirements for filing a criminal complaint for defamation as set-out in Sections 177, 178 and 179 CrPC (and other related provisions) are rendered ambiguous and uncertain, to the point of being untenable on principles of criminal jurisprudence, and have become the cause of serious harassment which ought to be modified/read down or otherwise amended;

More specifically, the provisions of Sections 499/500 IPC read with Sections 105 Evidence Act and Section 204 CrPC as applied to "journalists" amount to an unreasonable restriction which do not pass muster under Article 19(2) of the Constitution (for

curtailing the right to freedom of speech and expression as contained in Article 19(1)(a) thereof;

Furthermore, the requirement of personal presence of the accused before Court under Section 205 CrPC (especially journalists who, by the very nature of their profession, are routinely exposed to allegations of criminal defamation as presently understood) is cause of serious harassment, and even unreasonably curtails the right of journalists to practice their profession, or to carry on their occupation, trade or business as otherwise available under Article 19(1)(g) of the Constitution;

The existence of the crime of defamation inter alia under Sections 499/500 Indian Penal Code, in the existing form, is a breach of India's obligations under international conventions and covenants signed by the country to decriminalise "defamation", as explained in detail in the petition;

A fortiori the foregoing aspects of the criminal offence of defamation acquire an even more egregious and unfair taint when applied to publications/broadcasts made by print/electronic media journalists in relation to "public persons" and/or in "public interest";

In testing the constitutionality of the criminal offence of defamation as presently engrafted and understood in law, the right of the press to report must be adjudged from the perspective of the supervening and all-important right of the public to know in any modern democracy. A conspectus of past cases filed, adjudicated and pending under Sections 499/500

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Indian Penal Code, will show how and in what blatant manner the said provisions of law have been misused and abused, in order merely to create a sense of fear of criminal prosecution arising from allegations of defamation under the penal law; and the consequent demand for subservience / submissiveness from journalists by holding them *in-terrorem*;

The Petitioner further states and submits that for an act or omission to be termed "criminal", such act or omission must result in evident harm to society as a whole; and, when contrasted with the right to freedom of speech and expression, and considering the ambiguous and almost indefinable nature of the offence, it would appear right, just and fair that the act of defamation be "decriminalised" since even assuming that such an act has been committed, it remains a harm to an individual and does not fulfill the overarching requirement of harm to the society as a whole.

It may further be clarified that the constitutional validity of Sections 499/500 Indian Penal Code have not so far been tested by this Hon'ble Court, especially on the aspects set-out in the present petition.

Besides, the availability of ten exceptions to Section 499 IPC do not afford any solace against abuse of process or harassment, inasmuch as by reason of Section 105 of the Indian Evidence Act such defenses are available only at the time of trial (since the burden of proving that a case falls within any of the exceptions

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is upon the accused); as a result thereof, the initiation of a criminal prosecution for an alleged act of defamation is invariably a matter-of-course. Especially when such a position applies to a case involving a mere expression of opinion or views by a person engaged in the public duty of informing the people (namely journalists), such matter-of-course initiation of a criminal prosecution itself results in serious hardship and harassment.

The Petitioner submits that the remedy against defamation available under civil law more than adequately addresses the possible mischief, whereas on the other hand, the criminal law remedy (especially in its practical application and operation) is grossly disproportionate to the mischief sought to be addressed; and is accordingly an unreasonable restriction on the free speech guarantee available under the Constitution.

Since as per extant law, both substantive and procedural, in relation to the offence of defamation under the Indian Penal Code and the Code of Criminal Procedure, a single publication or broadcast can lead to multiple criminal prosecutions being filed against the same individual/author/broadcaster, the very existence of the criminal law remedy against defamation generates a serious sense of fear among journalists; and such fear naturally inhibits them in the performance of their duty to inform the public, which has a deleterious impact upon democratic institutions of the country.

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For all the foregoing reasons, Sections 499 and 500 of the Indian Penal Code (and other related provisions) are merely instruments in the hands of powerful people in public life for creating fear, coercion and harassment, which instruments are wielded with great success and effect upon defenseless journalists, who (the latter) are thereby held *in-terrorem* by people whose actions and omissions are subject of legitimate interest to the public at large. Instances abound where the criminal law remedy against defamation is used brazenly and without compunction by powerful people against journalists to seek vengeance for such journalists having revealed inconvenient truths relating to the unscrupulous deeds of people in positions of power and responsibility.

It is now settled that a legislation which, in its operation and effect, is disproportionately harsh or onerous to the object sought to be achieved or the mischief sought to be addressed, is not a "reasonable restriction" within the meaning of Article 19(2) of the Constitution and would not pass muster under that provision. It is submitted that Sections 499 and 500 of the Indian Penal Code fail this standard or test of a "reasonable restriction" under Article 19(2) of the Constitution and therefore, even though "defamation" may be a ground for enacting law to abridge the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, Section 499/500 IPC do not fulfill the constitutional requirements of being such reasonable restriction.

The practical position is, that taking a narrow and technical view of the provisions of the Indian Penal Code and the Code of Criminal Procedure, various High Courts in the country have held that it is permissible for an aggrieved person/complainant to file a prosecution for criminal defamation in any of the places where the offending material is published or circulated or read, thereby laying down a position that permits an aggrieved person/complainant (which very often include professedly aggrieved persons or proxies) to file criminal prosecutions in multiple locations, including locations which have nothing actually to do with the alleged offence, in order merely to harass a journalist by making him "run" all over the country to defend himself merely for exercising his right of free speech that is guaranteed under the Constitution. In this manner the process itself becomes the punishment, which is a position that ought not to be countenanced in law.

At the very least, insofar as it concerns journalists (working through both print and electronic media) who write/publish/broadcast on matters of public interest and public concern, the rigors of Section 105 of the Indian Evidence Act are required to be diluted inasmuch as it must be mandated that, prior to issuance of process against an accused, it must be incumbent upon the Magistrate/Trial Court to seek from the complainant/aggrieved person prima-facie evidence to show firstly, that the matter published/broadcast/otherwise circulated was not true and secondly, that such matter was not of public

concern, absent which a Magistrate/Trial Court may not issue process against the accused at all.

The view of the international community on criminalization of defamation is perhaps best reflected in the following comment by the Council of Europe as contained in Resolution 1577 of the Parliamentary Assembly of the Council of Europe passed on October 4th, 2007:

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9. The Assembly concurs with the clear position adopted by the Secretary General of the Council of Europe, who has denounced threats of prosecution for libel as “a particularly insidious form of intimidation”. The Assembly views such aberrant use of anti-defamation laws as unacceptable.

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13. The Assembly consequently takes the view that prison sentences for defamation should be abolished without further delay. In particular it exhorts states whose laws still provide for prison sentences - although prison sentences are not actually imposed - to abolish them without delay so as not to give any excuse, however unjustified, to those countries which continue to impose them, thus provoking a corrosion of fundamental freedoms.”

That this Hon'ble Court is at present considering the constitutional validity of Section 499 of the Indian Penal Code, 1860 in the case of *Dr. Subramaniam Swamy vs. Union of India & Ors.*, being W.P. (Crl.) No. 184 of 2014; and *Arvind Kejriwal vs. Union of India & Ors.* being W.P. (Crl.) No. 56 of 2015 and W.P. (Crl.) No. 62 of 2015. It is humbly submitted that these cases have been filed by politicians with respect to their own individual prosecutions and do not adequately represent the

interests of journalists and the press as averred in the present petition. It is humbly submitted that considering the wide repercussions on working journalists the Petitioner has been constrained to approach the Hon'ble Court.

Since the aforesaid two proceedings, which are presently pending before this Hon'ble Court, arise from specific criminal complaints of defamation relating to political persons/personalities, the scope and ambit as well as the motivation of the said petitions is restricted and contextual; and such petitions therefore do not represent the issues in their widest perspective. Since the present petition has been filed by an organization of media professionals, without being in the restricted context of any particular criminal complaint relating to defamation, the present petition represents the issues in their most objective and impersonal way. It is therefore respectfully submitted that the present petition be considered by this Hon'ble Court.

It is humbly submitted that criminal defamation as contained in Section 499 of the Indian Penal Code, 1860, and especially as interpreted and applied by the Courts, is contrary to the modern, plural and liberal values contained in the Constitution of India which seek to promote the freedom of speech and expression and avoid harsh criminal process on the basis of arbitrary legal provisions. These values are not unique to India. Several international conventions and comments under them, to which India is a signatory, highlight the need to decriminalise criminal

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defamation. This is also consistent with the trend in other modern constitutional democracies which have sought to decriminalise criminal defamation.

LIST OF DATES AND EVENTS

1860: The Indian Penal Code Bill was passed by the Legislative Council and it received the assent of the then Governor-General on 6th October, 1860.

Section 499, "Defamation" and Section 500 'Punishment for Defamation' were contained as such in the Indian Penal Code, 1860 when it was first passed.

1882: A uniform law of procedure for the whole of India was consolidated by the Code of Criminal Procedure of 1882 (10 of 1882).

1898: The Code of Criminal Procedure of 1882 was replaced by the Code of Criminal Procedure, 1898 (5 of 1898). Procedure of prosecution for defamation was set-out in Sections 198 and 198B.

1955: In 1955, extensive amendments were carried out in the Code of 1898 in order to simplify procedure and to speed up trials. Section 198B containing special procedure for

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prosecution of individuals accused of committing acts of defamation against public servants was brought by virtue of the Amendment Act of 1955.

1973: The Code of Criminal Procedure Bill having been passed by both the Houses of Parliament received the assent of the President on 25th January, 1974. It came into force on 1st April, 1974 as the Code of Criminal Procedure, 1973 (2 of 1974). Section 198 of the Code of 1898 became sub-Section (1) of Section 199 in the Code of 1973. Similarly, sub-Sections (1) to (4) of Section 198B of the Old Code were imported as sub-Sections (2) to (5) in the New Code and sub-Sections (13) and (14) of Section 198 of the Old Code were included as sub-Section (6) of Section 199 in the New Code.

07.10.1994: In the case of *R. Rajagopal alias R.R. Gopal and Another vs. State of T.N. and Others* reported in (1994) 6 SCC 632, this Hon'ble Court left the issue of impact of Art. 19(1)(a) read with clause (2) thereof on Sections 499 and 500, IPC open to be adjudicated in a "proper case".

2008 Petitioner, a not-for-profit organization was

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set up and registered under the Societies Registration Act, 1860. The Petitioner is engaged inter alia in activities to expand the freedom of the media; monitor legislation on matters affecting the news media, either directly or indirectly, and to make appropriate representations to Parliament, and other institutions and organisations at all levels of government and public life.

20.08.2009: In the case of *N. Ravi and Others vs. Union of India and Others* reported in (2007) 15 SCC 631, this Hon'ble Court was constrained to dispose of the Petition as being infructuous on the premise that the Prosecution had decided to withdraw the case. This Hon'ble Court, however, observed that the question of validity of Section 499, IPC was an important one that deserved consideration.

30.10.2014: This Court was pleased to grant a stay of
07-04-2015 further proceedings in the defamation complaints/cases pending against Dr. Swamy in W.P. (Crl.) No. 184 of 2014, titled *Dr. Subramaniam Swamy vs. Union of India*.

17.04.2015 Writ Petition (Criminal) No. 56 of 2015 titled *Sh. Arvind Kejriwal Vs. Union of India* was

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filed wherein this Hon'ble Court was pleased
to issue notice and stay further proceedings
in the defamation case pending before the
Trial Court. W.P. (Crl.) No. 56/2015 has been
tagged with W.P. (Crl.) No. 184/2014.

15.06,2015 Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. ___ OF 2015

[Under Article 32 of the Constitution of India]

IN THE MATTER OF:

Foundation for Media Professionals

Through its Director, Mr. Manoj Mitta

A-101, Shatabdi Rail Vihar,

Sector-62, Noida 201301.

...Petitioner

VERSUS

Union of India,

Through the Secretary,

Ministry of Law & Justice,

4th Floor, A-Wing,

Shastri Bhavan,

New Delhi- 110001

Contesting Respondent

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING INTER ALIA, FOR A WRIT, ORDER OR DIRECTION OR DECLARATION IN THE NATURE OF MANDAMUS DECLARING SECTIONS 499 AND 500 OF THE INDIAN PENAL CODE, 1860 AND SECTIONS 199(1) and 199(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973 ULTRA VIRES THE CONSTITUTION OF INDIA AND ISSUE GUIDELINES UNDER ARTICLE 142 OF THE

CONSTITUTION OF INDIA ON SECTIONS 179; 202; 204(1); AND
205 OF THE CODE OF CRIMINAL PROCEDURE, 1973

TO,

HON'BLE THE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES

OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH THAT :

1. The present petition is being filed by the Petitioner under Article 32 of the Constitution of India impugning Sections 499 and 500 of the Indian Penal Code, 1860 (hereinafter the, "IPC") and Sections 199(1) and 199(2) of the Code of Criminal Procedure, 1973 (hereinafter the, "CrPC") as being contrary to the fundamental rights of the Petitioner and working journalists whose interests it represents under Articles 14, 19 and 21 of the Constitution of India ; or, in the alternative, to interpret or read down such provisions, so as to bring them within accepted constitutional parameters. It further prays as per Article 142 of the Constitution of India for this Hon'ble Court to lay down principles and guidelines with respect to Sections 179; 202; 204(1); and 205 of the CrPC. It is humbly submitted that the offence of criminal defamation and the criminal process under which it is invoked has wide repercussions on working journalists due to which the Petitioner has been constrained to approach the Hon'ble Court.

A. Description of Parties

2. The Petitioner is a not-for-profit organisation set up on 25th April, 2008 bearing the Registration Number S62029/2008 under the Societies Registration Act, 1860. The Petitioner is engaged inter alia in activities to expand the freedom of the media; provide inputs on legislation on matters affecting the news media either directly or indirectly and to make appropriate representations to Parliament, and other institutions and organisations at all levels of government and public life. The Petitioner organisation's founder members include eminent journalists, namely, Amitabh Thakur, Aniruddha Bahal, Ashutosh, Madhu Trehan, Manoj Mitta, S Srinivasan, Sanjay Pugalia, Sanjay Salil, Shashi Shekhar, Vineet Narain and Vivian Fernandes.

A copy of the registration certificate of the Petitioner bearing Registration Number S62029/2008 dated 25.04.2008 is annexed hereto and marked as ANNEXURE - P-1. (From Pg. 60)

A copy of the Memorandum of Association and rules and regulations of the Petitioner is annexed hereto and marked as ANNEXURE - P-2. (From Pg. 61-83)

3. That the constitution of the governing board of the Petitioner as on date has the following composition:

Vivian Fernandes	President
Manoj Mitta	Director
Amitabh Thakur	Treasurer
Aniruddha Bahal, Vipul Mudgal, S Srinivasan, Shalini Singh, Deepak Sharma and Paranjay Guha Thakurta	Governing Council members

A copy of the resolution dated 15th May, 2014 by the President of the Petitioner, authorising Mr. Manoj Mitta, the Director of the Petitioner organisation for filing of the present petition is annexed herein and is marked as ANNEXURE - P-3.(From Pg. 84)

4. The Respondent to the instant petition is the Union of India, through the Secretary, Ministry of Law and Justice, which is the nodal ministry on all issues relating to the legislative and statutory framework inter-alia governing the criminalisation of certain actions, including the IPC and the CrPC.

B. Brief History of Criminal Defamation and the Criminal Procedure Code

5. The Indian Penal Code Bill was passed by the Legislative Council and it received the assent of the Governor-General on 6th October, 1860. Section 499 'Defamation' and Section 500 'Punishment for Defamation' were contained as such in the Indian Penal Code, 1860 when it was first passed.
6. A uniform law of procedure for the whole of India was consolidated by the Code of Criminal Procedure of 1882 (10 of 1882). The Code of Criminal Procedure of 1882 was replaced by the Code of Criminal Procedure, 1898 (5 of 1898).
7. Procedure of prosecution for defamation was set-out in Sections 198 and 198B. In 1955, extensive amendments were

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carried out in the Code of 1898 in order to simplify procedure and to speed up trials. Section 198B containing special procedure for prosecution of individuals accused of committing acts of defamation against public servants was brought by virtue of the Amendment Act of 1955.

8. The Central Law Commission was set up in 1955 to undertake detailed examination of the Code of Criminal Procedure, 1898. Law Commission was reconstituted and the reconstituted commission submitted its report in September, 1969. Thereafter a draft Bill was introduced in the Rajya Sabha on 10th December, 1970. The Bill, after incorporating recommendations of a Joint Select Committee, was introduced in both the Houses of Parliament.
9. The Code of Criminal Procedure Bill having been passed by both the Houses of Parliament received the assent of the President on 25th January, 1974. It came into force on 1st April, 1974 as the Code of Criminal Procedure, 1973 (2 of 1974). Section 198 of the Code of 1898 became sub-Section (1) of Section 199 in the Code of 1973. Similarly, sub-Sections (1) to (4) of Section 198B of the Old Code were imported as sub-Sections (2) to (5) in the New Code and sub-Sections (13) and (14) of Section 198 of the Old Code were included as sub-Section (6) of Section 199 in the New Code.

C. Prior challenges to Criminal Defamation

10. It is submitted that prior to the aforementioned petitions the issue of the constitutionality of the impugned provisions

had arisen before this Hon'ble Court on two previous occasions but was kept open:

- i) In *R. Rajagopal alias R.R. Gopal and Another vs. State of T.N. and Others* reported in (1994) 6 SCC 632, this Hon'ble Court observed as follows: "28. 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."
- ii) In *N. Ravi and Others vs. Union of India and Others* reported in (2007) 15 SCC 631, this Hon'ble Court observed as follows: "Strictly speaking on withdrawal of the complaints, the prayer about the validity of Section 499 has also become academic, but having regard to the importance of the question, we are of the view, in agreement with the learned counsel for the petitioners, that the validity aspect deserves to be examined. In this view, we issue rule, insofar as prayer (a) is concerned."

Thereafter however vide order dated 20.08.2009 in *N Ravi vs. Union of India*, being W.P. (Crl.) 274-283 of 2003, this Hon'ble Court disposed of the Petition as being infructuous on the premise that the Prosecution had decided to withdraw cases against the Petitioner therein.

A copy of order dated 20.08.2009 passed by this Hon'ble Court is annexed hereto and marked as ANNEXURE - P-4.

(From Pg. 85-)

11. That this Hon'ble Court is at present considering the constitutional validity of Section 499 of the Indian Penal Code, 1860 in *Dr. Subramaniam Swamy vs. Union of India & Ors.*, being W.P. (Crl.) No. 184 of 2014; and *Arvind Kejriwal v. Union of India and Ors.* being W.P. (Crl.) No. 56 of 2015 and W.P. (Crl.) No. 62 of 2015.

A copy of order dated 07.04.2015 passed by this Hon'ble Court is annexed hereto and marked as **ANNEXURE P-5.** (From Pg. 86-90)

A copy of order dated 17.04.2015 passed by this Hon'ble Court is annexed hereto and marked as **ANNEXURE P-6.** (From Pg. 91)

12. That to the best of the Petitioner's knowledge the constitutionality of the impugned provisions was also challenged before the Hon'ble High Court of Andhra Pradesh on the following two occasions being:

- i) K.V. Ramaniah vs Special Public Prosecutor reported in AIR 1961 AP 190; and
- ii) A.B.K Prasad vs Union of India reported in 2002 (3) ALT 332.

However both challenges were summarily dismissed. It is pertinent to mention here that both these judgments of the Hon'ble High Court of Andhra Pradesh were prior to the Judgment of this Hon'ble Court in *N. Ravi and Others vs. Union of India and Others* reported in (2007) 15 SCC 631.

D. Constitutionality of Section 499 and 500 of the IPC

13. At present the offence of defamation as contained under Section 499 of the Indian Penal Code, 1860 states the following ingredients:

"499. Defamation.- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1. - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

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

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

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

body of that person is in a loathsome state, or in a state generally considered as disgraceful."

14. As per the Press and Registration of Books Act, 1867 (the "PRB Act") in addition to a primary responsibility for an article by a reporter/author, vicarious liability is also placed on the editor, printer and publisher of a "newspaper" in terms of the PRB Act. Although, as per law laid down by this Hon'ble Court, the presumption regarding the responsibility for selection of matter that comes to be published in a newspaper arises only against the person named as "editor" in a declaration made in terms of Section 7 of the PRB Act, invariably, even a person who may be editor-in-chief or chief editor of a newspaper is also invariably arrayed as accused in criminal complaints made under Section 499/500 IPC; and such aberration is only, if at all, corrected after summons/process is issued after intervention of the High Court in proceedings under Section 482 CrPC seeking quashing of criminal proceedings against such editor-in-chief or chief editor. In these instance complainants often resort to an abuse of process purportedly acting under Section 7 of the Press and Registration of Books Act, 1867 which is given below:

"7. Office copy of declaration to be prima facie evidence.—In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, 1[or, in the case of the editor, a copy of the newspaper containing his name

printed on it as that of the editor] shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, 1[or printed on such newspaper, as the case may be] that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every 2[newspaper] whereof the title shall correspond with the title of the 2[newspaper] mentioned in the declaration, 5[or the editor of every portion of that issue of the newspaper of which a copy is produced]."

15. This tendency of complainants to utilise criminal defamation under Section 499 against senior journalists who may form part of the publication but have no connection with an allegedly defamatory article has been noticed by this Hon'ble Court as well as several High Courts in several instances. These instances are further enumerated in the averments on issuance of process under the CrPC.

- i. *Defamation under Section 499 penalises opinions and expression of ideas*

16. That it is evident from the ingredients of defamation as stated above that Section 499 not only fails to distinguish between assertions of fact and mere opinions but also penalises such expressions of opinion or ideas. This is relevant since a statement of fact may constitute an immediate cause for lowering the repute of a person (as it may be seen as a credible statement which has a sense of accuracy to it) but on the contrary an opinion is often a mere expression of a person's own subjective view and a mere

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expression of an idea. An omission to distinguish a statement asserting a fact from a statement expressing an opinion or an idea, leads invariably, to suppression of thought itself, which is anathema to the constitutional scheme in relation to freedom of thought, belief and expression.

17. It is humbly submitted that an opinion can be neatly distinguished from an assertion of fact in defamation proceedings and it includes within its ambit rhetorical hyperbole, figurative language or epithets. On the contrary a fact is capable of being proven true or false. In this respect reference may be made to the standards evolved on this aspect by the Supreme Court of the United States in *Gertz v. Robert Welch, Inc.*, reported in 418 U.S. 323 (1974) which Court stated that:

"We begin with the common ground. Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but [418 U.S. 323, 340] on the competition of other ideas. But there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in "uninhibited, robust, and wide-open" debate on public issues. New York Times Co. v. Sullivan, 376 U.S., at 270. They belong to that category of utterances which "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942)."

18. Rather than distinguishing between an expression of opinion and a statement of fact, Section 499 seeks to penalise opinion in exactly the same manner as an assertion of fact. Towards this the offence specifically contains the term, "imputation" which would within its ordinary meaning bundle both a fact as well as the expression of opinion. This is further made clear by the exceptions which contain specific exemptions for opinions made in good faith. By seeking to restrict and criminalise the expression of opinion which cannot be verified, it places it on the same threshold as an assertion of fact demonstrating a lack of an intelligible diffrentia as well as unreasonably restricting the right (and in fact the public duty) of the Press to inform the people at large .

19. It is also relevant to note that consequent on a failure to separate the prosecution of mere opinions from assertion of facts, Section 499 is also routinely used against artists and especially in works of political or social satire given it mentions the word, "innuendo" as well. In such instance often the mere act of launching a prosecution itself leads to harassment and consequent limitation on the liberty of a journalist. It also has a chilling effect on free speech and expression which may otherwise be legitimate.

ii. *Truth is not an absolute defence to a charge of defamation but is conditional on a factual determination of "public good" as per Exception 1 of Section 499 of the IPC*

20. It is humbly submitted that the offence of defamation under Section 499 in addition to the ingredients stated above also contains a list of 10 exceptions. Though such exceptions appear to provide substantive safeguards against criminal defamation, they are, in practice and effect, illusory. The First Exception to Section 499 is the defence of truth. However it makes the accuracy of a statement of fact dependent on the demonstration of "public good". The First Exception further states that, "[w]hether or not it is for the public good is a question of fact". This conditional defence of truth is therefore illusory resulting in an unreasonable restriction on working journalists.

21. The defence of truth as an absolute defence, as opposed to a conditional defence has been restated in several foreign jurisdictions. Further, beyond the additional requirement to demonstrate such "public good" is left as a determination of fact. The Law Commission of India in its 42nd Report (1971) on the Indian Penal Code states at Page 330 that:

"21.3. The first exception to section 499 says that a true imputation made for the public good is not defamation, and then adds a sentence, "whether or not it is for the public good is a question of fact". This is to make it clear that the question has to be decided by the jury in jury trial. After the abolition of jury trials, this explanation has lost its significance, and we, therefore, propose to delete the second sentence of the first exception."

iii. Absence of the modern standard of actual malice in instances of alleged defamation of public officials and personalities under Exceptions 2 and 3 of Section 499 of the IPC

22. It is humbly submitted that the offence of defamation under Section 499 does not contain the standard of actual malice as has been adopted by this Hon'ble Court in cases of civil defamation when claimed by public officials and persons as per the decision in *R. Rajagopal v. State of T.N.*, reported in (1994) 6 SCC 632. The standard of actual malice states that not only should there be falsity in the statement alleged to be defamatory, but that it should also be *with knowledge that it was false or with reckless disregard of whether it was false or not* (emphasis supplied). The intention for committing the act of defamation under Section 499 does not consider this standard and on the contrary goes against it. This is especially relevant given that many, if not most, cases of criminal defamation against journalists are made by public officials and public persons. Towards this Section 499 fails to contain any higher standard for the offence of criminal defamation and makes no differentiation between the defamation of private persons and public personalities. While considering this aspect, it must be borne in mind that it is now a well recognised jurisprudential principle that by reason of their role and special position in society, "public persons" even cede some part of their privacy; and "public persons" must also therefore be amenable and open to greater criticism in relation to the public functions they perform. Accordingly, the expression of views and opinions in relation to public functions performed by public persons ought not to give rise to the criminal offence of defamation;

or, at the very least, the standard and threshold for the criminal offence of defamation as regards expression of views or opinions in relation to public persons in performance of the public functions, ought to be higher.

23. With respect to the offence of criminal defamation of "public servants" and of any person touching any "public question", Section 499 expressly contains two exceptions which are provided below:

"Second Exception.—Public conduct of public servants.—It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further."

Here the Second Exception applies in cases of public servants and the Third Exception would apply to any person (inclusive of public servants and personalities) when the conduct of such person touches on a public question. In both these exceptions there is a requirement of, a) good faith; and b) a public function or question.

24. The term, "good faith" has been defined in Section 52 of the Indian Penal Code and would contemplate statements made with due care and attention. Hence, firstly the standard which is sought to be placed is not on the complainant to

demonstrate and prove, but on the accused to avail as an exception. Secondly this standard by itself is distinct from actual malice and again goes back to imputing due care and attention to mere inaccuracies. This is made clear by the interpretation of this Court of Section 52 of the Indian Penal Code, 1860 in *Sewakram Sobhani vs R.K. Karanjia* reported in 1981 SCR (3) 627 which stated that-

"The insistence is upon the exercise of due care and attention. Recklessness and negligence are ruled out by the very nature of the definition. The standard of care and attention must depend on the circumstances of the individual case, the nature of the imputation, the need and the opportunity for verification, the situation and context in which the imputation was made, the position of the person making the imputation, and a variety of other factors."

iv. *Exception Four of Section 499 of the IPC is only limited to Courts but does not extend to Parliament*

25. It is humbly submitted that the Fourth Exception to Section 499 states that:

"Fourth Exception.—Publication of reports of proceedings of Courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above Section."

26. This exception hence only applies to proceedings in Courts and not in Parliament and State Assemblies, again tilting

Section 499 against journalists. In the case of *Dr. Jatish Chandra Ghosh vs Hari Sadhan Mukherjee & Others* reported in 1961 SCR (3) 486 this Hon'ble Court has stated that:

"In this connection, it is also relevant to note that we are concerned in this case with a criminal prosecution for defamation. The law of defamation has been dealt with in ss. 499 and 500 of the Indian Penal Code.

Section 499 contains a number of exceptions. Those specified exceptions lay down what is not defamation. The fourth exception says that it is not defamation to publish a substantially true report of the proceedings of a court of justice, but does not make any such concession in respect of proceedings of a House of Legislature or Parliament."

27. Hence, the defences contained within the Section 499 are inadequate and subjective. They set high thresholds and result in a chilling effect on legitimate free speech protected under the constitution and are at best illusory. The offence under Section 499 alongwith its defences presents an unreasonable restriction on press freedom and stifles legitimate discourse through a chilling effect.

v. *The provision of criminal defamation under Section 499 of the IPC is excessive and disproportionate in view of the existence of the remedy of civil defamation*

28. The provision for criminal defamation under Section 499 is excessive and disproportionate to the alleged act for which adequate remedies exist under civil law. It is excessive in the sense that it criminalises not harm against the society per se, but against an individual and permits criminal prosecution for an alleged offence of defamation of an individual. Civil remedies which contain damages as well as

provisions for interlocutory orders and injunctions which provide for deposit of money as well as restraint on publication are effective and harsh enough prohibitions to deter any defamation in the Press. In view of the existence of such remedies the existence of Section 499 results in an unreasonable restriction on free speech guarantee that is the sine qua non of a modern democracy.

29. The remedy of civil defamation at present exists as a tort which is effectively enforced by Civil Courts in the country through the relief of damages and perpetual and mandatory injunctions. Civil defamation is an effective remedy which sets a tough deterrent for the following reasons:

- a. Most publications today are done on-line, permitting plaintiffs in civil defamation cases to prefer the suits in a jurisdiction as per their convenience as per Sections 16-20 of the Code of Civil Procedure, 1908. Hence when an article is published on the internet, the cause of action may arise in part within the territorial jurisdiction of any Civil Court almost as per the choice of the plaintiff.
- b. The valuation of damages in cases of civil defamation is self-assessed by plaintiff which is only limited by the payment of court fees which is not ad-volerm as per local Stamp Duty enactments in many States. Hence, Plaintiffs may claim and may also be decreed large sums of money as damages in civil suits for defamation and

instances of this already exist. It is respectfully submitted that in the State of Odisha, women are completely exempt from paying any Court Fee in terms of a notification passed by the Department of Law, Government of Odisha being Notification No. S.R.O. 575 of 1994 dated 7.6.1994 which stipulates as follows:

"SRO No.575/94 - In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870 (VII of 1870) the State Government do hereby remit in the whole of the State of Orissa all fees mentioned in Schedules-I and II to the said Act payable for filing or instituting cases or proceedings in any Court in Orissa by the following categories of persons, namely :

- (i)
- (ii)
- (iii) Women
- (iv)
- (v)
- (vi)
- (vii)"

c. To prevent the immediate dissemination of information, plaintiffs may further prefer suits for interim injunction and ex-parte ad-interim injunction against a defendant, which remedy is available under Order 39 Rules 1 & 2 CPC and is granted in appropriate cases. These are immediate restraints on further dissemination and prevent any further injury to the plaintiff.

30. It is humbly submitted that as is evident from the above, civil defamation provides an effective remedy to Plaintiffs and creates a harsh enough deterrent for defendants. In view

of the same Section 499 is not only superfluous but its only utility remains to harass and limit legitimate criticism and comment by journalists and the press.

E. Constitutionality of provisions of the CrPC in cases of prosecution for Section 499 of the IPC

31. The offence of criminal defamation as contained under Sections 499 also results in arbitrariness and serious procedural unfairness through the application of various provisions of the Code of Criminal Procedure, 1973. These include Sections 199(1); 199(2); 204(1); and 205 that operate in a manner so as to infringe Articles 14, 19 and 21 of the Constitution of India in cases of criminal defamation under Section 499 of the Indian Penal Code, 1860.

i. Multiple and proxy complaints are permissible under Section 199(1) of the CrPC

32. That as per the present scheme of the Code of Criminal Procedure, 1973 a single publication or broadcast can lead to the registration of multiple criminal cases against the same individual/author/broadcaster causing a vast chilling effect on the Press. No such limitation exists under Section 199(1) which contains the process for preferring a complaint for defamation. Section 199(1) of the CrPC is extracted below:

"199. Prosecution for defamation.

(i) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness

or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court make a complaint on his or her behalf."

33. As per a reported instance about 125 cases for criminal defamation were filed against, "The Hindu" by the Tamil Nadu Government between 2002-2006 which were withdrawn only after an Article 32 petition was filed by its managing editor. This is recorded in the affidavit of the Government of Tamil Nadu in the Order of this Hon'ble Court in *N. Ravi and Others vs. Union of India and Others* reported in (2007) 15 SCC 631. This is not a mere abuse of the criminal process but a regular feature of criminal defamation trials. A further instance of this is another reported decision of this Hon'ble Court in *S. Khushboo vs Kanniammal & Anr.* reported in (2010) 5 SCC 600 wherein it stated that:

"2. The appellant is a well-known actress who has approached this Court to seek quashing of criminal proceedings pending against her. As many as 23 Criminal Complaints were filed against her (emphasis applied), mostly in the State of Tamil Nadu, for the offences contemplated under Sections 499, 500 and 505 of the Indian Penal Code, 1860 [hereinafter 'IPC'] and Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986 [hereinafter 'Act 1986']."

34. That further Section 199(1) of Code of Criminal Procedure, 1973 states that a complaint for defamation may be preferred by, "some person aggrieved". Hence an, "aggrieved person" may not be the defamed person this dilutes the locus requisite to initiate a criminal process. Though this

may seem reasonable, the proviso to Section 199(1) expressly contains the power for some other person to prefer such a complaint with the leave of the court in specific instances of incapacity of the person allegedly defamed. Section 199(1) by stating such a complaint can be made by, "some person aggrieved" dilutes the effect of the proviso and often leads to proxy complaints on behalf of powerful and high net worth individuals in such cases of proxy complainants the individual defamed has no legal obligation to participate in the criminal trial as a complainant. This results in an arbitrary application of the law resulting in an unreasonable restriction on the freedom of speech and expression.

ii. *Exceptions to Section 499 of the IPC are disregarded at the point of issuance of process under Section 204 of the CrPC*

35. Due to Section 204 of the Code of Criminal Procedure, 1973 the exceptions to the offence of defamation contained within Section 499 are only considered after trial commences. Section 204 of the CrPC is extracted below:

"204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons- case, he shall issue his summons for the attendance of the accused, or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear

at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub- Section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub- Section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this Section shall be deemed to affect the provisions of Section 87."

36. It is humbly submitted that at the time of issuance of process there is no check as to the nature of allegations and every bald statement of the complainant results in the issuance of process. The truth of, or the public good resulting from, a journalistic publication is not even considered and journalists and editors are forced to face the rigours of criminal trial. This does not even require the consideration of any extraneous material but can be gauged from an applicability of the exceptions to criminal defamation under Section 499 of the IPC against the allegations contained in the complaint itself.

37. That this Hon'ble Court while analysing the scheme under Section 204 of the CrPC has stated in the case of *Balraj Khanna & Ors. V. Moti Ram* reported in AIR 1971 SC 1389 that:

"In our opinion, the question of the application of the Exceptions to Section 499, I.P.C does not arise at this stage. Rejection of the complaint by the Magistrate on the second ground mentioned above cannot be sustained. It was also unnecessary for the High Court to have considered this aspect and differed from the

trial Magistrate. It is needless to state that the question of applicability of the Exceptions to Section 499, I.P.C as well as other defences that may be available to the appellants will have to be gone into during the trial of the complaint."

iii. Process is issued summoning senior editors and owners / promoters / directors of journalistic publications without any due verification under Section 204 of the CrPC

38. It is humbly submitted as per Section 7 of the Press and Registration of Books Act, 1867 (hereinafter the "PRB Act") in addition to the primary responsibility for an article by a reporter/author vicarious liability is also placed on an editor, printer and publisher but only when they are responsible for the collection, control or selection of the matter printed in the newspaper or a periodical. A presumption for this arises pursuant to the Declaration made under the PRB Act; however this aspect is disregarded completely at the stage of issuance of process under which senior / managing editors are summoned under Section 204 of the CrPC when entertaining complaints under Section 499 of the IPC.

39. Some instances of this abuse of process, where process was issued under Section 204 and was only quashed after a journalist under fear and harassment had approached the High Court are given below:

S.No.	Case	Persons Accused	Position
1.	Vivek Goenka vs State (NCT Of	Vivek Goenka	Managing Editor, Indian

	Delhi) Crl.M.C.4037/2005 High Court of Delhi	Sh. Shekhar Gupta,	Express Editor-in- Chief, Indian Express
2.	Shobhana Bhartia & Ors. Vs. NCT of Delhi & Anr. 144 (2007) DLT 519	Shobhna Bhartiya	Managing Director, Hindustan Times
		Vir Sanghvi	Chief Editor, Hindustan Times
		Vineet Jain	Managing Director, Benett Coleman & Co.
4.	Vineet Jain vs NCT Of Delhi CRL.M.C.2111/2007 High Court of Delhi	Vineet Jain	Managing Editor, Bennett Coleman & Co. Ltd.
		Ramesh Chander	Editor, Dainik Bhaskar
		Mahinder Mohan Gupta Managing	Chairman cum Managing Director, Dainik Jagran
		Durbar Ganguly	Joint Managing Director, Pioneer
		Chandan Mitra	Printer and Publisher, Pioneer
5.	Aroon Purie & Ors. V/s. State Haryana & Anr LAWS(P&H)-07-5-85	Aroon Purie	Editor-in- Chief, India Today

40. In all the illustrative cases above summons were issued and then quashed only after the High Court was approached for a remedy. This clearly shows the tendency of complainants, which is enabled by law, to needlessly involve senior and executive editors and owners/promoters/directors in the criminal process to cause harassment and intimidation.

iv. Permanent Exemption from personal appearance under Section 205 of the CrPC is not granted despite tremendous hardship caused to editors and reporters

41. As most press publications are now on-line criminal defamation complaints are filed in far flung and remote corners of India to further cause harassment to editors and journalists. Since personal attendance in such cases is a rule, only dispensed by an application made under Section 205 of the Code of Criminal Procedure, 1973, an accused journalist has to be personally present in remote corners of India which have no connection to the place of publication or the ordinary domicile or place of work of the accused. Further guidelines on this issued by this Hon'ble Court leave the ultimate determination of it to the Magistrate under Section 205 as per which a permanent exemption from personal attendance is granted as a rare exception.

42. This Hon'ble Court recently in the context of offences under Section 138 of the Negotiable Instruments

Act was pleased to state in *TGN Kumar v. State of Kerala*, reported in (2011) 2 SCC 772:

"8. In *Bhaskar Industries Ltd. (supra)*, this Court had laid down the following guidelines, which are to be borne in mind while dealing with an application seeking dispensation with the personal appearance of an accused in a case under Section 138 of the N.I. Act:

"19. ...it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the Magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course." (2005) 4 SCC 173.

We respectfully concur with the above guidelines and while re-affirming the same, we would add that the order of the Magistrate should be such which does not result in unnecessary harassment to the accused and at the same time does not cause any prejudice to the complainant. The Court must ensure that the exemption from personal appearance granted to an accused is not abused to delay the trial."

43. It is humbly submitted that the same standards should be applied in cases for an offence alleged under Section 499 of the IPC.

GROUND S

44. The Petitioner therefore urges the following, among other grounds, in the alternative and without prejudice to each other:

A. For that the impugned provisions are violative of the Article 19(1)(a) of the Constitution of India. The freedom of

speech and expression is enshrined in Article 19(1)(a) of the Constitution of India. It is pertinent to reproduce the contents of Article 19(1)(a):

"19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;"

It is also pertinent to reproduce the contents of Article 19(2) of the Constitution of India:

"(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

A perusal of Article 19 (2) reveals that any law which restricts the freedom of speech and expression guaranteed under Article 19(1) (a) must: (i) be reasonable; (ii) have a rational nexus with the limited objectives/grounds provided for in Article 19 (2), namely sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

B. For that the restriction imposed by the impugned provisions transgress the parameters stipulated under Article 19(2) of the Constitution of India. It is submitted that while there is no straightjacket formula for

determining the contours of the term 'reasonable' in the context of Article 19(2), this Hon'ble Court has time and again laid down what amount to 'reasonable restrictions'. As per the decision of this Hon'ble Court in *Chintaman Rao v. The State of Madhya Pradesh*, reported in [1950] S.C.R. 759, this Hon'ble Court said:

"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 word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates" (Emphasis Supplied)

In *State of Madras v. V.G. Row*, reported in [1952] S.C.R. 597, this Hon'ble Court held:

"This Court had occasion in Dr. Khare's case (1950) S.C.R. 519 to define the scope of the judicial review under clause (5) of Article 19 where the phrase "imposing reasonable restriction on the exercise of the right" also occurs and four out of the five Judges participating in the decision expressed the view (the other Judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised."

Similarly, in *Mohd. Faruk v. State of Madhya Pradesh & Ors.*, reported in [1970] 1 S.C.R. 156, this Hon'ble Court held:

"The Court must in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less

drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency-national or local-or the necessity to maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved." (at page 161)

In *Dr. N. B. Khare v. State of Delhi*, reported in [1950] S.C.R.

519, this Hon'ble Court spoke of reasonable restrictions

when it comes to procedure. This Hon'ble Court held:

"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. It is obvious that if the law prescribes five years externment or ten years externment, the question whether such period of externment is reasonable, being the substantive part, is necessarily for the consideration of the court under clause (5). Similarly, if the law provides the procedure under which the exercise of the right may be restricted, the same is also for the consideration of the Court, as it has to determine if the exercise of the right has been reasonably restricted." (at page 524).

C. For that from a perusal of the aforementioned judgments of this Hon'ble Court, it can be inferred that the following factors are to be considered while examining the reasonableness of any law which seeks to restrict the freedom of speech and expression:

- a. The law/restriction in question should not suffer from the vice of excessiveness.
- b. The objective sought to be achieved by the law in question must be achieved by the least drastic/excessive law/provision;

c. Both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness.

D. For Section 499 of the IPC is unconstitutional and violative of Articles 14, 19(1)(a) and 21 given that it places a criminal penalty for expression of opinions and expression of ideas.

This is so for the following reasons:

a. The restriction is excessive as it does not differentiate between assertions of fact which are capable of verification from a mere opinion. By criminalising the expression of opinion the provision by itself penalises speech which is otherwise protected under Article 19(1)(a).

b. By its very nature, when penalising opinion, it also includes within it, expressions of satire and parody which are a part of legitimate political commentary. This is evident from the use of the phrase, "irony" which can lead to criminal prosecution under Section 499.

E. For that even in assertions of fact, truth under Section 499 does not constitute an absolute defence in the criminal prosecution and is conditional on being able to demonstrate, "public good". The defence of truth should be absolute when considering the defence against defamation, given that "public good" in any publication which is true can only (if at all) be an ingredient of the purported harm

to privacy of an aggrieved person and not harm to reputation (viz. defamation). Hence the first exception to Section 499 is not only onerous but "public good" does not have any reasonable nexus to objects of Section 499 rendering the entire provision void under Articles 14, 19 and 21.

F. For that further there is an absence of the modern standard of "actual malice" in instances of alleged defamation of public officials and public personalities under Exceptions 2 and 3 of Section 499 of the IPC. This is contrary to the judgement of this Hon'ble Court in *R. Rajagopal v. State of T.N.*, reported in (1994) 6 SCC 632 which applies the standard of actual malice in cases of civil defamation. This Hon'ble Court in adopting this standard has reasoned that without it there would be a chilling effect on free speech and hence such civil actions of defamation would be contrary to Articles 14, 19 and 21 of the Constitution of India. Given the same reasoning applies a fortiori in criminal defamation under Section 499 of the IPC the present statute as it stands is contrary to the fundamental rights of journalists.

G. For Exception 4 of Section 499 of the IPC is only limited to Courts but does not extend to Parliament, for which there is no justification. It is pertinent to bear in mind that the publication of a substantially true report of the proceedings is only a defence against defamation under

Section 499 for proceedings of a Court but not a legislature without any justification. This unreasonably limits the ability of the press and journalists to report freely on matters that go on within a Legislature (which is a matter of utmost interest to the public in a parliamentary democracy) and is against Articles 14, 19 and 21 of the Constitution.

H. For that the impugned provisions are grossly excessive and disproportionate to the objective sought to be achieved. It is respectfully submitted that any person who believes that she/he has been defamed by the act of another person has two concurrent remedies available to him. While the civil wrong of defamation is not codified, the person aggrieved can file a civil suit for damages and injunction. Simultaneously, the aggrieved person can also invoke the machinery of criminal Courts under the Criminal Procedure Code. It is submitted that the impugned provisions are excessive and disproportionate even for the reason that civil remedies are already available to the aggrieved person.

I. For that the 'crime' of defamation is in fact a unique one in as much as it is not a crime against the society but only a private wrong against the reputation of an individual. The wrong of 'defamation' therefore does not, in the first instance, belong in a penal code. Even historically traced, the criminalisation of 'defamation' belongs to an era when mutilation and death sentences for pickpocketing were the

norm and autocratic governments suppressing dissent were the order of the day. It belongs to an era when the concept of judicial review of legislation, the notions of liberty and free speech were not in vogue. It is submitted that not only do criminal proceedings involve the risk of the accused being deprived of his liberty by being imprisoned; the very factum of undergoing a criminal trial subjects an accused to perpetual and indelible stigma. The dilatory nature of criminal trials only serves to exacerbate the harassment and tribulations of the accused person.

- J. For that it is respectfully submitted that in *Mohd. Faruk v. State of Madhya Pradesh & Ors.*, reported in [1970] 1 S.C.R. 156 this Hon'ble Court held that while considering the reasonableness of a restriction, Courts must assess whether a less drastic alternate is possible. It is submitted that here is a case where a less drastic and sufficient alternative is already available in the form of Civil Suits and therefore the impugned provisions must be declared unconstitutional. It is submitted that even the civil remedies for defamation are excessive on account of various reasons such as abuse of territorial jurisdiction to the convenience of the plaintiff, an extraordinary number of cases being filed in States where court fees is negligible etc. Hence, available civil penalties and remedies provide adequate and even harsh deterrents to defamation.

K. For that the excessive and disproportionate nature of the penalty for defamatory statements, rampant abuse of the impugned provisions by the high and mighty and, most importantly the vagueness of the impugned provisions, together result in a chilling effect on the freedom of speech and expression. The relatively miniscule criticism of big corporate houses in India is the biggest testament to the existence of chilling effect in India as due to the uncertainty of the criminal process many journalists and media houses do not publish stories which are otherwise in public interest and ought to be published. It is respectfully submitted that in *Indian Oil Corporation Vs. NEPC India* reported in (2006) 6 SCC 736 this Hon'ble Court recognised the growing tendency of business conglomerates to abuse remedies available under criminal laws by stating that:

"10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

(Emphasis Supplied)

L. For that the impugned provisions are being frequently invoked to muzzle and stifle discussion, freedom of the

press, activism and dissent in general and are contrary to the requirement of, "reasonableness" under Articles 14, 19 and 21 of the Constitution of India.

M. For that this Hon'ble Court has also recognised the doctrine of 'Chilling Effect' on free speech. In *R. Rajagopal v. State of T.N.*, reported in (1994) 6 SCC 632, this Hon'ble Court held:

"19. The principle of Sullivan [376 US 254 : 11 L Ed 2d 686 (1964)] was carried forward — and this is relevant to the second question arising in this case — in Derbyshire County Council v. Times Newspapers Ltd. [(1993) 2 WLR 449 : (1993) 1 All ER 1011, HL] , a decision rendered by the House of Lords. The plaintiff, a local authority brought an action for damages for libel against the defendants in respect of two articles published in Sunday Times questioning the propriety of investments made for its superannuation fund. The articles were headed "Revealed: Socialist tycoon deals with Labour Chief" and "Bizarre deals of a council leader and the media tycoon". A preliminary issue was raised whether the plaintiff has a cause of action against the defendant. The trial Judge held that such an action was maintainable but on appeal the Court of Appeal held to the contrary. When the matter reached the House of Lords, it affirmed the decision of the Court of Appeal but on a different ground. Lord Keith delivered the judgment agreed to by all other learned Law Lords. In his opinion, Lord Keith recalled that in Attorney General v. Guardian Newspapers Ltd. (No. 2) [(1990) 1 AC 109 : (1988) 3 All ER 545 : (1988) 3 WLR 776, HL] popularly known as "Spycatcher case", the House of Lords had opined that "there are rights

available to private citizens which institutions of... Government are not in a position to exercise unless they can show that it is in the public interest to do so". It was also held therein that not only was there no public interest in allowing governmental institutions to sue for libel, it was "contrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speech" and further that action for defamation or threat of such action "inevitably have an inhibiting effect on freedom of speech". The learned Law Lord referred to the decision of the United States Supreme Court in *New York Times v. Sullivan* [376 US 254 : 11 L Ed 2d 686 89 (1964)] and certain other decisions of American Courts and observed — and this is significant for our purposes— "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 underlaid them are no less valid in this country. What has been described as 'the chilling effect' induced by the threat of civil actions for libel is very important. Quite often the facts which would justify a defamatory publication are known to be true, but admissible evidence capable of proving those facts is not available."

N. For that similarly in *S. Khushboo v. Kanniammal*, reported in (2010) 5 SCC 600, this Hon'ble Court held

"47. In the present case, the substance of the controversy does not really touch on whether premarital sex is socially acceptable. Instead, the real issue of concern is the disproportionate response to the appellant's remarks. If the complainants vehemently disagreed with the appellant's views, then they should have contested her views through the news media or

any other public platform. The law should not be used in a manner that has chilling effects on the "freedom of speech and expression".

O. For that in *Shreya Singhal Vs. Union of India* being Writ Petition (Civil) No. 167 of 2012 this Hon'ble Court has held the vice of 'chilling effect' to be a good ground for declaring a law unconstitutional:

"We, therefore, hold that the Section is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth."

P. For that the procedural machinery surrounding the impugned provisions acts to amplify the excessiveness and disproportionality of the said provisions. It is respectfully submitted that Section 179 Cr.P.C. mandates that the commission of an offence may be inquired into or tried by a Court within whose jurisdiction the act was done or its consequence has ensued. In the case of the offence of defamation under Section 499 of the Indian Penal Code, defamatory material in the form of newspaper reports, press conferences, television interviews, or web-based material are 'published' at one place but transmitted/circulated at multiple locations ; and in fact such circulation/transmission can, and is, very easily manipulated and contrived so as to "create" territorial

jurisdiction where none exists. The effect of these provisions is that the Court within whose jurisdiction the defamatory material is published as well the Courts within whose jurisdiction the defamatory material is supposedly circulated, read or watched have concurrent jurisdiction to inquire into and try the offence of defamation. Since the impugned provisions are frequently abused by corporate conglomerates, governments, etc complaints are often filed in multiple Courts and in Courts which are at a great distance from the accused merely to harass the accused.

Q. For that Section 199(1) of the CrPC further does not contain any limitation on the number of complaints which can be filed with respect to the same publication which is alleged to be defamatory under Section 499 of the IPC. Hence, as a reported instance about 125 cases for criminal defamation were filed against The Hindu newspaper by the Tamil Nadu Government between 2002-2006 which were withdrawn only after an Article 32 petition was filed by its managing editor recorded in the affidavit of the Government of Tamil Nadu in the Order of this Hon'ble Court in *N. Ravi and Others vs. Union of India and Others* reported in (2007) 15 SCC 631. This is not a mere abuse of the criminal process but a regular feature of criminal defamation trials. A further instance of this is another reported decision of this Hon'ble Court in *S. Khushboo vs Kanniammal & Anr.* reported in (2010) 5 SCC 600 wherein it stated that:

"2. The appellant is a well known actress who has approached this Court to seek quashing of criminal proceedings pending against her. As many as 23 Criminal Complaints were filed against her (emphasis applied), mostly in the State of Tamil Nadu, for the offences contemplated under Sections 499, 500 and 505 of the Indian Penal Code, 1860 [hereinafter 'IPC'] and Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986 [hereinafter 'Act 1986']."

R. For that, taking a limited technical view of the matter however, various High Courts have noticed and approved the aforementioned practice of multiple cases of criminal defamation being filed in different territorial jurisdictions to the harassment of reporters and editors. In the case of *Subhiksha Trading Services Ltd. v. Azim H. Premji*, reported in 2011 CrLJ 2769 (Mad), the Hon'ble High Court of Madras held that in the case of an interview to press, though the act of giving interview takes place at one place, its consequences ensue in the places of circulation of the newspaper and hence a prosecution for such statement, if defamatory can be launched in the Courts exercising jurisdiction over any of the places wherein such circulation is made. In *Shaukatali Ibrahim Rangrez v. Mohommad Siraj*, reported in 1997 Cri. LJ 1352, a learned Single Judge of Hon'ble High Court of Bombay (Aurangabad Bench) held that if a defamatory utterance is made at one place and the complainant is defamed at another place where he was residing, the Court exercising over that place will also have

a jurisdiction to try the offence. The Hon'ble High Court of Delhi in *Dr. Ashish Nandy v. State of Gujarat*, reported in 2010 DHC 1328, referring to the observations made by the Supreme Court in *State of M.P. v. Suresh Kaushal*, 2003 (11) SCC 126 held that when an article was written in Delhi and handed over to a newspaper in Delhi, it would amount to defamation committed in Gujarat, if such newspaper was proved to be in circulation in Gujarat or that any one in Gujarat could have read that article. The Bombay High Court in *Dr. Subramaniam Swamy Vs. Prabhakar S.Pai and Anr.*, reported in 1984 Cri.L.J. 1329 has held that the Court at Chandigarh, where the defamatory statements was made by the accused in a Press Conference and the Courts at Bombay, where the defamatory statement was published, circulated and read can have co-ordinate territorial jurisdiction to deal with a case under Section 500 of I.P.C. The High Court of Karnataka in *P.Lankesh and Another v. H. Shivappa & Anr.*, reported in 1994 CRI.L.J. - 3510 has held as follows:-

"It cannot be said that the act of publication comes to an end as soon as one issue of the newspaper is released at one place. If that newspaper is despatched by the printer and publisher to other places for being sold or circulated the defamatory article gets published at each such place. Mere fact that the headquarters of a news paper is based at a particular place or that it is printed and published at one place, does not necessarily mean that there cannot be publication of defamatory article contained in the

paper at another place. If the defamatory imputation is made available to public at several places then the offence is committed at each such place. Though the first offence may be committed at the place where it is printed and first published, it gets repeated wherever the newspaper is circulated at other places."

The nature of the procedure therefore is such that the complainant can practically pick any Court in the country to harass the accused compelling the accused to travel across the country and expend precious time, effort and resources to defend his case ;

S. For that further Section 199(1) of Code of Criminal Procedure, 1973 states that a complaint for defamation may be preferred by, "some person aggrieved". Hence an, "aggrieved person" may not be the defamed person and it dilutes the locus requisite to initiate a criminal process. Though this may seem reasonable, the proviso to Section 199(1) expressly contains the power for some other person to prefer such a complaint with the leave of the Court in specific instances of incapacity of the person allegedly defamed. Section 199(1) by stating such a complaint can be made by, "some person aggrieved" dilutes the effect of the proviso and commonly leads to proxy complaints on behalf of powerful and high net-worth individuals which do not even require them to make such a complaint under their own name or personally participate in the criminal process as a complainant. These result in an arbitrary application

of the law which result in an unreasonable restriction on the freedom of speech and expression.

T. For that the 'exceptions' contained in S. 499 of the Indian Penal Code are illusory and do not come to the aid of the accused or mitigate his tribulations in any manner. It is respectfully submitted that S. 105 of the Evidence Act stipulates that when a person is accused of an offence, the burden of proving the existence of circumstances proving that the case falls within any of the general exceptions in the Indian Penal Code or within any special exception or proviso contained in any other part of the same Code, or any other law defining the offence, is upon him and the Court shall presume the absence of such circumstances. The accused is therefore compelled to undergo the ignominy of criminal proceedings, even if he/she ex-facie comes under the protective umbrella of one of the exceptions to S.499 of the Indian Penal Code.

U. For that in the case of *Balraj Khanna & Ors. V. Moti Ram*, reported in AIR 1971 SC 1389 this Hon'ble Court has observed:

"In our opinion, the question of the application of the Exceptions to Section 499, I.P.C does not arise at this stage. Rejection of the complaint by the Magistrate on the second ground mentioned above cannot be sustained. It was also unnecessary for the High Court to have considered this aspect and differed from the trial Magistrate. It is needless to state that the question of applicability of the Exceptions to Section 499, I.P.C as well as other defences that may be available to the appellants will have to be gone into during the trial of the complaint.

Cy

V. Similarly in *M.N. Damani Vs. S.K. Sinha* reported in AIR 2001 SC 2037 this Hon'ble Court was pleased to hold:

"It is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of defamation under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, 1st Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 IPC."

W. For that in the absence of legislative safeguards against the abuse of the powers and process under Sections 179; 204(1); and 205 of the CrPC, and given the special and unique circumstances which exist in criminal prosecutions under Section 499 of the IPC this Hon'ble Court may under Article 142 of the Constitution, in the alternative, interpret the said provisions in a manner so as to reconcile the freedom of speech and expression under Article 19 (1) (a) with the aforesaid provisions of the CrPC. Such interpretation may specifically include:

- a. Limiting the territorial applicability of Section 179 to the proper location where the journalistic matter is

published (as per the declaration made under the PRB Act), as opposed to where it is circulated or read/viewed.

- b. Make it mandatory for any Court to consider the applicability of the exceptions to Section 499 of the IPC at the stage of issuance of process under Section 204 of the CrPC and to make it incumbent upon the complainant/aggrieved person to prima-facie show that the exceptions do not apply.
- c. Lay down principles which permit a more liberal grant of permanent exemption to journalists in cases of criminal defamation under Section 205 of the CrPC.

X. For that the impugned provisions suffer from the vice of vagueness. It is respectfully submitted that in *Kartar Singh v. State of Punjab*, reported in (1994) 3 SCC 569 at para 130-131, this Hon'ble Court held as follows:

"130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and

discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to "steer far wider of the unlawful zone ... than if the boundaries of the forbidden areas were clearly marked.

It is submitted that the first exception to S. 499 stipulates as follows:

"First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published.

It is submitted that 'public good' is too vague a concept and the notions of public good can differ amongst people of different cultural conditioning, religious persuasion, political beliefs etc. A person of ordinary intelligence cannot be expected to ascertain whether a statement/imputation falls within the contours of 'public good' or not. The impugned provisions are therefore unconstitutional on account of being vague.

Y. For that a perusal of the Parliamentary Debates wherein S. 199 of the CrPC was discussed reveals inter-alia that S. 199(2) was to be invoked only in rare situations and not in the rampant manner prevalent today. It is submitted that the genesis of Section 199(2) of the CrPC needs to be appreciated and may be considered by this Hon'ble Court in determining its validity, contours, scope and application. When the bill containing this provision was

being discussed in the Parliament in the year 1954, in view of the strong opposition by a Section of the House to the provision allowing the public prosecutor to file a complaint, the Home Minister in charge of the Bill gave an assurance that in almost all the cases, unless there is some valid reason, the defamed person would be directed to file a private complaint. The following is reproduced from the Statesman newspaper's report of the proceedings of the Lok Sabha in its issue of 1st December, 1954:

"Dr. Katju assured the House that instruction would be issued obliging a defamed official to file a private complaint. Only what he estimated as 2% of such cases—in which the official could not file the complaint owing to being posted at a distance for some other valid reason—would the Government ask the Public Prosecutor to file a complaint."

"If the man, he said, was unable to file a private complaint because the matter was published in Madras and he was in Coimbatore and it would be very difficult or impossible for him to be present at every hearing as a private complainant, then the public prosecutor would file the complaint. If the reason for not filing a private complaint did not appear to the Government to be valid, the public servant would be dismissed."

"The Home Minister assured the House that the Public Prosecutor would file a complaint only in a few cases where the Government agreed that the public servant was unable to move the Court as a private complainant, that Government's intention was to see to

it that normal procedure of a private complaint was resorted to the utmost and that could and would be done by way of executive instructions. He said that if an allegation of a specific nature was published in a newspaper against a Minister or a public servant an enquiry would be held into his conduct. If his denial was specific and absolutely clear he would be directed to file a private complaint, and if his reasons for not filing it did not appear to the Government to be valid, he would be dismissed. He said that he insisted on the matter going before a Court because the public was so suspicious about public servants that they were not satisfied with a departmental enquiry."

The objective and reason with which the special provision was culled out for public servants, which was already vague to begin with, has been defeated completely by the mindless action taken by the Central and State Government(s) against individuals. It is an extremely unfair and unjust proposition to put the complete might of the Government against the accused, in what would otherwise have been a private litigation between the accused and the public servant.

Z. For that India is currently a member of the 47-nation UN Human Rights Council (UNHRC) as well as signatory to the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966 (ICCPR). India has ratified the ICCPR. Section 2(d) read with 2(f) of the Protection of Human Rights Act, 1993 clarifies "human rights" to include the rights guaranteed by the

ICCPR. The Universal Declaration of Human Rights of 1948 adopted on 10th December in Article 19 said :

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

AA. For that the International Covenant on Civil and Political Rights (ICCPR) was adopted in 1968. India acceded to the ICCPR in 1979. Article 19 of the Covenant reads as follows:

"1) Everyone shall have the right to hold opinions without interference;

(2) Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice."

General Comment No. 34 to Article 19 of the ICCPR. Paragraph 47 states,

"Defamation laws must be crafted with care to ensure that they comply with paragraph 3 [of Article 19], and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue

statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. State parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously - such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others."

(Emphasis Supplied)

BB. For that this Hon'ble Court specifically commenting on the ICCPR in the case of *People's Union for Civil Liberties v. Union of India & Anr.*, reported in (1997) 3 SCC 433, opined that:

"For the present, it would suffice to state that the provisions of the covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such...."

For that the United Nations Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, in his report to the Human Rights Council of the United Nations General

Assembly reiterated that defamation should be decriminalised.

- CC. For that in 2012, the UN Human Rights Committee decided *Adonis vs. Philippines*, Communication No. 1815/2008 holding that Philippine laws criminalizing libel was incompatible with Article 19(3) of the ICCPR or the freedom of expression and requiring Philippines to review its libel laws.
- DD. For that various multilateral bodies and treaties have condemned the criminalisation of defamation. In *Cumpănă and Mazăre v. Romania*, being Application No. 3334, 8/96 Judgment of 17 December 2004, para. 114, the European Court of Human Rights has held that criminal sanctions for defamation have a chilling effect on journalistic freedom of expression.
- EE. For that Resolution 1577 of the Parliamentary Assembly of the Council of Europe specifically urges the decriminalisation of defamation in all European countries as it is often used as means of silencing the media. It urges states to adopt the actual malice test and advocates that states abolish prison sentences in the following words:
- "6. Anti-defamation laws pursue the legitimate aim of protecting the reputation and rights of others. The Assembly nonetheless urges member states to apply these laws with the utmost restraint since they can seriously infringe freedom of expression. For this reason, the Assembly insists that there be procedural safeguards enabling anyone*

charged with defamation to substantiate their statements in order to absolve themselves of possible criminal responsibility.

7. In addition, statements or allegations which are made in the public interest, even if they prove to be inaccurate, should not be punishable provided that they were made without knowledge of their inaccuracy, without intention to cause harm, and their truthfulness was checked with proper diligence.

8. The Assembly deplores the fact that in a number of member states, prosecution for defamation is misused in what could be seen as attempts by the authorities to silence media criticism. Such abuse - leading to a genuine media self-censorship and causing progressive shrinkage of democratic debate and of the circulation of general information - has been denounced by civil society, notably in Albania, Azerbaijan and the Russian Federation.

9. The Assembly concurs with the clear position adopted by the Secretary General of the Council of Europe, who has denounced threats of prosecution for libel as "a particularly insidious form of intimidation". The Assembly views such aberrant use of anti-defamation laws as unacceptable.

10. The Assembly also welcomes the efforts of the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) in favour of decriminalising defamation, and his unfaltering commitment to media freedom.

[...]

13. The Assembly consequently takes the view that prison sentences for defamation should be abolished without further delay. In particular it exhorts states whose laws still provide for prison sentences - although prison sentences are not actually imposed - to abolish them without delay so as

not to give any excuse, however unjustified, to those countries which continue to impose them, thus provoking a corrosion of fundamental freedoms.

14. The Assembly likewise condemns abusive recourse to unreasonably large awards for damages and interest in defamation cases and points out that a compensation award of a disproportionate amount may also contravene Article 10 of the European Convention on Human Rights."

FF. For that in *Castells v. Spain* Application No. 11798/85, Judgment of 23rd April, 1992, the European Court of Human Rights has acknowledged the disproportionality associated with criminal sanctions and defamation when it observed,

"[T]he 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"

GG. For that in *Nevanji Madanhire v. Attorney General* Judgment No CCZ 2/14, Const. Application No CCZ 78/12 the Zimbabwe Constitutional Court held the provisions which criminalise defamation are excessive, disproportionate and have a chilling effect on free speech. It is pertinent to reproduce the relevant extracts of this judgment of the Zimbabwe Constitutional Court:

"The practical consequences that would ordinarily flow from a complaint of criminal defamation are as follows. The accused person would be investigated and face the danger of arrest. This would arise even where the alleged

defamation is not serious and where the accused has an available defence to the charge. Thereafter, if the charge is prosecuted, he will be subjected to the rigours and ordeal of a criminal trial. Even if the accused is eventually acquitted, he may well have undergone the traumatising gamut of arrest, detention, remand and trial. Moreover, assuming that the accused has employed the services of a lawyer, he will also have incurred a sizeable bill of costs which will normally not be recoverable. I would accept that the foregoing tribulations are not peculiar to the offence of criminal defamation and would potentially be encountered by an accused person charged with any serious criminal offence. However, what is distinctive about criminal defamation, though not confined to that offence, is the stifling or chilling effect of its very existence on the right to speak and the right to know. This, in my view, is the more deleterious consequence of its retention in the Criminal Law Code, particularly in the present context of newspaper reportage."

The Court further held:

"The chilling effect of criminalising defamation is further exacerbated by the maximum punishment of two years imprisonment imposable for any contravention of s 96 of the Criminal Law Code. This penalty, in my view, is clearly excessive and patently disproportionate for the purpose of suppressing objectionable or opprobrious statements. The accomplishment of that objective certainly cannot countenance the spectre of imprisonment as a measure that is reasonably justifiable in a democratic society"

The court further held that criminalising defamation despite the existence of civil remedies is disproportionate:

"Another very compelling reason for eschewing resort to criminal defamation is the availability of an alternative civil

remedy under the actio injuriandum in the form of damages for defamation. Although this remedy may not be as expeditious as criminal prosecution, it affords ample compensatory redress for injury to one's reputation. If this is correct, the invocation of criminal defamation to protect one's reputation would be unnecessary, disproportionate and therefore excessive."

- 44 H. For that in *Sakal Papers v. Union of India*, reported in [1962] 3 SCR 842 this Hon'ble Court held that the legitimacy of the objective intended to be achieved by an enactment is irrelevant when the means to achieve the same are unconstitutional:

"The legitimacy of the result intended to be "achieved does not necessarily imply that every means to achieve it is permissible; for even if the end is desirable and permissible, the means employed must not transgress the limits laid down by the Constitution, if they directly impinge on any of the fundamental rights guaranteed by the Constitution it is no answer when the constitutionality of the measure is challenged that apart from the fundamental right infringed the provision is otherwise legal."

45. The Petitioner may be permitted to urge other and further grounds with the leave of this Hon'ble Court.
46. The aforesaid challenge to the provisions of Sections 499 and 500 of the Indian Penal Code apply equally to the provisions of Sections 501 and 502 of the IPC except that Section 501 IPC applies to a person who prints or engraves matter known to be defamatory and Section 502 IPC applies

to a person who sells or offers for sale any printed or engraved substance containing defamatory matter. Accordingly, the challenge made by the the present petition to the provisions of Sections 499 and 500 IPC may be read to apply mutatis-mutandis to the provisions of Sections 501 and 502 IPC as well.

47. That the Petitioner submit that they have not filed any other petition arising out of the same cause of action or facts before this Hon'ble Court or any other Court in the country for similar relief .

48. That Annexures P-1 and P-6 produced along with this Writ Petition are true and correct copies of their respective originals.

PRAYER

Under the circumstances this Hon'ble Court may be pleased to:

- a. Strike down Sections 499 and 500 of the Indian Penal Code, 1860 (and consequently also Sections 501 and 502 IPC) as ultra-vires the provisions of Articles 14, 19 and 21 of the Constitution;
- b. Strike down Sections 199(1) and 199(2) of the Code of Criminal Procedure, 1973 as ultra-vires the provisions of Articles 14, 19 and 21 of the Constitution;

c. In the alternative to prayers (a) and (b) above, interpret, read-down and issue directions and guidelines under Article 142 of the Constitution of India as this Hon'ble Court may deem necessary and appropriate to reconcile Sections 179; 204(1); and 205 of the Code of Criminal Procedure, 1973 with Articles 14, 19 and 21 of the Constitution including but not limited to:

- i. That the territorial applicability of Section 179 of the CrPC may be limited to the proper location where the journalistic publication is made (as per the declaration made by the newspaper under the provisions of the Press & Registration of Books Act 1867) , as opposed to where it is circulated or read/viewed ; and in the case of broadcasts and on-line publications (which do not fall within the purview of the PRB Act) territorial jurisdiction should vest in the place where the registered office of the broadcaster/on-line publication is situate ;
- ii. That the postponement of process under Section 202 of CrPC is mandatory in cases arising under Section 499 of the IPC;
- iii. That any Court must consider the applicability of the exceptions to Section 499 of the IPC at the

stage of issuance of process under Section 204 of the CrPC

iv. That on an application by an accused a Court must permit permanent exemption from personal appearance as a rule in cases under Section 499 of the IPC under Section 205 of the CrPC.

d. Pass such other or further order which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE PETITIONER, AS IN DUTY BOUND, SHALL EVER PRAY.

Filed by:

Settled by :

Anup J. Bhambani, Sr. Adv.

(Mohit Paul)
Advocate on record for the
Petitioner

Drawn by:

Apar Gupta, Adv.

Dushyant Arora, Adv.

Mudrika Bansal, Adv

DRAWN ON 10.06.2015

FILED ON : 15.06.2015

New Delhi

59

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) NO. _____ OF 2015
[Under Article 32 of the Constitution of India]

IN THE MATTER OF:

Foundation for Media Professionals

...Petitioner

VERSUS

Union of India

...Respondent

A F F I D A V I T

I, Manoj Mitta, S/o Shri Jagan Mohan Mitta, Aged about 51 Years resident of D-168, Sector - 55, Noida 201301 do, hereby solemnly affirm and state as under:

2. That I am the Director of the Petitioner **Foundation for Media Professionals**, Society and am well acquainted with the facts of the present case and competent to affirm this affidavit on behalf of the Petitioner.
2. It is stated that I have read the contents of the accompanying Writ Petition page Nos. 1 to 59 and para 1 to 48 and Synopsis and List of Dates page No. B to S and say that the facts stated therein are true to the best of my knowledge & belief as per the record of the case and the submissions made therein are based on legal advice received by me and believed to be correct.
3. That the Annexures are true copies of their respective originals.

Foundation For Media Professionals


Director
DEPONENT

VERIFICATION:

I, the abovenamed deponent do hereby verify that the contents of the above affidavit are true to the best of my knowledge and nothing is false and nothing material has been concealed therefrom.

Verified by me on this 08th day of JUNE, 2015 at New Delhi.

Foundation For Media Professionals


Director
DEPONENT

[Signature]
Director

Annexure P2

61

MEMORANDUM OF ASSOCIATION & RULES AND REGULATIONS

Foundation For Media Professionals

PREFACE

62

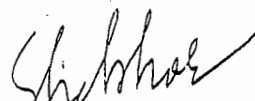
Set up in New Delhi in 2008, Foundation for Media Professionals (FMP) celebrates the romance of journalism and nurtures the values that drive and inspire the Fourth Estate. Different as it is from other journalistic collectives, FMP is focussed on helping media professionals harness the constitutional right to freedom of speech and expression. At a time when the priorities of the media are increasingly determined by market forces and other extraneous factors, FMP strives to keep alive the first principles of journalism while striking a balance between information and entertainment.

The under-mentioned founder members, who are media professionals with diverse backgrounds, took due care to ensure that FMP has a structure that is egalitarian, participatory and transparent. A Governing Body has been constituted from among them to comply with the procedure for registering FMP as a society. This booklet contains the legal documents that have brought FMP into existence: its certificate of registration, memorandum of association and rules & regulations.

All the media professionals who agree with its aims and objects are invited to become members of FMP, which can be leveraged by them to make their work more fulfilling. The membership cuts across all media platforms (print, TV, radio, internet, etc.), languages and states. Indeed, the goal is to establish, among other things, chapters of FMP in state capitals across the country.

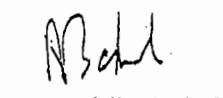
Please visit FMP's website www.fmp.org.in for more information, including fee details and the membership form.


Madhu Trehan


Shashi Shekhar



Manoj Kumar Mitta

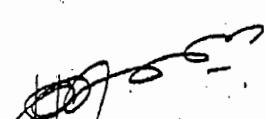

Vivian Fernandes

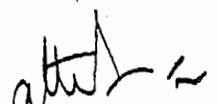

Aniruddha Bahal

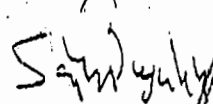

Vineet Narain

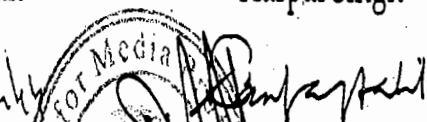

Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalie


Sanjay Salil



63

MEMORANDUM OF ASSOCIATION

1. NAME

The name of the Society is FOUNDATION FOR MEDIA PROFESSIONALS

2. REGISTERED OFFICE

The registered office of the Society will be at
C/o S.M. VARMA & Co.
B-57, 2nd Floor, New Rajinder Nagar,
New Delhi - 110 060.

3. AREA OF OPERATION

The area of operation of the Society shall be from Delhi.


4. OBJECTS

All the aims & objects for which the society is established are non-commercial in nature and shall be not for profit. The are :

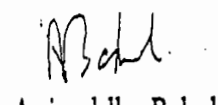
1. To work for the enhancement of the journalistic profession in India, print, broadcast, web, and other platforms they may develop in the future.
2. To be vigilant to and deal with any measure or pronouncement of any organ of the state impacting the freedom of speech and expression and the media's right to inform and educate its readers/viewers about issues of public interest.
3. To institute annual awards of journalistic excellence for print, broadcast and web.


Madhu Trehan


Shashi Shekhar



Manoj Kumar Mitta

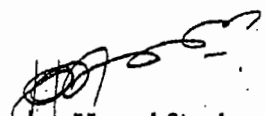

Vivian Fernandes

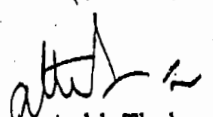

Aniruddha Bahal

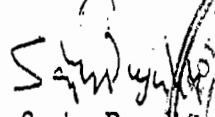

Vineet Narain



Ashutosh Gupta

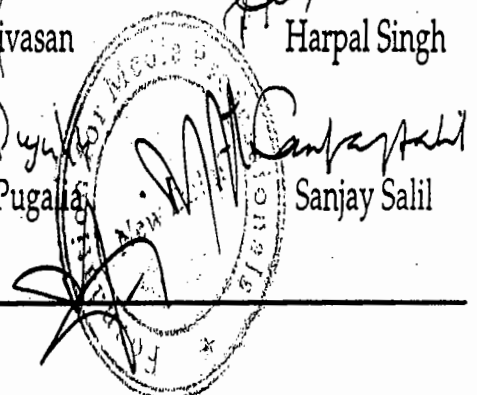

S. Srinivasan


Harpal Singh


Amitabh Thakur



Sanjay Pugal



Sanjay Salil



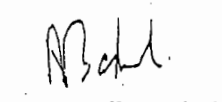
- 64
4. To publish a magazine, newspaper, website, or produce documentaries if so felt necessary to nurture and propagate freedom of speech.
 5. To institute fellowships for journalists to work on projects of importance.
 6. To publish books on public interest issues, poverty alleviation, developmental projects, the rule of law, human rights, environmental protection, et cetera.
 7. To organise seminars, debates and idea exchanges in order to keep India's journalists and people abreast with new ideas, views and trends.
 8. To set up facilities for freelance journalists for them to be able to do their work in a qualitative manner and to deal with professional hindrances.
 9. To set up an institute for journalistic training to nurture India's best and brightest.
 10. To set up chapters of the foundation in different state capitals of the country.
 11. To set up a fund to help and protect journalists.
 12. To ensure a healthy balance in the media between commercial considerations and journalistic values and to enhance the credibility of the media as a watchdog body and a civil society institution.
 13. To promote journalist exchange programmes with different countries specially neighbouring countries to foster a better understanding of each other.
 14. To get a team of full-time professionals to run the foundation.

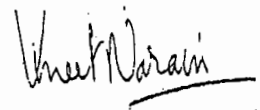

Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta

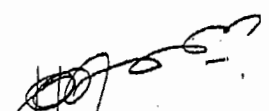

Vivian Fernandes

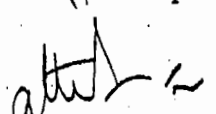

Aniruddha Bahal

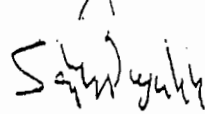

Vineet Narain

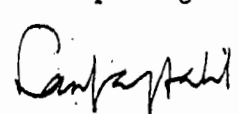

Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

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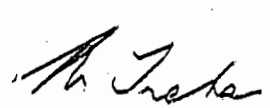
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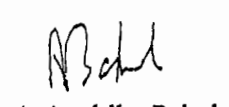
15. To raise resources in a manner that does not compromise the independence of the foundation.
16. To take up media issues without being drawn into inter and intra organizational disputes and make the furtherance of the above mentioned issues the main focus of the journalists who join the foundation.
17. To foster diversity and equality in the profession and to equip under-privileged journalists with better skills.
18. To evolve a code of ethics for all journalists and media platforms.
19. To help the foundation develop as a model for other media associations worldwide.
20. To do all such things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the society.
21. All the income, earnings, moveable or immovable properties of the society shall be solely utilized and applied towards the promotion of its aims and objects as set forth in the Memorandum of Association and no portion thereof shall be transferred directly or indirectly or by way of dividends, bonus, profits or in any manner whatsoever except remuneration for services rendered to the present or past members of the society or to any person claiming through any one or more of the present or the past members of the society. No member of the society shall have any personal claims over any moveable or immovable properties of the society to make any profit whatsoever by virtue of his/her membership.

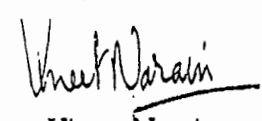

Madhu Trehan



Shashi Shekhar



Manoj Kumar Mitta

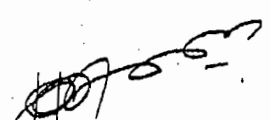

Vivian Fernandes

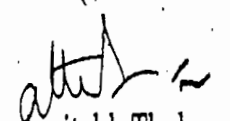

Aniruddha Bahal

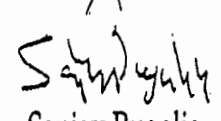

Vineet Narain


Ashutosh Gupta


S. Brinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil


- 66
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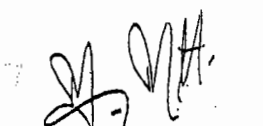
IV GOVERNING BODY

The names, addresses, occupations and designations of the present members of the Governing Body to whom the management of the Society is entrusted as required under Section 2 of the Societies Registration Act 1860 as applicable to the National Capital Territory of Delhi are as follows :

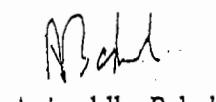
Name and Address	Occupation	Designation
1. Madhu Trehan B-4, Maharani Bagh New Delhi-110065	Media Person	President
2. Shashi Shekhar F-6, 6471, Alok Vihar Sector-50, Noida-201301	Media Person	Vice President


Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta

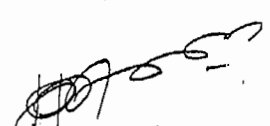

Vivian Fernandes


Aniruddha Bahal

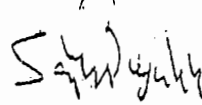

Vineet Narain



Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

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3. Manoj Kumar Mitta
B-102, Sector-39,
Noida-201301

Media Person

Director

67

4. Vivian Fernandes
22, SRN Apartments,
106, Indraprastha Extension,
Delhi-110092

Media Person

Treasurer

5. Aniruddha Bahal
E-76, Sector-21,
Noida-201301

Media Person

Member

6. Vineet Narain
D-3/3026, Vasant Kunj,
New Delhi-110070

Media Person

Member

7. Ashutosh Gupta
27C, Nilgiri - I,
Sector-34, Noida-201301

Media Person

Member

8. S. Srinivasan
10/602, East End Apartment
Mayur Vihar, Phase-I, Delhi

Media Person


Member


9. Harpal Singh
426, Kohat Enclave,
Rohini Marg, Delhi-110034

Media Person

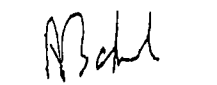
Member


Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta

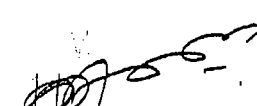

Vivian Fernandes

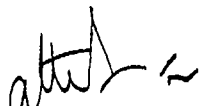

Aniruddha Bahal

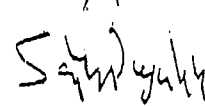

Vineet Narain


Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

10. Amitabh Thakur
12, 2nd Floor,
Qutab View Apartments,
Katwaria Sarai, N.D.-110016

Media Person

68
Member



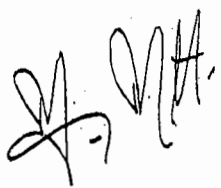

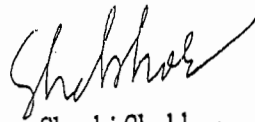
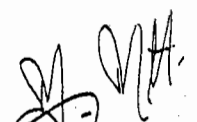
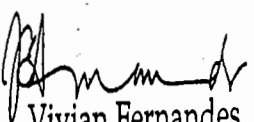
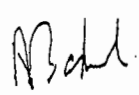
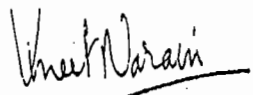


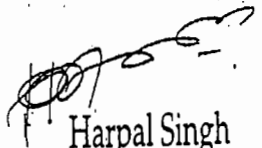
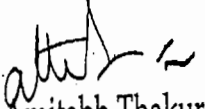
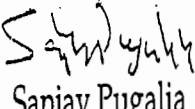
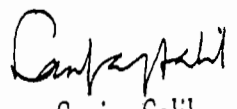
11. Sanjay Pugalia
59, Gulistan, Carmichael Road,
Mumbai - 400026

Media Person

Member

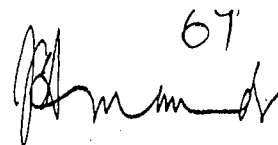
5 FOUNDER MEMBERS

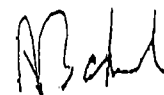
We, the undersigned, are desirous of forming a Society namely Foundation for Media Professionals under the Societies Registration Act, 1860 as applicable to the National Capital Territory of Delhi in pursuance of this Memorandum of Association of the Society.

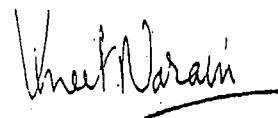
Name and Address	Occupation	Signatures
1. Madhu Trehan B-4, Maharani Bagh New Delhi-110065	Media Person	
2. Shashi Shekhar F-6, 6471, Alok Vihar Sector-50, Noida-201301	Media Person	
3. Manoj Kumar Mitta B-102, Sector-39, Noida-201301	Media Person	
 Madhu Trehan	 Shashi Shekhar	 Manoj Kumar Mitta
 Vivian Fernandes	 Aniruddha Bahal	 Vineet Narain
 Ashutosh Gupta	 S. Srinivasan	 Harpal Singh
 Amitabh Thakur	 Sanjay Pugalia	 Sanjay Salil

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4. Vivian Fernandes Media Person
22, SRN Apartments,
106, Indraprastha Extension,
Delhi-110092
5. Aniruddha Bahal Media Person
E-76, Sector-21, Noida-201301
6. Vineet Narain Media Person
D-3/3026, Vasant Kunj,
New Delhi-110070
7. Ashutosh Gupta Media Person
27C, Nilgiri - I,
Sector-34, Noida-201301
8. S. Srinivasan Media Person
10/602, East End Apartment
Mayur Vihar, Phase-I, Delhi
9. Harpal Singh Media Person
426, Kohat Enclave,
Rohini Marg, Delhi-110034
10. Amitabh Thakur Media Person
12, 2nd Floor,
Qutab View Apartments,
Katwaria Sarai, N.D.-110016

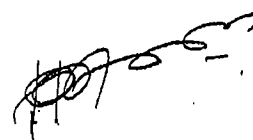
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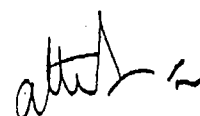












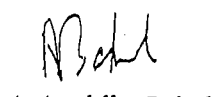


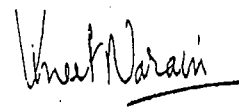

Madhu Trehan


Shashi Shekhar

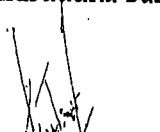

Manoj Kumar Mitta

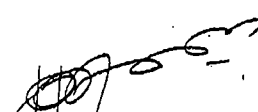

Vivian Fernandes

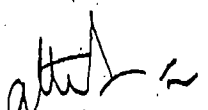

Aniruddha Bahal

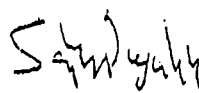

Vineet Narain

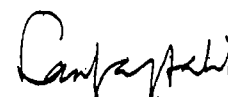

Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

11. Sanjay Pugalia
59, Gulistan,
Carmichael Road,
Mumbai - 400026

Media Person

70
Sanjayugaly

12. Sanjay Salil
B-4, 895-C/2, Ward-8,
Ridge Castle Mehrauli,
New Delhi-110030

Media Person

Sanjay Salil



Witness to all the above signatures :

SUDHIR VARMA

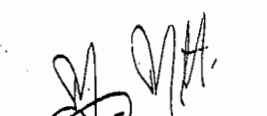
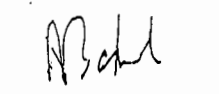

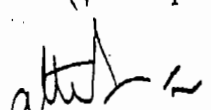
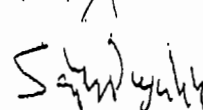
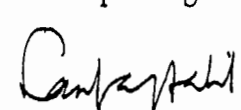
FCA, CIA (USA),

Membership No. 81489

S/o Mr. L. R. Varma

B-57, 2nd Floor, New Rajinder Nagar,

New Delhi-110060


Madhu Trehan
Shashi Shekhar
Manoj Kumar Mitta
Vivian Fernandes
Aniruddha Bahal
Vineet Narain
Ashutosh Gupta
S. Srinivasan
Harpal Singh
Amitabh Thakur
Sanjay Pugalia
Sanjay Salil

RULES & REGULATIONS

Name

1. The, name of the Society shall be "Foundation for Media Professionals"

Interpretation

2. In these Rules unless the context otherwise requires, words and expressions defined in the Societies Regulation Act XXI of 1860 (Punjab Amendment) Act 1957 or in any statutory modification or re-enactment thereof shall have the meaning as defined.

Words importing the singular shall include the plural and vice versa.

Subject to the above, the following words or terms shall bear the meaning set opposite to them hereunder :

"Act" means the Societies Registration Act XXI of 1860 as amended by the Punjab Amendment Act of 1957 and as extended to the National Capital Territory of Delhi and any statutory modification and re-enactment thereof.


"The Society" means constituted under the Act.

"Governing Body" means the governing body of the Society.

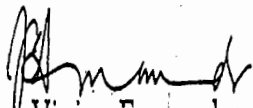
"General Body" means the body formed by the voting members of the Society.

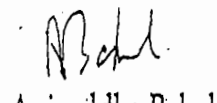
"Committees" means the Committee(s) appointed by the Governing Body for any particular purpose of the Society.


Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta

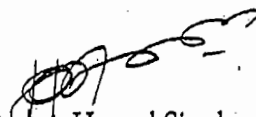

Vivian Fernandes

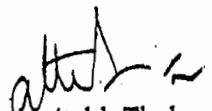

Aniruddha Bahal

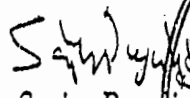

Vineet Narain

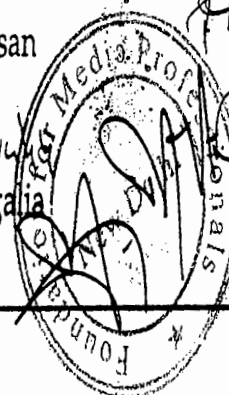

Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia




Sanjay Salil

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"Person includes an artificial person, whether incorporated or not, whether the context so requires, but only means those persons who are capable of entering into a contract.

Membership

3. The following shall be Members of the Society :

(a) The subscribers to the Memorandum of Association of the Society who shall be known as the **Founder Members**.

(b) All media professionals who endorse the aims and objects of the Society and are recommended by one other member of the society shall be screened by a membership committee who shall recommend the membership if found fit. On the basis of this recommendation the governing body shall admit members of the society.


(c) Individual media professionals being admitted as members of the society can opt to be **Patron Members** of the society.

4. The screening committee can recommend members to be either regular voting Members or Associate Members.

Associate Members shall be entitled to all privileges of membership except the right to vote at Annual General Meeting or other meetings of Members.

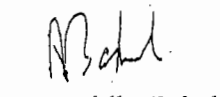
5. Universities with department of Journalism, Institutions, Polytechnics, Entities & NGO's who are associated with news media shall be admitted as **Institutional Members**. These members shall be entitled to all privileges of membership except the right to vote at Annual General Meeting or other meetings of Members.


Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta

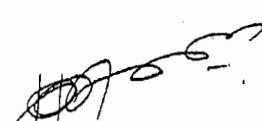

Vivian Fernandes

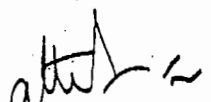

Aniruddha Bahal

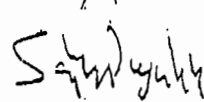

Vineet Narain


Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

Representative

Members not being individuals shall at all times keep on record of the Society the name and address of its authorised representative being an adult individual who shall be treated by the Society to be the member for all purposes under these Rules and shall be referred to as "Representative in these rules.

Rights and Privileges

All Founding Members & Members shall be entitled to attend and vote at the General Meeting and shall collectively be known as voting members and shall form the General Body of the Society.

Membership Fee

Founder members, Patron members & Institutional members shall be required to pay Rs. 100,000/- each as one time admission fee. Thereafter the annual subscription for different categories of membership shall be paid within two months from the beginning of each financial year and shall be as follows.

- | | |
|--------------------------|---------------|
| 1. Founder Members | Rs. 6,000 pa |
| 2. Patron Members | Rs. 6,000 pa |
| 3. Members | Rs. 6,000 pa |
| 4. Associate Members | Rs. 2,000 pa |
| 5. Institutional Members | Rs. 10,000 pa |

Founders members, Patrons & Members shall have their right to vote suspended in case of non payment of annual fee within two months. However, the voting rights shall be restored on the payment of full and final dues including any penalties that the governing body may impose.

Termination

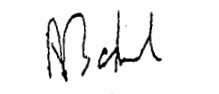
A member shall cease to be a member of the society in any of the following events :-


Madhu Trehan



Shashi Shekhar


Manoj Kumar Mitta


Vivian Fernandes


Aniruddha Bahal

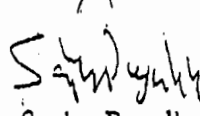

Vineet Narain


Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

74
a. Death, incapacity, lunacy or insolvency or if he/she is convicted of an offence involving moral turpitude.

b. Upon receipt by the Society of notice in writing from a member signed by him/her to be sent under a registered cover of his/her intention to resign from the Membership.

c. Intimation regarding termination of membership shall be given to the person concerned.

d. The governing body can recommend to the general body to strike off the name of a Founder member, Patron member or an Associate member from the membership register of the society where two years annual subscription has not been paid.

**Role of
Membership**

4. The Society shall maintain a roll of members with their current postal address. No person shall be deemed to be a member of The Society, or be entitled to exercise the rights and privileges of a members, until his/her name is on the roll.


**Address of a
Member**

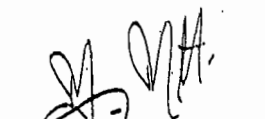
5. Any change in the address of a member shall be notified to the Director, who shall thereupon enter the new address in the roll of Director. The address registered in the roll of members shall continue to be deemed to be the member's address.

**Terms of
Membership**

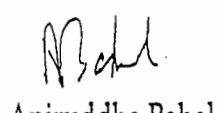
6. (a) Where a person is a member of the Society by virtue of an office held by him/her, or is a nominee of a Society, trust, corporate body, University or other institution, his/her membership shall automatically terminate when he/she ceases to hold that position and the vacancy so caused shall be filled by his/her successor to that office, or by the nominee of the appropriate authority.


Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta

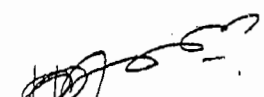

Vivian Fernandes


Aniruddha Bahal

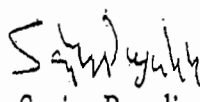

Vineet Narain

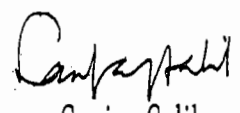

Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

(b) A member of the society may resign his membership by a letter addressed to the Director and the resignation shall take effect from the date it is received by the Society, except in the case of a member performing any executive functions on behalf of the Society, whose resignation shall take effect from the acceptance thereof.

(c) A member of the Society shall cease to be such member if he should become of unsound mind, or become insolvent or is convicted of a criminal offence involving moral turpitude.

(d) Any member may be removed from the membership if the Governing Body so recommend and if the General Body of the Society shall resolve by a three fifths majority of the members present that such a member should be expelled on the grounds that his conduct has adversely affected the reputation or dignity of the society, and the decision for the termination shall be communicated to the concerned member. The Governing Body shall have powers to suspend a member until the next General Meeting of the Society. However, notwithstanding such suspension, a member whose expulsion is proposed shall have the right to address the Meeting at which his expulsion is to be considered.

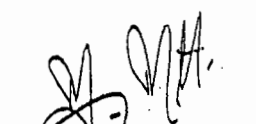
(e) Any person who resigns or is removed from membership shall have his name struck off from the rolls and there shall be no refund of his subscription fee and dues or any part thereof, or of any other moneys contributed by him at any time.

**Readmission to
Membership**

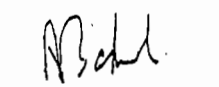
7. Any member who ceases to be a member may be readmitted to the society on such terms and conditions as the Governing Body may lay down in that behalf.

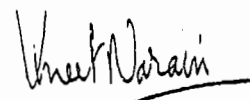

Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta


Vivian Fernandes

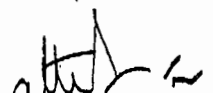

Aniruddha Bahal



Vineet Narain



Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

**Election and
Quorum**

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8.1 The General Body in its annual meeting once in a year shall elect the members of the Governing Body of the Society. The quorum for the General Body meeting would be one-third members. Should a quorum not be present, the meeting shall stand adjourned and will be reconvened after 30 minutes to transact, the business. The members present at that time shall form the quorum for the meeting. The mode of election shall be by raising of hands or by secret ballot papers as unanimously agreed.

8.2 The Governing Body of the Society shall consist of not less than five members and not more than 15 members.

8.3 The Governing Body shall hold office for a period of one year.

**Board of
Governing
Body**

9.1 The management and control of the affairs of the Society shall vest in the Governing Body which shall administer and control the funds of the Society.


9.2 OFFICE BEARERS

The Governing Body shall elect from among themselves one of them to be the President who shall normally preside at all meeting of the General body and the General Body of the Society.

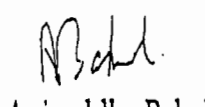
The President or his/her alternate shall perform and carry out and exercise all powers, duties and functions as the Governing Body may assign to him/her from time to time and exercise all such powers, privileges and discretion and do all such acts, matters and things as may be necessary or convenient for the administration of the general policies and promoting the objects of the society.

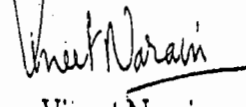

Madhu Trehan

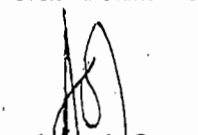

Shashi Shekhar


Manoj Kumar Mitta

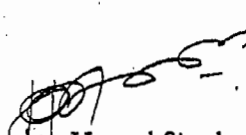

Vivian Fernandes

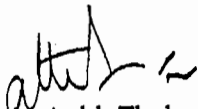

Aniruddha Bahal

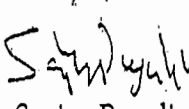

Vineet Narain

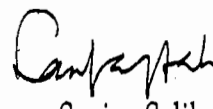

Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

9.3 The Board shall also elect from among themselves a Vice President, Director, Joint Director and a Treasurer and assign to them all such powers, duties and functions which they may deem fit from time to time.

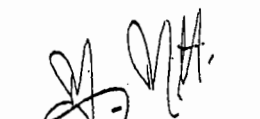
**Powers and
Functions of
the Governing
Body**

10.1 Without prejudice to the generality of the powers mentioned in Rule 9.1 above, the Governing Body shall have the following powers namely :

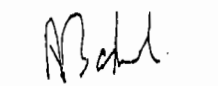
- a) to receive funds or assets in cash or kinds for the objects of the Society;
- b) to raise money with or without furnishing any security ;
- c) to invest and deal with any money, always keeping in view the restrictions and requirements of the Income Tax Act, 1961 for grant of exemption and registration, immediately not required for the purpose of the Society in such manner as it may deem fit and from time to time vary or realize such investments ;
- d) to make, vary or repeal the bye-laws for the regulation of the business of the Society and the service conditions and functions of its employees and to frame rules of procedure;
- f) to sign, seal, deliver and execute all conveyance(s), mortgage(s), charge(s), transfer(s), settlement(s), declaration (s(c) and all other deeds and instruments in relation to property(ies), funds and assets of the Society;
- g) to open accounts in the name of the Society with scheduled bank or banks and keep the funds of the society deposited with such bank or banks;


Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta


Vivian Fernandes

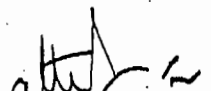

Aniruddha Bahal



Vineet Narain


Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

h) to sue and defence all legal proceedings on behalf of the Society and engage advocate(s) and Solicitor (s) in this behalf;

i) to appoint Auditor or Auditors for auditing the accounts of the Society and to report thereon;

j) to acquire by purchase, gift and hold movable or immovable property for the use and benefit of the Society.

k) to enter into contracts and execute necessary deeds in respect of such purchase, gift, lease or mortgage;

l) to give by way of advance or loan with or without interest and with such security, if any, such sums of money to such bodies, individuals and other as the Governing Body may deem proper;

m) to accept and receive grants-in-aid, endowments, donations, gifts or contributions to the Society;

n) to meet out and defray all cost, charges or expenses to carry out the objects of the Society;


10.2 The office of a Member of the Governing Body shall fall vacant if;


a) he/she dies or voluntarily resigns his/her office;

b) he/she becomes incapacitated by reasons of illness, lunacy or insolvency or if he/she is convicted for an offence involving moral turpitude;

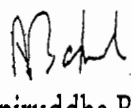
c) he/she ceases to be a Member of the Society.

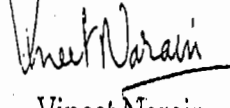

Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta

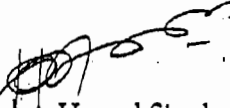

Vivian Fernandes

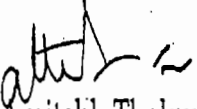

Aniruddha Bahal

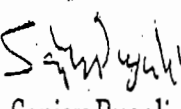

Vineet Narain

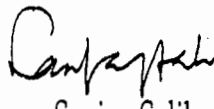

Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

10.3 In case the office of a Member of the Governing Body becomes vacant for whatever reason, it shall be filled forthwith by the president provided that the appointment shall be valid only until the next immediate Annual General Meeting.

**Meeting of
the Board of
Governing Body**

11.1 The Governing Body shall meet as and when a meeting is convened by the President.

11.2 At least seven days' notice shall be given for a meeting of the Governing Body but a meeting may be called at shorter notice if its members for the time being in India unanimously agree to waive the aforesaid period of seven day's notice.

11.3 One third members of the Governing Body personally present one of whom being the President or his/her alternate shall constitute the quorum for meeting of the Governing Body. If there are less than one third members in the Governing Body as a result of casual vacancy, such vacancy shall be filled in before transacting any business.

11.4 The Governing Body shall take decisions by a majority vote. Every member shall have one vote and in the case of equality of votes the President or his/her alternate, as the case may be, presiding at the meeting shall have a casting vote in addition to his/her own vote.

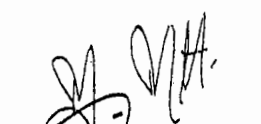
11.5 A resolution signed by a majority of the members of the Governing Body after circulation among all the Members shall be as effective as a resolution passed by a meeting of the Governing Body.

**General
Meetings**

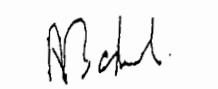
12.1 In addition to any other General Meeting, the Society shall each year have an Annual Meeting of the Members of the General Body of the Society.


Madhu Trehan


Shashi Shekhar

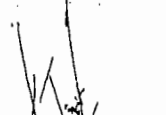

Manoj Kumar Mitta


Vivian Fernandes

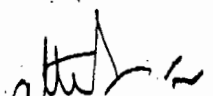

Aniruddha Bahal

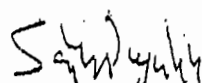

Vineet Narain


Ashutosh Gupta


S. Prinevasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

12.2 All General Meetings shall be convened by the President.

12.3 The quorum necessary for a General Meeting shall be one third members present in person or by proxy including the President or his/her alternate present in person. Should a quorum not be present, the meeting shall stand adjourned and will be reconvened after 30 minutes to transact the business. The members present at that time shall form the quorum for the meeting.

12.4 A member entitled to attend and vote may be present in person or by proxy. Only a member of the Society may be appointed as a proxy by an instrument of proxy in the form to be prescribed by the Governing Body.

12.5 Each Member shall have one vote whether present in person or by proxy.

12.6 The President or his/her alternate presiding at the meeting, in the event of equality of votes shall have a casting vote in addition to his/her own vote.


**Annual
General
Meeting**

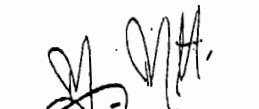
13.1 The Annual General Meeting of the Society shall be held not later than six months from the close of the financial year of the Society.

A notice of Twenty-one clear days for the holding of such meeting shall be sent by post to all members of the Society at the address(es) registered with the Society along with the statement of business to be transacted, the date, time and the place where any meeting(s) is/are to be held.

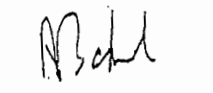
13.2 At the Annual Meeting, apart from any other business set by the Governing Body, the following business shall be transacted


Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta


Vivian Fernandes

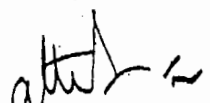

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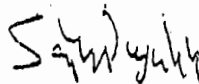

Vineet Narain



Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

81
a) Consideration and adoption of the Annual Report of the Governing Body regarding the working of the Society;

b) Consideration and adoption of the Annual Accounts of the Society; with Auditors report thereon.

c) Elections as per rule hereof of the Members of the Governing Body;

d) Appointment of auditors of the Society.

**Change of Name
Memorandum or
Rules**

14. The Members of the Society may change the name or alter, extend or abridge any object or objects of the Society or modify any of the provisions of its Memorandum or Rules for the time being in force, in accordance with the procedure prescribed by Sections 12 and 12A of the Act.

Accounts

15.1 The Governing Body shall cause true accounts to be kept of all sums of money received and expended by the Society. It shall also cause to be prepared and laid before the Annual General Meeting a Balance Sheet and Income and Expenditure Account duly audited and certified by a qualified Chartered Accountant appointed by the General Body for the year.

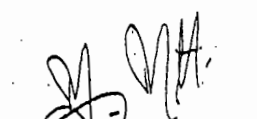
15.2 The financial year shall, unless otherwise resolved by the General Body, be from April 1st to March 31st.

**Annual List
to be Filed with the
Registrar**

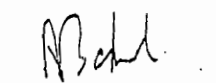
16 Once every year on or before the fourteenth day succeeding the day on which the Annual General Meeting is held, a list shall be filed in accordance with Section 4 of the Act with the Registrar of Societies for the Union Territory of Delhi of the names, addresses and occupations of the Members of the Governing Body then constituted.

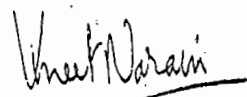

Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta

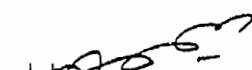

Vivian Fernandes



Aniruddha Bahal

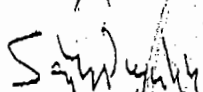

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Ashutosh Gupta


S. Srinivasan


Harpal Singh



Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

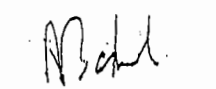
- Committees** 17 The Governing Body may constitute Committees from two or more of their members and entrust them with specific powers and duties vested in the Governing Body and formulate the rules of procedure for the working of such Committees.
- Minutes** 18 The Governing Body shall cause minutes of the meetings of the General body, the Governing Body and the Committees entered in the books kept for the purpose and entries therein duly signed by the person presiding at the same or the next meeting shall prima facie be the evidence of the matters stated therein.
- Bank Accounts** 18.1 Bank Accounts of the Society shall be operated as decided by the Governing Body from time to time.
- Contingency** 19 Any contingency not covered by these rules may be decided upon by the Governing Body in such manner as it thinks fit.
- Income** 20 The income of the Society from its property, donation or subscription, when so ever derived, shall be applied solely towards the promotion of the objects of the Society as set out in its Memorandum of Association and no portion thereof shall be paid or transferred directly or indirectly to the persons who at any time are or have been members of the Society or to any of them or to any person claiming through them.
- Source of Income** 21 The Source of income of the Society shall be fees, donations, gifts, subscriptions, endowments and any proceeds of the society.
- Dissolution** 22 The Society, shall have perpetual succession by its corporate name. But if, in the course of time, should there be a dissolution of the Society, then the same shall be in accordance with Sections 13 and 14 of the Act and if at that time, there shall have remained, after the satisfaction of the


Madhu Trehan


Shashi Shekhar


Manoj Kumar Mitta

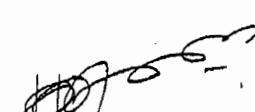

Vivian Fernandes

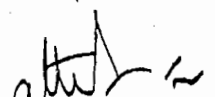

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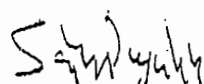

Vineet Narain



Ashutosh Gupta


S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalia


Sanjay Salil

Society's debts and liabilities, any assets of property, movable or immovable, of any nature whatsoever the same shall not be paid out to nor distributed among the members of the Society or any of them but shall be given to some other Society(s), or institution(s) having objects similar to those of the Society.

**Liabilities of
the Members
of the
Governing
Body**

23 No member of the Governing Body or offices or Auditors employed by the Society shall be answerable or personally liable for any loss arising from the administration or application of the funds and the properties of the Society and shall be indemnified out of the funds of the Society against all liabilities incurred by him/her in connection with the activities of the Society unless such loss or damage is caused through any wilful default or breach of trust or culpable negligence on his/her part.

Suits


24 The Society shall sue or be sued in the name of the President according to Section 6 of the Societies Registration Act of 1860.

General

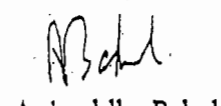
25 All provisions under all sections of the societies Registration Act, 1860 as applicable to the National Capital Territory of Delhi shall be applicable to the Society.

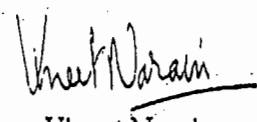

Madhu Trehan


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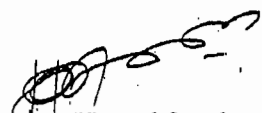

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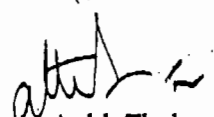

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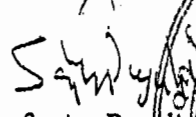

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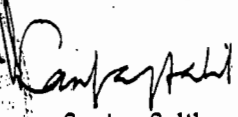

Ashutosh Gupta

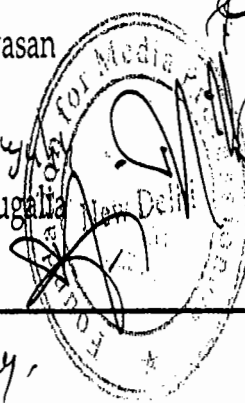

S. Srinivasan


Harpal Singh


Amitabh Thakur


Sanjay Pugalita


Sanjay Salil



— TRECA —



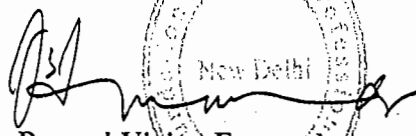
ANNEXURE P-3
84

RESOLUTION BY GOVERNING BODY

CERTIFIED Copy of Resolution Passed In The Meeting of the Governing Body of The Society Held on Friday, 15th May, 2015 at the Registered Office of the Society at New Delhi.

"RESOLVED that Mr. Manoj Mitta, Director of the Society, be and is hereby authorized to contest the Criminal Writ Petition filed on behalf of the Society before the Hon'ble Supreme Court of India and to sign and verify vakalatnama, writ petition, all the other relevant papers, give explanations, statements, file reply, depose, withdraw the case and to do all necessary acts in connection with the same on behalf of the Society.

Certified true copy


Bernad Vivian Fernandes
President

- PROCAHY -

Correspondence Address : - A-101, Shatabdi Rail Vihar, Sector-62, Noida - 201 301 (U.P)

Regd. Office: B-57, 2nd Floor, New Rajinder Nagar, New Delhi-110 060

Ph. : 011-28741778, 28741848, 28742468 Fax: 011-28741540

Web : www.fmp.org.in E-mail : fmp.india@gmail.com

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NOS. 274-283 OF 2003

N. RAVI & ORS.

..PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

..RESPONDENT(S)

WITH

WRIT PETITION (CRL.) NOS. 15-17 and 26-28/2004

ORDER

Learned counsel for the respondents has taken us through an affidavit dated 22/11/2004 filed by Mr. T. Pitchandi to the effect that the State Government had decided to withdraw the prosecution and had passed an order dated 16/6/2004 for withdrawal of the criminal cases against all the petitioners herein.

We, therefore, assume that the prosecution must have been withdrawn by now. We have also called the cases several times. The counsel for the petitioners is not present. We, accordingly, dispose of the petitions as infructuous.

.....J.
(HARJIT SINGH BEDI)

.....J.
(B.S. CHAUHAN)

New Delhi;
August 20, 2009.

True copy

Annexure P-5
86

ITEM NO.11

COURT NO.5

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Criminal) No(s). 184/2014

SUBRAMANIAN SWAMY

Petitioner(s)

VERSUS

UNION OF INDIA, MIN. OF LAW& ORS.

Respondent(s)

(with appln. (s) for permission to appear and argue in person and stay and office report)

WITH

W.P.(Crl.) No. 8/2015

(With appln.(s) for stay and Office Report)

W.P.(Crl.) No. 19/2015

(With appln.(s) for vacating stay and appln.(s) for stay and Office Report)

T.P.(Crl.) No. 102-105/2015

(With appln.(s) for stay and Office Report)

T.P.(Crl.) No. 94-101/2015

(With appln.(s) for stay and Office Report)

Date : 07/04/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

Mr. T.R. Andharujina, Amicus Curiae

Mr. K. Parasaran, Amicus Curiae

For Petitioner(s) Petitioner-in-person.

Mr. G.S. Mani, Sr. Adv.

Mr. A. Lakshminarayanan, Adv.

Mr. M. M. Kashyap, Adv.

Mr. Sushil Kumar Jain, Sr. Adv.

Mr. Puneet Jain, Adv.

Mr. Pradeep Agarwal, Adv.

Ms. Chhaya Kirti Advocate. Adv.

Mr. Manu Maheshwari, Adv.

Ms. Pratibha Jain, Adv.

Signature Not Verified
Digitally signed by
Gulshan Kumar Arora
Date: 2014.04.11
11:54:21 IST
Reason:

For Respondent(s) Mr. Gaurav Agrawal, Adv.

Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Subramonium Prasad, AAG
Mr. M. Yogesh Kanna, AOR
Ms. J. Janani, Adv.

Mr. P.S. Narasimha, ASG
Mr. C. Paramasivam, Adv.
Mr. M.P. Parthiban, Adv.
Mr. Rakesh K. Sharma, AOR

Mr. V. Shekhar, Sr. Adv.
Mr. Tarun Gupta, Adv.

Mr. V. Giri, Sr. Adv.

UPON hearing the counsel the Court made the following
O R D E R

Mr. Narsimha, learned Additional Solicitor General, Mr. Rakesh Dwivedi, learned senior counsel appearing for the State of Tamil Nadu, Mr. V. Giri, learned senior counsel and Mr. Shekhar, learned senior counsel appearing for some of the complainants, while making a prayer for grant of four weeks time to file the counter affidavit, submitted that the points that have been urged by the petitioner and which have been enumerated by this Court vide order dated 30.10.2014 are not acceptable in the constitutional canvass. They have basically referred to two contentions raised by Mr. Subramanian Swamy, the petitioner, who had appeared in person. The said contentions read as follows :

"(a) The provisions contained in Sections 499 and 500 IPC, travel beyond the restriction clause enshrined under Article 19(2) of the Constitution of India, for that really constricts the freedom of speech beyond reasonable limit.

(b) The very purpose of Article 19(2), as would be evident from the debate in the provisional Parliament, was not meant to put such restrictions and, therefore, such an enormous restriction cannot be thought of under Article 19(2) to support the constitutionality of the said provisions and further it will violate the concept of rule of law."

It is submitted by them that Article 19(2) of the Constitution itself imposes the restriction and, therefore, the

submissions put forth by Mr. Subramanian Swamy that the provisions contained in Sections 499 and 500 of the Indian Penal Code travel beyond the restrictions as enshrined under Article 19(2) of the Constitution of India and reference to the debate in the provisional Parliament are unsustainable.

At this juncture, we have thought it apt to have the assistance of Mr. K. Parasaran, learned senior counsel and Mr. T.R. Andhyarujina, learned senior counsel to assist the Court. Apart from the contentions which were raised by Mr. Subramanian Swamy, which were recorded in our previous order, today, as we are obliged, we must record the submissions of the learned counsel appearing for the respondents, as has been stated hereinbefore, the emphasis is on the constitutional restriction, as incorporated under Article 19(2). The said Article 19(2) reads as follows :

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Mr. Dwivedi, Mr. Narsimha, Mr. Giri and Mr. Shekhar, learned senior counsel, would give immense emphasis on the phrase "defamation or incitement to an offence". To buttress the stand that the word 'defamation' being there in the Article itself and that being there in Section 499 of the Indian Penal Code which defines 'defamation' and also provides enormous safeguards by way of number of exceptions, there can be violation of Article 19(2) of the Constitution.

Mr. Andhyarujina, learned senior counsel submitted that there has to be a debate with regard to the conceptual meaning of the term 'defamation' used in Article 19(2) of the Constitution and the definition of 'defamation' in Section 499 of the Indian Penal Code. It is also his submission, *prima facie*, that regard being had to the accent given under Article 19(1)(a) to freedom of speech and expressions and regard being had to the development of free speech and expression in last few decades, the debates in the provisional Parliament may be of some help. Learned senior counsel would contend that the terms 'defamation' or 'incitement' has to be read disjunctively. According to him, "incitement to an offence" would stand on a different compartment altogether and the 'defamation' has to be construed in a different compartment and, therefore, 'incitement to an offence' would have criminal

capability whereas 'defamation' as per Article 19(2), when properly understood and appreciated, would give rise to civil liability. We repeat at the cost of repetition, there are, *prima facie*, views of Mr. Andhyarujina, as learned senior counsel himself submitted with all the humility at his command, that the case requires detailed argument and he will be assisting the court from all perspectives.

Mr. K. Parasaran, learned senior counsel, who has been requested to assist the Court, appearing at a later stage, submitted that the first part of Article 19(2) i.e. "nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law" would stand disjunctively from the rest of the Article and Sections 499 and 500 of the Indian Penal Code being the existing law, are saved under the Constitution. It is his submission that the freedom of speech and expression possibly has to be controlled one not to include the concept of defamation as defined under Section 499 IPC. Learned senior counsel has urged that "reputation", that is, "kirti", is the greatest treasure of the man of this side of the grave and, therefore, no citizen has a right to defame another. It is canvassed by him that as the existing law is protected, it is to be seen whether apart from freedom of speech and expression, other Articles in Part III of the Constitution are violated.

It is his further submission that if everyone would use the language, which is defamatory in nature, it would become collective irresponsibility which the law does not countenance.

Mr. Sushil Kumar Jain, learned senior counsel appearing for one of the petitioners, would submit that though the existing laws are saved and may be segregable from the other part, yet they have to pass the test of "such law", which impose reasonable restrictions on the exercise of the right pertain to the interests of [the sovereignty and integrity of India], the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Mr. Jain would further submit that these conditions precedent are bound to have inescapable association with the existing law and the existing law can only withstand the constitutional scrutiny, if they meet the parameters provided/stipulated therein.

Ms. Chaya Kirti, learned counsel, assisting Mr. Sushil Kumar Jain, learned senior counsel, has undertaken to supply a copy of the brief to Ms. Prabha Swamy, learned counsel, who is requested to assist Mr. K. Parasaran, learned senior counsel.

Mr. T.R. Andhyarujina, learned senior counsel shall be assisted by Ms. Jesal Wahi, learned counsel.

Let the counter affidavits be filed within four weeks by all the respondents. Rejoinder affidavit, if any, be filed within four weeks therefrom

List the matter on 08.07.2015.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

— *Arora* —

Annexure P-6
91

ITEM NO.602

COURT NO.5

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Criminal) No.56 of 2015

ARVIND KEJRIWAL

Petitioner(s)

VERSUS

UNION OF INDIA, MINISTRY OF LAW AND
JUSTICE AND ORS.

Respondent(s)

(With appln.(s) for exemption from filing O.T. and ex-parte stay
and office report)

Date : 17/04/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Dr. Rajeev Dhavan, Sr. Adv.
Ms. Vrinda Bhandari, Adv.
Mr. Chirag M. Shroff, AOR
Ms. Swati Vaibhav, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Issue notice, returnable within six weeks.

Tag with Writ Petition (Crl.) No.184 of 2014.

Let the matter be listed on 8th July, 2015.

There shall be stay of further proceedings in
defamation cases, being Criminal Complaint No.44/1 of 2014,
pending before the Additional Chief Metropolitan Magistrate,
Patiala House Court, New Delhi, and Criminal Complaint
No.728/1 of 2013, pending before the Chief Metropolitan
Magistrate, Karkardooma Court, Delhi,

Signature Not Verified
Digitally signed by
Chetan Kumar
Date: 2016.04.17
17:04:53 IST
Reason:

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master