

## Criminal Law : Section 499, Indian Penal Code

THE CRIMINAL law of defamation in India is codified, and is enumerated in section 499 of the Indian Penal Code.

An aggrieved person has both the remedies—civil and criminal.<sup>1</sup> He is not compelled to make a choice between the two. If he has filed a criminal prosecution, he can still file a civil suit for damages for defamation, even though the prosecution is still pending. In fact, if he waits too long, the civil action may become time-barred. Withdrawal of a criminal complaint on tender of apology is no bar to civil action for libel unless there is a specific agreement barring a civil action.<sup>2</sup>

Defamation as an offence is dealt with in section 499 of the Indian Penal Code. The main paragraph of the section defines what is "defamation". In essence, it is an action causing harm to the reputation of a person, by making an imputation. Two explanations to the section (the first and second) deal with defamation of a deceased person and defamation of a group of persons, respectively. The third explanation to the section deals with an imputation in the form of an alternative, or expressed ironically. The meaning of "harm to reputation" is dealt with in the fourth explanation.

### Definition of Defamation

Coming to the definition, a person commits defamation when, by words either spoken or intended to be read, or by signs or by visible representations, he 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—unless the case falls within one of the exceptions. As a point of comparison, it will be noted that in civil law, the tort of defamation consists in the publication without lawful justification of a false statement, tending to lower a person in the estimation of right thinking people generally, or tending to make them shun or avoid him; briefly, defamation is a statement tending to bring a person into hatred, ridicule or contempt. The element of ridicule, though not mentioned in the main paragraph of section 499, is dealt with in the fourth explanation to the section.

1. *Asoke Kumar v. Radha Kanto*, A.I.R. 1967 Cal. 178 at 183, para 20.  
2. *Gavinda Charyulu v. Seshagiri Rao*, A.I.R. 1941 Mad. 860 at 861.

### Deceased Persons and Groups

Imputing anything to a deceased person may amount to defamation if it 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. An imputation concerning a company or an association or collection of persons as such may also amount to defamation.

The first explanation dealing with defamation of the deceased, is of great interest. The two parts of the first explanation to section 499 are to be read together. The imputation must not only harm the reputation of the deceased person concerned if living, but must also be intended to be hurtful to the feelings of the members of his family or other relatives.<sup>3</sup>

### Harming Reputation

The meaning of "harming a person's reputation" is explained in the fourth explanation to section 499. The imputation must directly or indirectly, in the estimation of others,—(a) lower the moral or intellectual character of that person, or (b) lower the character of that person in respect of his caste or of his calling, or (c) lower the credit of that person, or (d) cause it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. The meaning of this explanation was spelt out in a Calcutta case<sup>4</sup> by Lahiri, J., as under :

In my opinion this explanation does away with much of the fine distinctions under the English law and seems to imply that what constitutes defamation has to be determined not upon an interpretation that may be found for a word by a laborious research in a court of law, but upon the meaning that might be conveyed by the word to a reasonable and fair-minded man. I am prepared to concede that a meaning that might be conveyed to a morbid or suspicious mind cannot be taken into account for this purpose. The word 'others' in the explanation refers in my opinion to a reasonable and fair-minded man and not to a man with a morbid or suspicious mind.<sup>5</sup>

The explanation speaks *inter alia* of "caste".

So long as caste prevails, an attempt to minimise or ignore existing sanctions is contrary to the public good. If a person is really out-casted, a statement to the members of the brotherhood that he was out-casted is the kind of statement contemplated by the expression for the public good.<sup>6</sup>

3. *N.J. Nanporia v. Brojendra Bhowmick*, (1975) 79 C.W.N. 531.

4. *Debajyoti Burman v. The State*, I.L.R. (1957) 2 Cal. 181.

5. *Id.* at 191.

6. *Umed Singh v. Emperor*, A.I.R. 1924 All. 299 at 301 (case of slander) (per Walsh, J.).

### Concept of Good Faith

Coming to the exceptions to section 499, the first observation to be made is that most of them require "good faith". The definition of "good faith" in the Indian Penal Code provides that nothing is said to be done or believed in good faith which is done or believed without due care and attention. The definition in the code seems to *super-impose* the concept of due care and attention on that of honesty of purpose. In other words, honesty of purpose is certainly required. In addition, due care and attention must also be present in order to constitute good faith. The element of good faith is of particular importance to persons engaged in the profession of media. To illustrate this, two decisions may be cited. In a case which went upto the Privy Council,<sup>7</sup> the accused, the editor of a newspaper, published an article alleging that the district magistrate, in discharging a military officer for the offence of rape, had committed a breach of trust and was unworthy of the position he held. In fact, the Lieutenant Governor of the Province had exonerated the district magistrate; and the editor did not produce any fresh information on the basis of which he had made the allegation. Hence the plea that the publication was made in good faith did not succeed. In the second case which is comparatively more recent,<sup>8</sup> there was a reckless comment in a newspaper article that "the prosecuting staff at Aligarh" was corrupt. No instances of bribery had been cited, and good faith was, therefore, held to be absent.

Another general point concerning the exceptions to section 499 may be noted, namely, that the exceptions are exhaustive and no exception derived from English law or from any other source may be engrafted thereupon.<sup>9</sup> Of course, besides the specific exceptions given in the section, account must be taken of the general exceptions to criminal liability given in the code.<sup>10</sup> For example, if a person is, by threats of instant death, forced to make a defamatory statement, he is immune from criminal liability under one of the general exceptions.<sup>11</sup> An important exception, previously dealt with in a central Act which had a fluctuating history and which is now incorporated in the Constitution, protects statements made by way of publication of proceedings of Parliament and state legislatures,<sup>12</sup> provided there is no malice.

### Parliamentary Proceedings

Further, the Constitution, in articles 105 and 194, protects statements

7. S. 52, I.P.C.

8. *Channing Arnold v. King-Emperor*, A.I.R. 1914 P.C. 116.

9. *Sahib Singh v. State of U.P.*, A.I.R. 1965 S.C. 1451 at 1467, para 11.

10. *Satish v. Ram*, A.I.R. 1921 Cal. 1. See also *infra*, p. 78.

11. Ss. 76 to 106 of the I.P.C.

12. *Id.*, s. 94.

13. Art. 301A, Constitution of India, inserted by the Constitution (44th Amendment Act with effect from 20 June, 1979.

made by members during the course of proceedings in Parliament or legislature.<sup>14</sup> Malice does not take away this protection (for members of Parliament, etc.). But it would take away the protection for publication *outside Parliament, etc.* of the concerned proceedings, since the protection for such publication is, under the Constitution,<sup>15</sup> dependent on absence of malice.

### Exceptions

The ten exceptions to section 499 of the Indian Penal Code, protect the following classes of statements from criminal liability for defamation. They are briefly stated and analysed below :

First exception : True statement made or published for the public good.<sup>16</sup>

Second exception : Opinion expressed in good faith 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 : Opinion expressed in good faith 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.

Fourth exception : Publication of a substantially true report of the proceedings of a court of justice or of the result of any such proceedings. [Such publication may, however, constitute some other offence under a statutory provision regulating the reporting of judicial proceedings].

Fifth exception : Opinion expressed in good faith respecting the merits of any case decided by a court of justice or respecting the conduct of any person as a party, witness or agent in any such case or respecting the character of such person, so far as his character appears in that conduct, and no further.

Sixth exception : Opinion expressed in good faith respecting the merits of any performance which its author has submitted to the judgment of the public or respecting the character of the author, so far as his character appears in such performance and no further.

Seventh exception : Censure passed in good faith on the conduct of a person by a person having authority over him (conferred by law or arising out of a lawful contract) where the conduct is in matters to which such lawful authority relates.

Eighth exception : Accusation preferred in good faith against any person to one who has lawful authority over that person with respect to the subject matter of the accusation.

14. Cf. *Tej Kiran v. Sanjiva Reddy*, A.I.R. 1970 S.C. 1573 at 1574.

15. Art. 361A, Constitution of India.

16. Good faith is not required under the first exception, but truth is; contrast the ninth exception where truth is not required, but good faith is,

Ninth exception : Imputation on the character of another made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.<sup>17</sup>

Tenth exception : Caution conveyed in good faith to one person against another and intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

In India, in criminal cases, questions of privilege (in a prosecution for defamation) are determined exclusively by the provisions of the Indian Penal Code. Accordingly, an oral statement made by an accused person before the court carries only a qualified privilege under the ninth exception to section 499 of the Indian Penal Code.<sup>18</sup>

Belief is not a basis of privilege. For example exception 9 to section 499 cannot be read as meaning that if the person making the imputation *believes in good faith that he has been acting* for protecting his interest, then he is not liable. The interest must exist, objectively and not merely in the mind of the accused. The expression "good faith" used only once in the exception is used in connection with an act.<sup>19</sup>

#### Retention of Criminal Liability for Defamation

The question whether criminal liability for defamation should be retained has been widely debated in the United Kingdom but ultimately the offence of criminal libel, in so far as it punishes defamatory libel, continues still to be punishable in the United Kingdom. It may, of course, be mentioned that in the United Kingdom where a newspaper is proposed to be prosecuted for libel, it is necessary to obtain the permission of the judge in chambers by virtue of a specific statutory provision meant for newspapers.<sup>20</sup> Lord Shawcross has been one of the strong advocates of abolishing criminal liability for libel altogether, or of allowing a right of appeal against the decision of a judge to grant leave for a libel prosecution against a newspaper.<sup>21</sup> But no such amendment of the law has been carried out. In fact, strong views have been expressed in the United Kingdom against proposals for abolition of the offence.

In an editorial in the *London Times*,<sup>22</sup> it was suggested that criminal libel ought to be restricted to cases where it creates a risk of breach of the peace. But the suggestion has not been accepted in the United Kingdom. Against the

17. Truth is not required, but good faith is; contrast the first exception.

18. *Champa Devi v. Purbhu Lal*, A.I.R. 1926 All. 287.

19. *Bhola Nath v. Emperor*, A.I.R. 1929 All. 1, 8.

20. S. 8 of the Law of Libel Amendment Act, 1888.

21. Lord Shawcross, article in *The Times*, 26th May, 1977.

22. Leading article, *The Times*, 15 May, 1977, referred to by J.R. Spencer, *The Press and the Reform of Criminal Libel* in Glazebrook (ed.), *Reshaping the Criminal Law* 266-284 (1978).

point of view made in the suggestion in the *London Times* editorial, it could be argued that deliberate character assassination and the wild dissemination of defamatory matter by cranks, are surely evils worth suppressing, whether or not the person defamed is likely to resort to unlawful violence by way of retaliation.

It should also be pointed out that there are practical reasons for continuing the offence of defamation on the statute book, not the least of these being the consideration that attempts at character assassination have to be checked by effective means. These are purposeful attempts to harm people by spreading deliberate lies about them. In most civil law countries, it may be mentioned, defamation is primarily a matter for criminal law, and only secondarily a civil action.<sup>23</sup>

### First Exception

What is known as the defence of "justification" in the context of the law of defamation is dealt with in the first exception to section 499 of the Indian Penal Code, which provides as under :

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. Whether or not it is for the public good is a question of fact.

It needs to be pointed out that this exception imposes two conditions to be satisfied by the defamatory statement, if it is to receive the protection of the law. In the first place, the imputation must be true<sup>24</sup> and, secondly, the making or publication of the imputation should be for the public good. In this respect, the position differs in criminal and civil law, respectively. Immunity from civil liability for defamation exists, once it is proved that the statement is substantially true.<sup>25</sup> "Public good" is not an essential element for immunity in civil liability—unlike the position as regards criminal liability.

An Allahabad case however takes a wide view of the exceptions to section 499.<sup>25a</sup> In an application before a magistrate for the appointment of a *Mukhia*, there was a statement made that a particular person was of "bad character" and "a previous convict". He complained of defamation. The defence of truth was put forth. No previous conviction was proved against him, though it was proved that he had committed adultery with his sister-in-law, by whom he had also an illegitimate child. It was held that the offence of adultery under section 497 of the Indian Penal Code was a serious criminal

23. See J.R. Spencer, *ibid*, Stromholm, *Right of Privacy and the Rights of the Personality* 132, para 82 and p. 154, para 101 (1967).

24. *Chandrasekhara v. Karthikeyan*, A.I.R. 1964 Kerala 277 (creating a doubt is not enough)

25. *Duncan & Neill, Defamation* 55, para 11.03 (1978).

25a. *Emp:ror v. Murat Singh*, A.I.R. 1934 All. 904, 905.

offence, and, therefore, even if there was a statement about conviction which was not literally established, the evidence showed that he ought to have been convicted under section 497, thus indicating that the statement was substantially true. Therefore, the exception was held to be applicable.

It is also to be noted that the exception under discussion does not require good faith as an essential condition of the immunity. This is presumably for the reason that the requirement of public good may be regarded as sufficient enough to justify the publication of a true (though defamatory) statement.<sup>26</sup>

### Concept of Public Good

The concept of public good, it should be noted, is not confined to the first exception. It appears in express terms in the ninth and tenth exceptions to the section also. In a sense, it may be said to underlie some of the other exceptions to section 499 also, such as the second, fourth and fifth exceptions, relating respectively to statements concerning the public conduct of public servants, publication of reports of judicial proceedings and comments on the merits of a case decided in court and the conduct of witnesses and others concerned in relation to that case. In fact, in the law of obscenity, section 292 of the Indian Penal Code as amended in 1969, contains an exception whercunder the section does not extend to—

- (a) any book, pamphlet, paper, writing, drawing, painting, representation or figure
  - (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern.

Regarding the ingredient of truth, required by the first exception to section 499 two propositions are worth nothing :

- (i) on the one hand, where truth is set up as a defence, it must extend to the entire libel,<sup>27</sup> and (ii) on the other hand, truth of the allegation need not be literally proved. It is enough if it is substantially proved.<sup>28</sup>

However, if there is a doubt whether the matter in question is true or not, there is no protection.<sup>29</sup>

In a case<sup>30</sup> the Allahabad High Court, while dismissing the plea of justification on the facts, described it as a "dangerous plea". Its observations are

26. At common law, truth was not a defence in criminal proceedings for libel. S. 6 of the Libel Act, 1843 made the change (by requiring truth and public benefit).

27. *Chundrasekhara Pillal v. Karthikeyan*, *supra* note 24 at 283.

28. *Labouchere* : 14 Cox 419, cited by Gaur, *Penal Code* 4080, para 24, (1973).

29. *Lalmohan Singh v. King*, A.I.R. 1950 Cal. 339.

30. *Mohammad Nazir v. Emperor*, A.I.R. 1928 All. 321.

lucid and pertinent :

The defendant in proceedings for defamation whether in a suit or under S. 500, I.P.C., is usually in a delicate and difficult position . . . . The first step to consider is what is the exact nature of the defence that can be set up . . . . The facts may be so strong that occasionally it may happen that the counsel can advise the client to "justify" . . . . That most dangerous plea should never be put forward unless there is practical certainty of success.<sup>31</sup>

### Second Exception

The second exception to section 499 provides that it is not defamation to express in 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.

It is generally understood that the second, third, sixth and ninth exceptions to section 499 embody the defence compendiously known as "fair comment."<sup>32</sup> So viewed, these exceptions do not cover assertions of fact, but only expressions of opinion. Facts alleged must be proved to be true. It is not enough for the accused to say that he honestly believed those facts. Comment, must be on real, and not on imagined, facts.<sup>33</sup>

It is also necessary to bear in mind that it is one thing to comment upon the proved act of a public servant, and another to say that he has been guilty of a particular act of misconduct or misappropriation. This is illustrated by a case from Pepsu involving the editor of the weekly *Malwa Gazette*, published from Patiala.<sup>34</sup>

The Madhya Pradesh High Court in a case<sup>35</sup> while observing that a newspaper writer should be more cautious than a private individual, deals with the requirements of the defence available under the second and third exceptions to section 499 :

- (i) The facts (on which comment is offered) should be substantially true.
- (ii) The comments should be fair, in the sense that they are inspired by a genuine desire on the part of the writer to serve the public interest, and not by any intention of wreaking private spite.
- (iii) The criticism, even if called for by the facts, should be in public interest, and should not be malicious. It is for the accused to show that these requirements are satisfied.

31. *Id.* at 325.

32. *R. Sankar v. The State*, A.I.R. 1959 Kerala 100, 102, 103, para 12.

33. *Ibid.*

34. *T.G. Goswami v. The State*, A.I.R. 1952 Pepsu 165, 168.

35. *Purushottam Vijay v. State*, A.I.R. 1961 M.P. 205, 208, 210, 211, 212.



The Madhya Pradesh case involved an editorial in the daily *Indore Samachar* which imputed regional bias in the matter of granting successive extensions to an officer and his contemplated appointment as inspector general of police. The editorial was *per se* defamatory of the minister in charge of the department. However, the act of the accused was held to be within the ambit of "fair comment", and was saved by the second and third exceptions to section 499. In so holding, the High Court pointed out, it is in the public interest that anything shaky or unjust or improper in a minister's conduct should be brought to the notice of the country at large.

The concept of "fair comment" was further analysed in a Nagpur case<sup>36</sup> which points out that the comments must be based on facts truly stated, must not contain imputations of corrupt or dishonest motives to the person whose conduct or work is being criticised (save in so far as such imputations are warranted by the facts) and must be an honest expression of the writer's real opinion.

### Second Exception as invoked by the Press

A few other cases involving newspapers have been reported under the second exception to section 499. Generally, one finds the courts pointing out that the press has no special privileges as such. There are even pronouncements that newspapers must be more cautious than ordinary persons in publishing defamatory matter.<sup>37</sup> It has also been pointed out that the defence of fair comment does not extend to defamatory allegations of fact. This is illustrated by an Oudh case.<sup>38</sup> A jail superintendent was accused by the editor of a newspaper of having ill-treated prisoners in the jail. It was emphasised by the court that the newspaper editor, accused of defamation, must show that he had reasonable grounds for believing the allegation to be true and that the person now complaining of defamation was responsible for mismanagement, and that that person could have remedied the mismanagement, but preferred not to do so, being (as was alleged) naturally disposed to cruelty.

A newspaper editor cannot publish matter which is known to be a half-truth. Thus, to say that a person has been sent to be prosecuted, when one knows that the prosecution had been ordered to be withdrawn, would be defamatory. A person publishing such an imputation cannot enjoy immunity on the ground that the imputation was made in good faith for the public good.<sup>39</sup>

36. *N.B. Khare v. M R. Massani*, A.I.R. 1942 Nag. 117, 118 (Vivian Bose, J.).

37. *T.G. Goswami v. The State*, *supra* note 34.

38. *Rama Rao v. Emperor*, A.I.R. 1933 Oudh 1, 8, 9, 10.

39. *Imperatrix v. B. Kakde*, I.L.R. 4 Bom 298 (1880).

### Third Exception

While the second exception to section 499 is confined to the criticism of public servants, the third exception to the section embraces a much wider area of fair comment by providing that it is not defamation to express 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".

This exception thus has a positive as well as a negative aspect. The positive aspect being concerned with the situations where the exception applies, and the negative aspect being concerned with the limitations to which the exception is subject. Besides the reported decisions, the exception itself provides an illustration elucidating its scope and limitations.

To take, first, the illustration appended below the third exception, states that it is not defamation (in a person) to express in good faith any opinion whatever respecting the conduct of another person—

- (a) in petitioning the government on a public question
- (b) in signing a requisition for a meeting on a public question
- (c) in presiding or attending at such meeting,
- (d) in forming or joining any society which invites the public support, or
- (e) in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties in which the public is interested.

Reported decisions point out that if an occasion is privileged, it is not necessary to justify every detail provided the gist of the libel is correct. Where, in a newspaper report, the main assertion is true, mere exaggeration does not take away the privilege under the third exception.<sup>40</sup> An article in a newspaper which is a fair comment on public affairs and merely an expression of opinion is immune unless it is proved to be the outcome of a dishonest or corrupt motive.<sup>41</sup>

### Limitations of the Third Exception

While these decisions illustrate the positive operation of the third exception, a few other decisions point out its limitations. In the first place, good faith is an essential ingredient of the exception (and, as defined in section 52), requires due care and attention. Therefore a writer is not justified in repeating highly defamatory statements based upon mis-statements of facts.<sup>42</sup>

A good deal of light is thrown upon the scope and limitations of the third exception by reported decisions relating to the liability of newspapers. There

40. *Murlidhar Jeramdas v. Narayendas*, A.I.R. 1914 Sind 85, 86, 87.

41. *Subroya Aiyar v. Kadar Rowthan AbdulQadar*, A.I.R. 1914 Mad. 352, 353.

42. *Abbasi v. Emperor*, A.I.R. 1941 Sind 92, 93, 95, 96.

is, for example, an interesting case from Mysore.<sup>43</sup> The death of a person had become a public question. The editor of a Kannada paper *Aashavadi* published an article, expressing an opinion in respect of the conduct of the complainant touching that question. The third exception was held to apply. In the absence of a dishonest or corrupt motive, an article in a newspaper which is a fair comment on public affairs is protected, as was emphasised in a Madras case.<sup>44</sup> Even exaggeration is excusable, if there is no deliberate misrepresentation or suppression of facts.

However, the comment must be based on facts. A writer in a newspaper cannot invent facts. On this principle, it has been held that to assert that a certain person makes gifts to certain funds not out of motives of charity but from motives of self-advantage, would be defamatory. It would seem to make no difference that the writing is published in a newspaper. The conduct of a public man cannot be labelled as dishonest simply because the writer fancies (that) such conduct is open to suspicion.<sup>45</sup>

### Newspapers and the Question of Good Faith

Since many of the important exceptions to section 499 require good faith as a condition of immunity, editorial good faith becomes a crucial factor in the determination of the criminal liability of a newspaper for defamation. This is illustrated by a Supreme Court decision of 1965.<sup>46</sup> The case involved a newspaper article in the *Kalijug* of Aligarh, containing defamatory statements against public prosecutors and assistant public prosecutors. From the tenor of the article, no evidence of an object of advancing the public good was established, and there was also no evidence to show that the defamatory remarks were made with due care and attention. In the circumstances, neither the third nor the ninth exception to section 499 applied. The court, in its judgment, stressed the great power of the press in impressing the public mind.

Thus, so far as the abstract principles of liability are concerned, newspapers stand in the same position as others, and are required to comply with the essential ingredients of the statutory exception on which reliance may be placed in a particular case. However, even where, owing to non-compliance with essential ingredients of immunity, criminal liability arises, the courts can still view the matter with sympathy while considering the quantum of punishment to be awarded to newspapers. This is illustrated by a case from Travancore-Cochin, involving a paper having a rather poor circulation.<sup>47</sup> The case was one of complaint made by a private person for the publication of a libel containing a charge of bribery against a magistrate. The trial court had acquitted

43. *K. Balakrishna Rao v. Udhaya*, (1971) 1 Mys. L.J. 28.

44. *Subroya Iyer v. Kadar Rowthan Abdul Kadar*, *supra* note 41.

45. *Appa v. Maricar*, A.I.R. 1918 Lower Burma 36, 40.

46. *Sahib Singh v. State of U.P.*, *supra* note 9 at 1454.

47. *State v. Packiaraj*, A.I.R. 1951 Trav-Co 105, 107.

the accused of the offence of defamation; the government appealed against the decision to the High Court, and the appeal succeeded. However, the government was not so much interested in the punishment of the accused, as in securing a decision on a matter involving the reputation of a government officer. In the circumstances, the High Court decided to impose only a fine of one rupee. The aggrieved officer, the court observed, could still file a suit for damages, if he so desired.

The element of "due care and attention" required to prove good faith has also been elaborated in a number of cases. In the absence of reasonable care exercised before making the imputation, the exception does not apply.<sup>48</sup> Thus, in a Calcutta case,<sup>49</sup> it was held that if the accused, without making inquiries, publishes defamatory allegations against a doctor (charging the doctor with drugging a patient), he cannot claim the protection of the ninth exception to section 499, merely on the ground that the public good was involved. This illustrates the stringent requirements of the exception. The material published was flimsy; hence good faith was not proved.

#### Fourth Exception

To come now to the fourth exception to section 499, it provides that it is not defamation to publish a substantially true report of the proceedings of a court or of the result of any such proceedings. The explanation to the exception provides that 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 exception. The practical importance of the explanation is almost nil, since commitment proceedings are now formal in character.

It has been held<sup>50</sup> by the Calcutta High Court that it is not necessary under this exception that the proceedings of the court should be published contemporaneously. Further, the publication need not be true word by word, but should give a substantially true account of the proceedings. Finally, good faith is not an ingredient of the exception. The Calcutta decision is, of course, correct on the wording of the exception as it stands. However, since it is not necessary that the proceedings should be published contemporaneously (even a delayed publication would be protected), and "good faith" is also not an essential ingredient of the exception,<sup>51</sup> the present position does leave some scope for raking up old trials which led to the conviction of a person in the distant past, with the result that even after the episode is over and the proceedings have no topical interest at all, one can publish accounts of such trials after years and thereby damage the reputation of the convicted person. In some countries, such a

48. *Ibid.*

49. *Superintendent & Remembrancer of Legal Affairs v. P.C. Ghosh*, A.I.R. 1924 Cal. 611, 614.

50. *Annada Prosad v. Manotosan Roy*, A.I.R. 1953 Cal. 503, 504.

51. *Ibid.*

situation is taken care of by allowing an action for violation of privacy. In India, it is not, in the present position, possible to seek such relief.<sup>52</sup>

### Fifth Exception

While the fourth exception to section 499 is concerned with the factual reporting of proceedings before a court the fifth exception deals with comments expressed on the merits of a case which has been already decided in a court or comments relating to the conduct of parties and witnesses in any such case. It is not defamation to express in good faith any opinion whatever respecting—

(a) the merits of any case, civil or criminal, which has been decided by a court, or

(b) the conduct of any person as a party, witness or agent, in any such proceeding, or

(c) the character of such person, so far as his character appears in that conduct, and no further.

Two illustrations to the exception elucidate its scope and limitations. Illustration (a), which relates to comment on the conduct of a witness, states that a statement that the evidence of a person at the trial "is so contradictory that he must be stupid or dishonest", if made in good faith, is within the exception, since it is an opinion expressed respecting that person's character as it appears in his conduct as a witness, and no further. In contrast with this, illustration (b) to the exception states the case where the statement made is: "I do not believe what Z asserted at the trial, because I know him to be a man without veracity". To this case, the exception does not apply because the opinion expressed about the character of Z is not founded upon *his conduct as a witness*. In such a case, the opinion has already been formed and precedes the assessment of the conduct. To put it differently, the opinion about character, already formed, leads to the opinion about the witness's conduct in the particular trial, and not *vice versa*. The two illustrations, read together, indicate with a fair measure of clarity the requirement connoted by the word "as far as his character appears in that conduct and no further". Incidentally, this requirement is found not only in the fifth exception, but also in the second, third and sixth exceptions to the section.

The authors of the Indian Penal Code have tried to explain at length the rationale of the exception.<sup>53</sup> But there is hardly any case law on the fifth exception. Presumably, cases involving the merits of a decision of a court (falling under the first part of the fifth exception), would mostly involve issues belonging to the region of the law of contempt of court, rather than to the law of defamation. As regards the other parts of the exception, in India, comments respecting the conduct of witnesses and parties do not appear frequently in

52. Point for consideration.

53. See Ratan Lal, *Law of Crime* (1971), citing draft Penal Code, note R.

newspapers or periodical writings, and this seems to account for the paucity of case law. Probably, the strictness of the law of contempt of court might have had a chilling effect on the publication of comments relating to cases decided in a court. In any case, the fifth exception does not need further discussion.

### Sixth Exception

One can now proceed to the sixth exception to section 499. A mention has been made above that some segments of "fair comment" are covered by the second and third exceptions to section 499. A very wide segment is taken care of by the sixth exception, concerned with comments on the merits of a public performance. An opinion expressed in good faith respecting the merits of any performance which its author has submitted to the judgment of the public is exempt from criminal liability. A similar immunity is conferred on an opinion expressed in good faith respecting the character of the author so far as his character appears in such performance, and no further.

The crux of the immunity lies in the requirement of submission of the work to the judgment of the public. The explanation to the exception provides that a performance may be submitted to the judgment of the public expressly, or by acts on the part of the author which imply such submission to the judgment of the public. Thus, as is elucidated by illustrations (a), (b) and (c) to the exception, a person who publishes a book, makes a speech in public or appears as an actor or singer on a public stage submits his work to the judgment of the public.

Besides the requirement of submission of a performance to the judgment of the public (which is discussed in the preceding paragraph), the sixth exception postulates that the opinion must be expressed in good faith, and also that a comment respecting the character of the author of a work is protected only in so far as his character appears in such performance, and no further. This limitation is illustrated by illustrations (d) and (e) to the sixth exception. Thus, there is protection for a statement made in good faith in these terms: "Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." But there is no protection for a statement in these terms: "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." Here the opinion expressed about Z's character is not founded on Z's book. The distinction so illustrated is similar to that illustrated by the illustrations to the fifth exception.

Not much case law exists on this particular exception, but it is useful to refer to a Bombay case,<sup>54</sup> wherein it was emphasised that the responsibility of the critic of a public performance, where he seeks to rely on the defence of fair comment underlying this exception, is to be gauged by the effect which his

54. *Emperor v. Abdool Wadood Ahmed*, 1.L.R., 31 Bom. 293 (1907).

comment is calculated to produce, and not by (what he says was) his intention. It was also pointed out that the object of the sixth exception is that the public should, in its evaluation of a performance submitted to public judgment, be aided by a comment on that performance. Hence, the comment must make it clear that the judgment of the public is sought to be aided only on such evidence as is supplied by the public performance.

The defence of fair comment under the sixth exception to section 499 is available as much to newspapers, as to others. At the same time, newspapers do not enjoy a higher protection than ordinary citizens — a protection well emphasised by the Privy Council<sup>55</sup> in a criminal appeal heard by it, from Calcutta where the following observations occur :

Their Lordships regret to find that there appeared on the one side in this case the time-worn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length the subject in general may go, so also may the journalist, but apart from statute law, his privilege is no other and no higher.<sup>56</sup>

### Seventh Exception

To turn now to the seventh exception to section 499, it provides that it is not defamation of a person having over another any authority, either conferred by law or arising out of a lawful contract made with another, to pass in good faith, any censure on the conduct of that other in matters to which such lawful authority relates. The illustration to the exception gives six instances of censure protected by this exception, if good faith is established, as under :—

- (i) a judge censuring the conduct of a witness or of an officer of the court ;
- (ii) a head of department censuring those who are under him ;
- (iii) a parent censuring his child in the presence of other children ;
- (iv) a school master, whose authority is derived from a parent censuring a pupil in the presence of other pupils ;
- (v) a master censuring a servant for remissness in service ;
- (vi) a banker censuring the cashier of his bank for the conduct of the cashier as such cashier.

Case law under the seventh exception has involved a variety of situations such as, a village *Panchayat* making remarks that are *prima facie* defamatory;<sup>57</sup>

55. *Channing Arnold v. Kings Emperor*, *supra* note 8 (per Lord Shaw).

56. *Id.* at 124.

57. *Kamla v. Bhagwandas*, A.I.R. 1934 Nag. 123, 124.

a religious head of a sect issuing an interdict;<sup>58</sup> the general manager of an organisation placing before the board of directors a report made by his subordinate officer which was adverse to another officer.<sup>59</sup> The decisions, however, do not raise any issues requiring detailed discussion or comment.

### Eighth Exception

A theme connected with the seventh exception to section 499 (censure passed by the person having lawful authority) is dealt with in the eighth exception which renders immune the person who, in good faith, prefers an accusation against any person to any of those who have lawful authority over that person, with respect to the subject matter of the accusation. As the illustration to the exception tells us, if A, in good faith, (i) accuses Z before a magistrate, or (ii) complains against Z, a servant, to Z's master, or (iii) complains of the conduct of Z, a child, to his (the child's) father, A is within the exception.

It should be noted that good faith and lawful authority are important ingredients of this exception. From the reported decisions on the subject, it appears that, in practice, this often turns out to be a crucial issue when the question to be determined is whether, in the particular case, the exception does or does not apply. Thus, a complaint made to a police constable is not protected, if good faith is not affirmatively proved, or if the police constable has no authority in the matter. In a Nagpur case,<sup>60</sup> a woman made a false report to the police that her modesty had been outraged by the servants of A (a *malguzar*) at the instigation of A. The report was held to be defamatory, as lowering the complainant in the estimation of right-thinking persons. Although her offence fell under section 211 of the Indian Penal Code (making a false charge), A was not precluded from proceeding under section 500 of the code.

In an Allahabad case,<sup>61</sup> a woman made certain defamatory and false statements against a government official and on inquiry, she repeated the same before the inquiry officer which amounted to be a publication of the original petition. It was held that the case was not covered either by the second exception (because it was not a mere expression of opinion), or by the eighth exception (as there was no good faith). The woman was, therefore, held guilty of three separate publications of libel.

It is also important to bear in mind the requirement of "lawful authority" occurring in the eighth exception. Thus, a complaint made to the district *panchayat* officer that the complainant's neighbour was keeping a bawdy house

58. *Sukratendra Tirtha Swamiar v. Prabhu*, A.I.R. 1923 Mad. 587, 591.

59. *Brij Ballabh v. Shri Satya Dev*, A.I.R. 1960 Raj. 213, 214.

60. *Mt. Binta v. Emperor*, A.I.R. 1936 Nag. 240, 242.

61. *Jai Debi v. Emperor*, A.I.R. 1915 All. 162, 163.



is not privileged, since the *panchayat* officer had no lawful authority in the matter.<sup>62</sup>

In reported decisions on the eighth exception, one occasionally comes across observations of "absolute privilege".<sup>63</sup> However, as was pointed out in a Gujarat case,<sup>64</sup> the eighth exception does not formulate any rule of absolute privilege. Thus, a statement made to a higher authority by way of complaint, and casting an imputation on the character of a co-villager, is privileged only if the imputation is made in good faith, *i.e.* with due care and attention.<sup>65</sup> The status of the privilege enjoyed in criminal law by witnesses who give evidence in judicial proceedings is that of qualified privilege. The term "absolute privilege", which is used in connection with civil liability for such statements or evidence,<sup>66</sup> is not quite appropriate for criminal liability under section 499. As was pointed out in a Madras case,<sup>67</sup> in civil courts, witnesses cannot be sued for damages for defamation in respect of evidence given by them in judicial proceedings, but in a criminal prosecution the question of absolute privilege does not arise in view of section 499 of the Indian Penal Code.<sup>68</sup>

So far as newspapers are concerned, the eighth exception to section 499 cannot generally be of much importance, because an accusation before the publication in a newspaper is not the sort of accusation before "lawful authority" contemplated by the exception.<sup>69</sup>

#### **Eighth and Ninth Exceptions—Inter-relationship**

Interesting questions could arise about the inter-relationship of the eighth exception with the ninth exception. The point of difference between the two is that while the eighth exception requires that the complaint must have been made to a person who has lawful authority to deal with the subject and to take proceedings against the person complained against, the ninth exception contains no such requirement. For the purpose of the ninth exception, it is sufficient that the communication is made to a person, *inter alia*, for protecting the interest of the person who is making it in which the recipient of the statement may also be interested.<sup>70</sup>

#### **Defamation and other Related Offences**

There may also arise interesting questions as to the inter-relationship of

62. *Kanwal Lal v. State of Punjab*, A.I.R. 1963 S.C. 1317, 1318, 1319.

63. *Golap v. Bholanath*, I.L.R. 38 Cal. 880, 888 (1911).

64. *Gulabchandra Soni v. The State of Gujarat*, A.I.R. 1970 Guj. 171, 173.

65. *P. Kamayya v. K. Tripurantakam*, 15 Cri. L.J. 281.

66. *Lola Lachman Prasad v. Majju*, A.I.R. 1923 All. 167 (Walsh, J.).

67. *Narayana v. Veerappa*, A.I.R. 1951. Mad. 34, 38, 40, para 8-10.

68. For earlier cases, see *Satish Chandra v. Ram Doyal*, A.I.R. 1921 Cal. 1 (F.B.).

69. *Chandrasekhara v. Karthikeyan*, *supra* note 24 at 284;

70. *Kanwal Lal v. The State*, *supra* note 62.

defamation with *other wrongs and offences*. Libellous reflection upon the conduct of a judge in respect of his judicial duties may certainly come under section 499, and it may be open to the judge to take steps against the libeller in the ordinary way for vindication of his character and personal dignity as judge; but such libel may or may not amount to contempt of court, which is something more than mere defamation and is of a different character. What is made punishable in the Indian Penal Code is the offence of defamation *as defamation* and not as contempt of court. If defamation of a subordinate court amounts to contempt of court, proceedings can certainly be taken under the Contempt of Courts Act, quite apart from the fact that another remedy may be open to the aggrieved officer under section 499.<sup>71</sup>

Questions have also arisen as to the distinction between the eighth exception to section 499 and the proviso to section 132 of the Evidence Act. It has been held that the proviso to section 132 of the Evidence Act, assumes that the accusation contained in the answer is punishable as defamation. But notwithstanding that position, the proviso excludes a prosecution for defamation, and bars proof of the accusation in a trial for defamation. The proviso to section 132 of the Evidence Act applies even if the statement, not being made in good faith, is not covered by the eighth exception to section 499.<sup>72</sup>

### Ninth Exception

The ninth exception to section 499 confers immunity from criminal liability where the imputation is made on the character of another person—

- (a) for the protection of the interests of the person making the imputation, or
- (b) for the protection of the interest of any other person, or
- (c) for the public good.

Two illustrations below this exception relate to—

- (i) a shopkeeper warning his manager about Z, as to whose honesty the shopkeeper has no opinion, and
- (ii) a magistrate making a report to his own superior officer, casting an imputation on the character of Z.

These imputations are immune from liability if made in good faith for the protection of his own interest (by the shopkeeper) or for the public good (by the magistrate). Strictly speaking, the illustrations do not afford much help, since they “illustrate” nothing.

71. *Ramakrishna Reddy v. The State of Madras*, A.I.R. 1952 S.C. 149, 152.

72. *Chotkan v. The State*, A.I.R. 1960 All. 606, 608, para 4.

### Ingredients of the Ninth Exception

Briefly, there are two ingredients essential for applying the ninth exception, namely,—

- (i) the statement must be made for protecting the interest of the maker or recipient of the communication or for the public good, and
- (ii) the communication must be made in good faith.

Unlike the first exception, the ninth exception does not require that the imputation must be true.

As regards the first ingredient the court has to decide what interest the person accused of defamation was trying to protect. The interest sought to be protected can be a private one, or it may be the public good. But the *mere belief* of a person that he is seeking to protect such an interest or the public good is not enough.<sup>73</sup> The existence of a legitimate interest of the maker or recipient or of the public good must be established objectively.<sup>74</sup>

Incidentally, the reason why public good is a legitimate occasion for privilege in regard to defamation is that the right of a person to have his reputation maintained has sometimes to give way to the public good, but the injury caused to a person must be compensated for by the resultant advantage to the public.

### Good faith under the Ninth Exception

The concept of good faith, which is the second essential ingredient of the ninth exception, requires honesty of purpose, as also due care and attention. Honesty of purpose as an ingredient of good faith has been elaborated in a Madras case,<sup>75</sup> which emphasises that the accused must honestly believe the imputation to be true and must make the imputation honestly from a sense of duty to himself.

The care and attention required must have relation to the occasion and the circumstance.<sup>76</sup> At the same time, it is not necessary to prove that every word spoken or written is literally true. If the allegations made are such that, having regard to certain facts and circumstances within his knowledge, the accused might, as an ordinarily reasonable and prudent man, have drawn the conclusion which he expressed in defamatory language for the protection of his own interest, he can be said to have acted in good faith.<sup>77</sup>

73. *Bholanath v. Emperor*, *supra* note 19.

74. *Chaman Lal v. State of Punjab*, A.I.R. 1970 S.C. 1372, 1375.

75. *Aycasha Bi v. Peerkhan*, A.I.R. 1954 Mad. 741, 748, 749, paras 15-18.

76. *Anandrao v. Emperor*, A.I.R. 1915 Bom. 28, 35.

77. *Abdul Hakim v. Tej Chandar Mukarji*, I.L.R. 3 All. 815, 818 (1881) (petition before court—statements in).

Broadly speaking, it can be said that in so far as good faith requires due care and attention, the test is an objective one. The emphasis is on enquiry, care and objective satisfaction, as pointed out by the Supreme Court.<sup>78</sup> The same view has been taken by the several High Courts.<sup>79</sup> There cannot be good faith if there is recklessness. A mere plea that the accused believed in the truth of the allegation is not enough.<sup>80</sup>

Of course, this does not mean that the accused can make the allegations first and gather later the evidence supporting his allegation. The evidence supportive of the allegation must be in the possession of the accused when he made the statement, if he desires to establish good faith. Evidence which was gathered subsequently, but which was not at the disposal of the accused when he made the defamatory imputation, cannot be allowed to prove his good faith.<sup>81</sup> In this sense, the test is not an exclusively objective one.

It appears that the following points have to be considered in order to establish good faith :

- (a) circumstances under which the imputation was made or published;
- (b) whether there was any malice;
- (c) whether the accused made any inquiry before he made the allegations;<sup>82</sup>
- (d) whether there are reasons to accept the version that the accused acted with care and caution; and
- (e) whether there is preponderance of probability that the accused acted in good faith.

### Burden and Quantum of Proof

It is also settled that the onus lies on the accused to establish the plea taken by him that the case falls within the ninth exception of section 499.<sup>83</sup> This is the general rule applicable in regard to all the exceptions<sup>84</sup> under section 499 and, indeed, to all special or general exceptions contained in the Indian Penal Code.<sup>85</sup>

78. *Sukra Mahto v. Basudeo Kumar*, A.I.R. 1971 S.C. 1567, 1969.

79. *Sec Ram Kumar v. State*, (1962) 1 Cri. L.J. 122, 124, 125 (All.) (statements published without basis). *Anandrao v. Emperor*, *supra* note 76; *Balasubrahmania v. Rajagopalachariar*, A.I.R. 1944 Mad. 484, 492, 494; *Amar Singh v. K.S. Badalia*, (1955) 2 Cri. L.J. 693, 699 (Patna).

80. *Dr. L.C. Randhir v. Giridharilal*, (1978) Cri. L.J. 879.

81. *Superintendent & Remembrancer of Legal Affairs v. P.C. Ghosh*, *supra* note 49.

82. *Chaman Lal v. State of Punjab*, *supra* note 74 at 1374.

83. *Ibid.*

84. *Harbhajan Singh v. State of Punjab*, A.I.R. 1966 S.C. 97, 102.

85. *Surajmal v. Ramnath*, A.I.R. 1928 Nag. 58, 62; (dissenting from *Umed Singh*, *supra* note 6); *C.C. Das v. Raghunath Singh*, A.I.R. 1959 Orissa 141, 143.

The contrary view taken in an Allahabad case,<sup>86</sup> relating to the first exception to section 499 does not appear to be correct and has been expressly dis-sented from in a Nagpur case.<sup>87</sup>

However, the burden is not so onerous as that of the prosecution in proving guilt.<sup>88</sup>

### Position of Newspapers under the Ninth Exception

The ninth exception to section 499, in so far as it protects an imputation published in good faith for the public good, is of special relevance to newspapers. Case law involving newspapers under this exception is profuse; some points of peculiar interest can be usefully illustrated.

At the outset, let it be stated that even where the occasion is privileged, excess of publication (e.g. publication in a newspaper where the occasion justified only a less wide mode of publicity) may defeat the privilege. Thus, there is a Travancore-Cochin case<sup>89</sup> which holds that a libel containing a charge of bribery against a magistrate is not protected if published in a newspaper. It was held that the public good could have been protected by making a representation to the government. Publication in a newspaper was held to be excessive in the circumstances and destroyed the privilege.

Similarly, in a Madras case,<sup>90</sup> publication of a notice in the newspaper having wide circulation was held to be outside the ninth exception. In that case, the notice stated that the accused feared that the complainant and other persons would cause bodily harm to the accused, and if anything befell the accused, the complainant and his men would be responsible. The High Court held that there was no justification for publishing the notice in a newspaper. There are also a few earlier cases<sup>91</sup> relating to excessive publication.

### Position of Newspapers vis-a-vis the Law of Defamation

Assuming that, in the circumstances of the case, the publication of libellous matter claimed to be privileged is not to be regarded as "excessive", it must still be remembered that in the matter of defamation, the position of newspapers is not, in any manner, different from that of members of the public in general. This proposition has been emphasised more than once in the case law.<sup>92</sup> It is, therefore, surprising that attempts are still made from time to time

86. *Umed Singh v. Emperor*, *supra* note 6 at 300.

87. *Surajmal v. Ramnath*, *supra* note 85.

88. *C.C. Das v. Raghunath Singh*, *supra* note 85 at 143, para 7.

89. *State v. Packiaraj*, *supra* note 47.

90. *Mammunhi v. Abdul Rahiman*, 50 Cri. L.J. 710 (1949).

91. *Thiagaraya v. Krishnasami*, I.L.R. 15 Mad. 214 (1892); *Vinayak v. Shantaram*, A.I.R. 1941 Bom. 410.

92. *Thakur Dongar Singh v. Krishna Kant*, A.I.R. 1958 M.P. 216, 217, 218; *Debajyoti Burman v. The State*, *supra* note 4; *Abid Ali Khan v. Prabhakara Rao*, (1968) Cri. L.J. 398, 402, para 17 (Andhra Pradesh).

to persuade the courts to adopt a contrary approach. These attempts never succeed.

In fact, there are observations in a Calcutta case that the editor of a local journal must submit to a more rigorous test of good faith, when he claims the protection given by the exception.<sup>93</sup>

It has been emphasised in an Allahabad case that the editor of a newspaper should be most watchful not to publish defamatory attacks upon individuals, unless he first takes reasonable pains to ascertain that there are strong and cogent grounds for believing the information which is sent to him, to be true,<sup>94</sup> that proof is readily available and that in the particular circumstances his duty to the public requires him to make the facts known. This judicial anxiety is understandable, when one bears in mind that (i) a libel published in a newspaper has a much wider circulation than other libels; and (ii) that the ordinary reading public is more prone to believe the printed word, than a hand-written libel—particularly when the printed word is published in a newspaper.

In deciding whether an accused person acted in good faith under the ninth exception, it is not possible to lay down any rigid rule or test. The court will have to find out the circumstances in which the imputations were made; whether they were fraught with malice; whether the accused had made any enquiry; whether it was with due care and attention or whether it was reckless so that it could be said that it was in good faith or bad faith. If there is preponderance of probability that the accused acted in good faith, the element of good faith could be taken as proved.<sup>95</sup>

In the context of good faith, it is proper to point out that absence of malice and presence of good faith are not synonymous. A person who has not taken reasonable care does not act in good faith.<sup>96</sup> Thus, the fact that the publisher of a defamatory imputation, on learning of the true facts, published a correction the very next day may prove his absence of malice, but does not establish due care and attention which is an essential ingredient of good faith.

### Attitude towards Newspapers

This does not, however, mean that courts have adopted any rigid attitude towards newspapers while administering the law relating to good faith. Rather, the majority of the reported decisions show that a sincere attempt is made to hold a balance between the protection of reputation and the need to bring before the public matters which concern the public. In fact,<sup>97</sup> the law reports provide us with an interesting instance—not very old—in which the

93. *Bibhuti Bushan v. Sudhir Kumar*, A.I.R. 1966 Cal. 47.

94. *Mohammad Nazir v. Emperor*, *supra* note 30 at 324.

95. *Dr. L.C. Randhir v. Girdharilal*, *supra* note 80.

96. *Bibhuti Bhushan v. Sudhir Kumar*, *supra* note 93.

97. *Balasubramania v. Rajagopalachariar*, *supra* note 79.

courts seem to have gone to the utmost length in holding that the publication of a certain matter, even though the factual assumptions were incorrect, deserved protection on the ground of good faith (and public good). This was a criminal prosecution for defamation, the person alleged to have been defamed was none other than the eminent Indian statesman Shri C. Rajagopalachariar. After he had resigned as the Chief Minister of the Madras Province under the Congress government, the Justice party in its weekly newspaper *Sunday Observer* published a news item containing certain allegations, the gist of which was that Gandhiji and Rajagopalachariar, "in league" with each other, were encouraging violence. While laying down the propositions that (i) the editor of a newspaper is in no better position than an ordinary citizen, and (ii) where protection is claimed under an exception (ninth exception) which requires good faith, recklessness may negate good faith, the High Court held that the ninth exception may protect even baseless or incorrect statements if there is good faith. On the facts, the printer and the editor (who were the accused) were held to have acted in good faith.

The element of "public good" is also crucial for newspapers. Thus, a Madhya Pradesh case<sup>98</sup> relating to a libel in a newspaper holds that there can be no "public good" in telling the world that a person was killed, when, in fact, he died a natural death. Similarly, there cannot be "public good" in telling the public that a death was caused by a particular person, when that person was not, in any way, concerned with it.

### Tenth Exception

This disposes of the ninth exception to section 499. A limited and specialised area of protection is the subject matter of the tenth exception to the section. It gives immunity to caution conveyed in good faith to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Most of the reported decisions on the tenth exception relate to caste matters, and things done at caste meetings. They do not decide any points of general importance or juristic interest.<sup>99</sup>

An interesting question arose in a Punjab case<sup>100</sup> concerned with tortious liability, not for defamation but for giving wrong information leading to the publication of a defamatory imputation which, in turn, resulted in conviction. The case is a civil one, but was the offshoot of a conviction for defamation. Can the editor of a newspaper, convicted of defamation, sue in damages the

98. *Thakur Dongar Singh v. Krishna Kant*, *supra* note 92.

99. *Haripado v. Emperor*, A.I.R. 1930 Cal. 645, 646 (allegation that complainant married a woman already married). *Thiagaraya v. Krishnasami*, *supra* note 91; *Paduram v. Biswanbar*, A.I.R. 1958 Orissa 259.

100. *Gurbachan Singh v. Babu Ram*, A.I.R. 1969 Punj. 201, 203, para 6.

person who gave wrong information which led to the publication of a defamatory statement by the editor ? This was the novel point which the High Court of Punjab had to decide. The case arose out of the conviction for defamation of the editor of the Urdu weekly "*Sach*" published from Ludhiana. It was held that the law recognises no such right of action. The editor must himself check the veracity of information received by the newspaper. If the editor publishing a defamatory report is convicted, he cannot sue the supplier of the wrong information.

Of course, the manner in which the issue was presented in the Punjab case did not allow of a consideration of the interesting, though vexed, question of contribution between concurrent or connected tortfeasors.<sup>101</sup>

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101. The point, though not raised, may be of interest for purposes of civil liability.