

PSN

W.P. (Crl.) No. 67 of 2015

Rahul Gandhi v Union of India

SUBMISSIONS OF P.P.RAO ON BEHALF OF THE PETITIONER

Sections 499 and 500 of IPC are ultra vires Articles 14, 19(1) (a) and Article 21 of the Constitution for the following reasons:

1) a) "Fundamental Rights" are basic human rights which the State is bound to protect. The right to freedom of speech conferred by Article 19(1) (a) is vital for a democracy. Uninhibited free speech is a basic requirement of democracy. The "reasonable restrictions" are those which are calculated to prevent the expression of a thought which is intrinsically dangerous to public interest.

S. Ragarajan v P. Jagjivan Ram, (1989)2SCC574, 592-593, prs. 36-39, pp. 593-594 part of pr. 40, pp. 594-596, pr. 45

Union of India v Naveen Jindal, (2004) 2 SCC 510, 540, pr. 48

PUCL v UOI (2003) 4 SCC 399, 424-425 prs.17 and 18 and pp.430-434 prs.24 to 27.

b) Parliamentary democracy is a part of the basic structure of the Constitution.

P.V. Narasimha Rao v State (1998) 4 SCC 626, 673, pr.47.

2) Fundamental Rights are fetters against State action. The enabling power in Article 19(2) to impose reasonable restrictions on the right conferred by Article 19(1) (a) was intended to safeguard the interests of the State and the general public and not of any individual. Article 19(2) cannot be regarded as the source of authority for Section 499 of IPC which makes defamation of a private person an offence.

3) Article 19 (2) is an exception to Article 19 (1) (a) and as such, it needs to be construed narrowly while Article 19 (1) (a) warrants liberal interpretation.

4) The common thread running through the various grounds mentioned in clause (2) of Article 19 is protection of interests of the State and the public in general. Consequently, having regard to the scheme of the Constitution, the nature of the fundamental rights and the scope of reasonable restrictions to be imposed thereon, the ground of "defamation" mentioned therein needs to be understood applying the principle of *Noscitur a sociis*.

K. Bhagirathi G. Shenoy v K.P. Ballakuraya, (1999)4SCC135,137, pr. 6

RBI v Peerless General Finance and Investment Co., (1987) 1 SCC 424, 450 pr. 33

5) (a) The right to freedom of speech and expression can be restricted only on one or the other of the grounds specified in Clause (2) of Article 19 and no other.

(b) This right cannot be restricted for securing better enjoyment of another fundamental right

Sakal Papers (P) Ltd. v. The Union of India, (1962)3SCR842, 863

6) The Constitution recognises the importance of freedom of speech in Parliament and State Legislatures vide Article 105 (1) and (2) and Article 194 (1) and (2) which grant immunity from legal proceedings. It would be unreasonable to make speeches made by leaders during election while canvassing for candidates of their respective political parties a crime punishable with imprisonment which affects the voters' right to know the views of the leaders on matters of public interest.

7) The Court has to reconcile the social interest involved in the Freedom of Speech and Expression and the public interest involved in the provision of law under challenge.

Indian Express News Paper v Union of India, (1985)1SCC641, 686, pr. 68.

8) Sections 499 and 500 of IPC are not confined to defamation of the State or its components or departments by a citizen, but include

defamation of any private person by another private person unconnected with the State.

9) Defamation of an individual by another individual is a "civil wrong" (tort) pure and simple for which the common law remedy is an action for damages. To the extent such defamation is made a crime, it is outside the purview of Part III of the Constitution and ultra vires Articles 14, 19 and 21 which constitute the core of the basic structure of the Constitution.

I.R.Coelho v. State of Tamil Nadu, (2007)2SCC1, 108, prs.139-141.

10) Fundamental Rights are conferred in public interest as held in *Basheshamath v. Commissioner of Income Tax*, (1959) Supp1 SCR 528, 552, 532-565, pp. 598-599 and 618. As defamation of a private person by another person is unconnected with the fundamental right conferred in public interest by Article 19(1) (a), Section 499 is outside the scope of Article 19(2) of the Constitution.

11) (a) Right to one's reputation which has been held to be a facet of Article 21 is vis-a-vis the State, not a private individual.

Board of Trustees of the Port of Bombay v. D.R. Nadkarni, (1983)1 SCC 124, 134, pr. 13

Mehmood Nayyar Azam v. State of Chhattisgarh, (2012)8SCC1, 14, pr.

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Umesh Kumar v. State of AP, (2013)10SCC591, 604, pr. 18

Om Prakash Chautala v. Kanwar Bhan, (2014)5 SCC 417, pr. 1

(b) In any event, "reputation" which has been held to be a facet of Article 21 is not false reputation enjoyed by a person, but reputation based on truth.

(c) It is said that a man's reputation is his property, more valuable than other property – see *Dixon v Holden* (1869) LR7 Equity 488. Initially, Right to Property was a Fundamental Right of a citizen and the State could impose reasonable restrictions by law in the interests of the general public or for the protection of the interests of any Scheduled Tribe – vide unamended Article 19 (1) (f) and (5). After

omission of Articles 19 (1) (f) and 31 from Part III by the 44th Amendment of the Constitution, the right to property has ceased to be a Fundamental Right w.e.f. 20.06.1979.

(d) The Respondent's right to reputation, if any, is a common law right. The distinction between a common law right, a statutory right and a Fundamental Right is well known. Fundamental Rights are enforced by the State against itself.

Golaknath (I.C.) v. State of Punjab 1967(2) SCR 762, p. 885, pp. 859-862. Article 19 (2) cannot be invoked to serve private interest. Therefore, Section 499 to the extent it serves private interest of an individual falls outside the scope of Article 19 (2) and void.

12) "Crime" means an offence against the society of which the State is the custodian.

State of Maharashtra v. Sujay Mangesh Poyarekar, (2008)9SCC475, 483, pr. 23

Mohd. Shahabuddin v. State of Bihar, (2010)4SCC653, 701 pr. 121

Having regard to the submissions made above regarding the scope of Article 19 (1) (a) and (2), defamation of a private person by another private person could not be made a "crime" under the Constitution.

13) The distinction between a 'tort' and a 'crime' is well known. To treat a civil wrong allegedly committed by a citizen, though in exercise of the right conferred by Article 19(1)(a) against another citizen as a "crime" is arbitrary. Only offences against the society as a whole or the State can be made punishable with imprisonment and/or fine. Any arbitrary provision in a penal statute is liable to be declared ultra vires Articles 14, 19 & 21.

14) On a correct interpretation of Article 19 (2), the word "defamation" mentioned therein would permit only defamation of the kind mentioned in the first part of Column 1 of the table under subsection (2) in Section 320 of the Code of Criminal Procedure, 1973 with reference to Section 500 of IPC which reads: "Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union Territory or a Minister in respect of

his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor."

15) Except to the extent indicated in the preceding Submission No.15, Section 499 of IPC *ex facie* inhibits free speech and it is a serious restriction on the fundamental right conferred by Article 19 (1) (a). It cannot be regarded as a reasonable restriction in a democratic republic. A restriction which excessively invades the right or which goes beyond the requirement of public interest cannot be regarded as reasonable restriction and would be arbitrary.

Chintamanrao v. State of M.P. 1950 SCR 759, 763

Shreya Singhal v Union of India (2015) 5 SCC 1, 136-137 *prs.*26-29 and *pp.*149-166 *prs.*53-86.

16) Article 51A (b) mandates every citizen, "to cherish and follow the noble ideals which inspired our national struggle for freedom". Mahatma Gandhi led the freedom struggle with strict adherence to the noble ideals of truth and non-violence. Truth is one of the basic postulates of the Constitution, the importance of which is evident from the national motto "*Satyameva Jayate*" (Truth alone triumphs) displayed in every Court Hall. It is an eternal value cherished by all faiths and by all people all over the world. Therefore, making speaking of truth an offence punishable with imprisonment is unconstitutional.

17) In as much as "making a false statement" is not made an essential ingredient of the offence "defamation" and it is made an exception to 'defamation', casting the burden of proof on the accused straightaway is wholly arbitrary. To qualify as a reasonable restriction on the fundamental right of a citizen to freedom of speech and expression, 'making of a false statement' ought to be made an essential ingredient of the offence which needs to be established *prima facie* before issuance of summons. Making 'truth' an exception to defamation with the rider that "if it be for the public good" and casting the entire burden of proof on the accused is on the face of it unreasonable, unfair and unjust and therefore arbitrary and violative

of Articles 14, 19 and 21.

Maneka Gandhi v Union of India (1978) 1 SCC 248, 281-284 prs.6 and 7.

18) According to the founding fathers, 'truth' is always for the public good. A citizen who has spoken truth is also subjected to the ignominy of being treated as an accused, the harassment of summons, obtaining bail or otherwise suffering arrest and detention, attending all hearings of the case, engaging a lawyer involving considerable expenditure and made to wait for the trial to proceed to the stage of defence evidence and ultimately acquitted after proof of truth, is wholly irrational, unjust, unfair and arbitrary, prohibited by Articles 14, 19 and 21. There is no justification at all for subjecting any citizen who speaks truth to this ordeal.

19) The added requirement of the accused having to prove that the statement made by him was for the public good is unwarranted and crosses the limits of reasonableness.

a) *M.A. Rumugam v Kittu* (2009) 1 SCC 101, 105-106, prs.18-21.

b) *Sewakram Sobhani v R.K. Karanjia*, (1981) 3 SCC 208, 216 pr.9.

20) In any event, the term "public good" is vague as it does not provide any objective standard or norm or guidance and therefore imposes an unreasonable restriction on the fundamental right guaranteed by Article 19 (1) (a).

H.R. Banthia v Union of India (1969) 2 SCC 166, 183 pr.21.

21) "Reasonableness" is not a static concept. Its content may vary from time to time. What was considered reasonable at one point of time may become arbitrary and unreasonable at a subsequent point of time. Whatever be the justification for this colonial law when it was enacted in the 19th century, it has become unreasonable and arbitrary in independent India which is a sovereign, democratic republic w.e.f. 26.01.1950. In the following cases, this Hon'ble Court held that the impugned provisions had become unreasonable with the passage of time.

Motor General Traders v State of Andhra Pradesh (1984) 1 SCC 222, 232-237 prs. 16-22

Rattan Arya v State of Tamil Nadu (1986) 3 SCC 385, p. 390 pr. 4

Malpe Vishnu Nath Acharya v State of Maharashtra (1998) 2 SCC 1, p. 12 pr. 15, p. 23 prs. 31-32.

22) In judging reasonableness of a statutory provision, the Court takes into consideration the prevailing law in other countries particularly in the UK which enacted the Indian Penal Code during its rule and the USA which has a written Constitution with judicially enforceable Bill of Rights.

Romesh Thapar v. State of Madras, (1950) SCR 594, 596-603

P. Rathinam v Union of India (1994) 3 SCC 394, 428-429 prs. 106-110.

Note: This judgment has been overruled on merits by a Constitution Bench in *Gian Kaur v State of Punjab* (1996) 2 SCC 648.

23) As the intention of the Legislature in enacting Section 499 of IPC is very clear, reading down Section 499 is not reasonably possible.

Minerva Mills Ltd. v UoI (1980) 3 SCC 625, p. 657 prs. 64-65

Delhi Transport Corporation v DTC Mazdoor Congress (1991) Supp. 1 SCC 600,

pp. 711-712: B.C. Ray, J.

pp. 721-730 prs. 241-257: P.B. Swant, J.

pp. 761-765 prs. 321-329: K. Ramaswamy, J.

24) As the invalid part and the valid part of Section 499 IPC are inextricably mixed up and cannot be separate from one another, the principle of severability cannot be applied. Section 499 and consequently Section 500 are liable to be declared unconstitutional.

R.M.D. Chamarbaugwala v Union of India (1957) SCR 930 at 951:

Proposition No. 2.

The Bullion and Grain Exchange v The State of Punjab, (1961) 1 SCR 668, pp.674-675

Deepak Sibal & Ors. v Punjab University & Anr. (1989) 2 SCC 145, pp. 158-159 pr. 24.

25) Sections 499 and 500 of IPC have 'a chilling effect' on the basic right to freedom of speech and expression and also suffer from 'overbreadth'.

Shreya Singhal v Union of India (2015) 5 SCC 1, 166-170 prs.87-94.

26) The Writ Petition deserves to be allowed with consequential relief to the Petitioner.