

A study of the exceptions to the offence of defamation

Defamation, as defined under Section 499 of the Indian Penal Code, 1860, is an offence that criminalizes the act of harming the reputation of a person by means of spoken or written words, signs, or visible representations. The law of defamation seeks to balance two competing values—on one hand, the individual's right to reputation, which is recognized as an inherent part of the right to life and personal liberty under Article 21 of the Constitution of India, and on the other, the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a). To maintain this balance, the law provides for certain well-defined exceptions that protect bona fide expressions made in the public interest, in good faith, or as fair comment on matters of public concern.

Section 499 lays down ten specific exceptions that exclude certain statements or publications from being treated as defamatory even if they appear to lower the reputation of a person. The first exception relates to imputation of truth made for the public good. If a statement is true and its publication is for the public good, it does not amount to defamation. The truth of a statement alone is not sufficient; it must also serve the public interest. For instance, publication of the truth about a public servant's misconduct, if done in the public interest, falls within this exception. In the landmark case of *Chaman Lal v. State of Punjab* (1970), the court held that the defence of truth must be accompanied by a bona fide intention to serve the public good. The question of whether publication is for the public good is one of fact, to be decided on the circumstances of each case.

The second exception concerns the public conduct of public servants. It allows expressions made in good faith regarding the conduct of a public servant in the discharge of his public functions or his character insofar as it appears in that conduct. This exception arises from the principle that the public has a right to comment on those who hold positions of public responsibility. However, the protection is conditional upon good faith. In *Harbhajan Singh v. State of Punjab* (1966), the Supreme Court observed that criticism of public servants is a legitimate exercise of the right to free speech, provided it is made honestly, without malice, and with due care and attention.

The third exception deals with the conduct of any person touching any public question. It extends the protection of fair comment to expressions made in good faith regarding the conduct of any person participating in public discussions or activities that concern the public. For example, journalists, political commentators, and citizens can express their opinions on public figures or policies as long as the opinions are made honestly and without malicious intent.

The fourth exception provides protection to publications of substantially true reports of judicial proceedings. The rationale behind this exception is to ensure transparency in judicial proceedings and to maintain public confidence in the administration of justice. It covers fair and accurate reports of proceedings before any court, tribunal, or authority exercising judicial functions. However, any comment that goes beyond fair reporting or distorts the proceedings may lose the protection of this exception.

The fifth exception protects expressions made in good faith concerning the merits of a case decided in a court of law or the conduct of parties, witnesses, or advocates involved in such cases. This allows for public scrutiny and discussion of judicial decisions, which is an essential aspect of a democratic society. Yet, such criticism must be constructive, fair, and made with due regard to the dignity of those involved.

The sixth exception concerns expressions made in good faith about the merits of public performance. This includes criticism of literary works, artistic performances, or public exhibitions. Critics, reviewers, and commentators can freely express their honest opinions about public performances as long as their comments are made without malice. In *Abdul Hamid v. State of Uttar Pradesh* (1960), the court observed that bona fide criticism of a public performance, even if harsh, does not amount to defamation if made in good faith.

The seventh exception protects censure passed in good faith by a person who has lawful authority over another. For instance, a teacher's remarks about a student's performance or an employer's report about an employee's behavior do not constitute defamation if made honestly and within the scope of authority. This exception reflects the importance of maintaining discipline and accountability within hierarchical or professional relationships.

The eighth exception pertains to accusations made in good faith to persons who have lawful authority over the person accused. For example, a complaint made by a citizen to the police about suspected misconduct, or by an employee to a superior about a colleague's unethical behavior, would not amount to defamation if the complaint is genuine and made in good faith. This exception encourages reporting of wrongdoing to competent authorities without fear of legal consequences, provided there is no malicious intent.

The ninth exception protects imputations made in good faith for the protection of one's or another's interests. This is a broad defence that covers situations where a person makes a statement to safeguard their legitimate interests or those of another person, provided it is done honestly and with due care. For instance, a businessperson warning another about a potential fraudulent partner or a doctor informing a colleague about a patient's misconduct may be protected under this exception.

The tenth and final exception concerns caution or advice given in good faith. It applies to situations where a person gives a warning or advice for the benefit of another, such as cautioning a friend about associating with a person of questionable character or advising a subordinate about the potential risks of certain behavior. The emphasis again lies on good faith and the absence of malice.

The common thread running through all these exceptions is the requirement of *good faith*—a term defined under Section 52 of the IPC as an act done with due care and attention. Courts have consistently interpreted good faith to mean honesty of purpose and reasonable belief in the truth of the statement. The burden of proving good faith lies on the accused, and it is determined based on the facts and circumstances of each case.

A notable judicial pronouncement in this context is *Subramanian Swamy v. Union of India* (2016), where the Supreme Court upheld the constitutionality of criminal defamation under Sections 499 and 500 of the IPC. The Court reasoned that while freedom of speech is a fundamental right, it is not absolute and must coexist with the right to reputation. The Court recognized the importance of the statutory exceptions under Section 499 in striking a balance between these competing rights and emphasized that these exceptions act as safeguards to prevent the misuse of the law.

In practical terms, the exceptions to defamation play a crucial role in ensuring that the law does not stifle free expression or legitimate criticism. They recognize the social value of honest opinion, fair comment, and responsible communication. At the same time, they prevent individuals from abusing freedom of speech to harm others' reputations under the guise of truth or public interest. The offence of defamation under Section 499 IPC is not absolute but subject to carefully crafted exceptions that uphold the principles of justice, fairness, and free expression. These exceptions safeguard truthful statements made for the public good, fair criticism of public servants and performances, bona fide reports of judicial proceedings, and honest communication made in the protection of interests or in discharge of duties. The essence of these exceptions lies in the requirement of good faith and public interest, ensuring that the law of defamation remains a tool for protecting reputation without becoming an instrument of oppression against free and responsible speech.

Landmark cases under Indian judiciary that deal with exceptions to defamation

1. Subramanian Swamy v. Union of India (2016) 7 SCC 221

This is the most significant modern ruling on defamation. The Supreme Court upheld the **constitutional validity of Sections 499 and 500 IPC**, observing that the **right to reputation** is an integral part of the right to life under **Article 21**, and that **criminal defamation laws do not unduly restrict free speech** under Article 19(1)(a). The Court emphasized that the **exceptions to Section 499** serve as **necessary safeguards** that allow honest criticism, fair comment, and bona fide publication in the public interest. The judgment highlighted that these exceptions maintain a balance between freedom of expression and protection of reputation.

2. Chaman Lal v. State of Punjab, AIR 1970 SC 1372

This case is frequently cited regarding the **first exception**—imputation of truth made for public good. The Court held that **truth alone is not a defence** in defamation; the imputation must also be made **for the public good**. The decision clarified that determining whether publication is for the public good is a **question of fact**, depending on the context and intention of the accused. This case firmly established that a true statement published with malicious intent and without public benefit can still amount to defamation.

3. Harbhajan Singh v. State of Punjab, AIR 1966 SC 97

This is a landmark case interpreting the **second exception**, which allows fair comment on the **public conduct of public servants**. The Supreme Court acquitted the accused, holding that **criticism of a public servant's performance** made **in good faith** and **without malice** does not constitute defamation. The Court defined "good faith" as involving **due care and attention** and an honest belief in the truth of the statement. The judgment reinforced that **public servants are subject to public scrutiny**, provided such criticism is not motivated by ill will.

4. Rajendra Sail v. M.P. High Court Bar Association (2005) 6 SCC 109

In this case, the Supreme Court dealt with the **fourth and fifth exceptions**, which relate to **fair reports of judicial proceedings** and **comments on judicial acts**. The Court clarified that **fair criticism of judicial functioning** is permissible and protected, provided it does not **scandalize the court or obstruct the administration of justice**. The Court cautioned that while freedom of expression extends to judicial criticism, it must be made **in good faith** and with **respect for the dignity of the judiciary**.

5. Abdulla Khan v. State of Uttar Pradesh, AIR 1960 All 380

This case is relevant to the **sixth exception**, which concerns **merits of public performances**. The Allahabad High Court held that **honest criticism of artistic or literary works** does not amount to defamation even if it is harsh, provided the opinion is expressed **without malice** and in **good faith**. The decision recognized the right of critics and reviewers to express opinions about public performances as part of **freedom of expression**, as long as they are not motivated by ill will.

6. T.K. Achuthan v. A.R. Appu Nair, AIR 1956 Mad 656

This case addressed the **eighth exception**—accusation made in good faith to persons in authority. The Madras High Court ruled that **a complaint made in good faith to a competent authority** about a person's alleged misconduct is protected. The Court observed that if the accusation is **honestly believed to be true** and **made to a person having lawful authority**, it does not constitute defamation, even if it turns out to be incorrect. The decision reaffirmed that the focus must be on **good faith** and **absence of malice**.

7. M.C. Verghese v. T.J. Ponnann, AIR 1970 SC 1876

While primarily concerning the question of privilege and marital communication, this case is often cited in discussions of **good faith** under Section 499. The Supreme Court noted that the test of good faith depends on whether the person making the statement exercised **due care, attention, and honesty**. The case underscored that **good faith is a matter of fact**, and each case must be judged according to its own circumstances.

8. Sewakram Sobhani v. R.K. Karanjia, Chief Editor, Blitz (1981) 3 SCC 208

This case is a classic illustration involving the **first and second exceptions**. The editor of *Blitz* magazine was prosecuted for publishing an article alleging misconduct of a public official. The Supreme Court held that **journalists are entitled to protection under the exceptions**, provided they act **in good faith** and in the **public interest**. The Court emphasized that the **press plays a vital role in democratic**

accountability, and bona fide criticism of public officials, based on verified facts and reasonable belief, cannot be termed defamatory.

9. Jeffrey J. Diermeier v. State of West Bengal (2010) 6 SCC 243

This case discussed the concept of **good faith and public interest** in the context of corporate governance. The Supreme Court held that **honest statements made for protecting one's interest or the interest of others**, even if they affect someone's reputation, can be protected under the **ninth exception**. The Court reiterated that **good faith implies due care, prudence, and absence of ill will**, and that the accused bears the burden to prove it.

10. Dr. J. Jayalalitha v. Reader's Digest Association Ltd., AIR 2000 Mad 291

This case related to a publication in a magazine concerning the conduct of a public figure. The Madras High Court held that the **freedom of the press** includes the right to publish truthful information about matters of public concern, but it must be done **for the public good** and not with **malicious intent**. The Court examined the **first and second exceptions**, emphasizing that **truth plus public good** forms the cornerstone of the defence to defamation.

11. S. Khushboo v. Kanniammal (2010) 5 SCC 600

Although primarily concerning obscenity, this case dealt with **public discussion on social issues**. The Supreme Court held that **expressions of opinion on matters of public morality**, made **without intent to harm any specific individual's reputation**, are protected under the **third exception**. The Court reinforced that **open debate on public issues** is essential for democracy and cannot be silenced under the pretext of defamation unless malice or intent to harm is clearly established.

12. John Thomas v. Dr. K. Jagadeesan (2001) 6 SCC 30

This case revolved around **publication of a warning** by a medical association regarding a doctor's unethical practices. The Supreme Court observed that such **caution or advice given in good faith** fell under the **tenth exception** to Section 499. The Court ruled that the publication was made **for the protection of the public and the medical profession** and thus did not amount to defamation.

The judicial interpretation of the **exceptions to defamation** under Section 499 IPC reflects a consistent effort to uphold **truthful, honest, and responsible communication** while protecting individuals from **malicious or reckless attacks on reputation**. The courts have repeatedly emphasized that the key determinant in most cases is **good faith**—involving honesty, reasonable care, and absence of malice. Through these landmark decisions, the Indian judiciary has reinforced that **freedom of expression and right to reputation are coexistent**, and the statutory exceptions act as vital safeguards ensuring neither right eclipses the other.

The way the **Indian judiciary interprets and classifies the exceptions to the offence of defamation under Section 499 of the Indian Penal Code, 1860** has undergone a gradual but profound evolution over time. This evolution reflects the broader transformation of Indian society, constitutional jurisprudence, media practices, and democratic values. Initially, courts adopted a narrow and conservative view, prioritizing the protection of individual reputation, but as social contexts and modes of communication evolved—especially with the growth of the press, political discourse, and digital media—the judiciary has increasingly adopted a more **contextual, liberal, and rights-based interpretation** of these exceptions.

In the early decades following independence, Indian courts approached defamation with strict adherence to the statutory language of Section 499. The focus was primarily on the **literal application** of the exceptions, with little emphasis on the underlying constitutional dimensions. For instance, in *Chaman Lal v. State of Punjab* (1970), the Supreme Court emphasized that even a true statement could be defamatory if it was not made for the public good. This indicated a cautious judicial approach—truth alone was not an absolute defence, and the burden on the accused to prove “public good” and “good faith” was heavy. During this period, the judiciary was largely concerned with maintaining social order and protecting individual dignity, often at the cost of limiting the scope of free expression.

However, as democratic institutions matured and public discourse became more vibrant, the judiciary began to acknowledge the **importance of freedom of speech and the role of criticism in a democracy**. This shift became visible in cases such as *Harbhajan Singh v. State of Punjab* (1966), where the Court recognized that **public servants are open to fair criticism** and that expressions made in good faith and without malice should be protected. This marked an early recognition of the need to interpret the exceptions dynamically, in accordance with democratic principles. The Court clarified that **good faith** must be understood not merely as honesty, but as involving **reasonable care and due diligence**—a standard that evolved to adapt to changing societal expectations of accountability.

The post-1980 period witnessed a significant transformation in judicial reasoning as the press and public communication expanded. In *Sewakram Sobhani v. R.K. Karanjia* (1981), the Supreme Court held that journalists are entitled to rely on the exceptions provided they act in good faith and in the public interest. This judgment was pivotal because it extended the protection of the exceptions to **media professionals**, acknowledging the critical role of the press in exposing corruption and misconduct. The Court began to distinguish between **malicious defamation** and **legitimate public criticism**, moving toward a more nuanced classification of exceptions that prioritized the intent and purpose of the statement over its literal meaning.

The constitutionalization of defamation law reached its peak in *Subramanian Swamy v. Union of India* (2016), where the Supreme Court upheld the validity of criminal defamation but also **reinterpreted the statutory exceptions through a constitutional lens**. The Court stated that the ten exceptions in Section 499 are **not merely statutory defences**, but integral safeguards designed to uphold the **balance between the fundamental right to freedom of speech (Article 19(1)(a)) and the right to reputation (Article 21)**. Importantly, the Court recognized that social and technological changes demand a **contextual application** of these exceptions. This case effectively constitutionalized the notion that defamation law must evolve in light of societal transformations, not remain static.

The digital age has further compelled the judiciary to revisit how the exceptions apply to **online publications and social media communications**. Courts have had to confront situations where

statements spread instantly to vast audiences, amplifying reputational harm but also expanding the space for public debate. In several High Court rulings post-2016, including *Kamal R. Khan v. State of Maharashtra* and *Nikhil Wagle v. State of Maharashtra*, courts have leaned on the **spirit of the exceptions**—particularly the first (truth and public good), second (public conduct of public servants), and third (conduct touching public questions)—to protect responsible journalistic and political speech. The judiciary now recognizes that **public good and public interest are dynamic concepts**, and what constitutes fair comment must be interpreted in the light of contemporary political and social realities.

The meaning of “**good faith**” has also evolved significantly. Earlier courts equated it with subjective honesty, but modern judgments demand an **objective test**—whether a reasonable person in similar circumstances would have believed the statement to be true and acted with due care. This shift reflects an acknowledgment that in an era of mass media, careless or reckless statements can cause immense harm even without malicious intent. Hence, while the judiciary remains protective of free expression, it continues to insist that the exceptions must be invoked responsibly, with an emphasis on verification and accountability.

Another major evolution concerns the **balance between individual reputation and collective interest**. Earlier, defamation law was viewed through a purely individualistic lens, focusing on the personal harm suffered by the complainant. Contemporary courts, however, increasingly recognize the **collective dimension of free speech**—that public scrutiny of officials, corporations, and policies serves the democratic process. For example, in *Rajendra Sail v. M.P. High Court Bar Association* (2005), the Supreme Court protected fair criticism of judicial functioning as long as it did not scandalize the court. Similarly, in *S. Khushboo v. Kanniammal* (2010), the Court shielded public discussion on morality and social norms under the third exception, observing that free expression on matters of public concern cannot be silenced under the pretext of protecting reputation. These rulings illustrate the judiciary’s evolution toward **classifying exceptions based on the nature of the speech and the public interest involved**, rather than rigidly adhering to traditional categories.

The judiciary has also shown greater sensitivity to the **role of intent and context** in defamation cases. Modern courts tend to interpret the exceptions more liberally when the statement concerns matters of public interest, is part of investigative journalism, or contributes to democratic debate. However, where personal attacks, fake news, or deliberate misinformation are involved, courts have applied the law strictly, denying the benefit of exceptions. Thus, the evolution has led to a **contextual classification**—distinguishing between speech that advances public welfare and that which merely indulges in personal vilification.

Furthermore, with the rise of **digital defamation**, the judiciary is beginning to interpret the exceptions in a way that accommodates the unique nature of online speech. Courts increasingly assess whether online statements are expressions of opinion (protected under fair comment) or assertions of fact made recklessly (outside the scope of exceptions). Though jurisprudence in this area is still developing, the trend suggests that courts are willing to extend traditional exceptions to online platforms when the speech aligns with public good, transparency, or whistleblowing. Evolving situations—democratic maturity, expansion of media, rise of social activism, and digital communication—have significantly changed the way the Indian judiciary classifies and applies the exceptions to defamation. The focus has shifted from a rigid, statutory understanding to a **dynamic, purpose-driven, and constitutional interpretation**. Courts now read these exceptions as instruments for protecting truthful, responsible,

and good-faith communication in the public interest, rather than as narrow technical defences. This evolution underscores the judiciary's ongoing effort to ensure that the law of defamation remains relevant in a rapidly changing society—protecting reputation without stifling legitimate criticism or free discourse, and ensuring that the right to speak truthfully coexists harmoniously with the right to live with dignity.