

# Concept Of Reputation – An Analysis

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## ABSTRACT

*'Glass china and reputation are easily cracked, but never well amended', Benjamin Franklin declared. Reputation plays a vital role in accessing the performance and ability to deliver reliable results in the society. It is believed to be an important personal and professional requisite for success which signifies the esteem that individual holds and which distinguishes them from others in a positive approach. Reputation is the current standing the person has gained from previous actions or refusal of actions in helping others. Human dignity is the basic element amongst other human rights and thus right to reputation comes under the basic inalienable right to enjoy a decent and dignified life. Defamation laws enables an individual to keep his reputation whenever it is attacked by other person. Defamation occur in two ways, libel or slander, where both are detrimental to a person's reputation. In a society, every person should behave in a particular way such as not to harm the right of others and specifically not indulge in the damage of other's dignity or reputation.*

**Keyword:** Human right, Reputation, Dignity, Restriction, Defamation

## I. INTRODUCTION

The universe is occupied by varied living and non-living things and human beings are being a part of it. However human beings are distinguished from other creatures, because they belong to the species which is rational, capable of thinking and expressing their thoughts and feelings and are corporeal being who act upon the material environment. They are social and ethical beings, accumulated with emotions and sentiments intended towards personality development and taking shape in the social environment. They possess the capability of questioning, evaluating their thinking and acting and differentiating the truths or falsity and right or wrong. Human beings, are thus a complex structured beings leading life for improving their stature and carving stable support from the society. Human rights are possessed by a person by virtue of their responsibilities and belong to them because of their very own existence. These rights are incurred from birth and are therefore applicable to all individuals irrespective of their caste, creed, religion, sex and nationality. These rights are necessary for all the individuals, in accordance with the freedom and dignity and are conducive to social, moral, physical and spiritual welfare. They are essential as they provide suitable conditions of the material and moral elevation of the people.<sup>1</sup> The idea of human right operates as a fundamental moral limitation over the individual and collective livelihood of the person in the society. Human rights belongs to every member of the human race and are vested upon individuals by very nature. The idea of human rights confers that each and every human being is sacred and each and every human being is in violable has inherent dignity and worth.<sup>2</sup>

## II. NEED FOR THE STUDY

This paper prioritizes on the importance of upholding dignity and reputation of individuals, which is an essential aspect of every human life. Right to reputation is a permissible restriction on the freedom of speech and expression ensured under Article 19(1)(a) of the Constitution of India, which is not an absolute right. The right to life and personal liberty includes right to reputation as well, which is a mandatory requisite for living a dignified life.

<sup>1</sup> Dr. Y. K. Sharma & Dr. Kuldeep S. Kataoch, Education for Values, Environment and Human Rights (10 edition, 2007) p. 264

<sup>2</sup> Michael J Perry, Idea of Human Rights Four Inquiries (1st ed., 1998) p. 13

### III. OBJECTIVES

1. To analyze if the right to reputation of a person is a fundamental human right.
2. To determine if right to reputation is a permissible restriction on freedom of right to speech and expression enshrined under Article 19(1)(a) of the Indian Constitution.
3. To analyse if right to reputation is part of Right to life and personal liberty under Article 21 of the Indian Constitution.

### IV. REPUTATION: AN HUMAN RIGHT AND INTEREST OF INDIVIDUAL

Reputation is a kind of right to enjoy the good opinion of others and is capable of growth and existence as a real thing.<sup>3</sup> Reputation is the general estimation in which a person is held with reference to moral character, ability and other qualities such as his good name, character, honour or credit etc. Reputation is distinguished from character. Character is made up of things an individual is, whereas reputation is what others say about him. Reputation is recognized as an individual interest in the society. Reputation is the opinion formed of a man by others. The right to possess good opinion is an intrinsic right of every individual. The reputation of an individual presumes much importance in their social life as it a crucial ingredient for leading a meaningful and healthy life. It assists in acquiring job, practising a profession, carrying out any trade or business and for every other participation of life such as marriage, disposal or purchase of property etc. Thus, reputation is an important requisite for acquiring social status. The conduct and character of an individual, which are the necessary elements of determining reputation, is very much required for shaping their career. Thus, in every day today affairs of our life, the assessment of our character and conduct by others become relevant.<sup>4</sup> So, the successful thriving of our life to a certain extent depends on the estimation of our character, credit, honour etc. by some other people. However, the right to enjoy good reputation does not mean that one will be allowed to a claim for reputation better than what he deserves.

When right to enjoy a decent and dignified life is an inviolable right, then right to reputation also falls under that, which means right to enjoy good name or conduct is an integral part of the natural and immanent right of every distinct individual. The basic human rights are those that are due worth of the person and his sovereignty over himself. Hence, rights are simply an indication that some person is obliged to behave in a certain way.<sup>5</sup> Accordingly, right to reputation is a part of right to human dignity, fundamental right conferred on every human being naturally which cannot be deprived by the society

### V. RIGHT TO REPUTATION - A PERMISSIBLE RESTRICTION ON FREEDOM OF SPEECH AND EXPRESSION

Indian Constitution under Article 19(1)(a) guarantees freedom of speech and expression to all citizens, but that freedom is not absolute. It can be curtailed by laws made by the legislature on the grounds mentioned in clause (2) of Article 19 and defamation is one amongst them.<sup>6</sup> So Article 19(1)(a) does not give free hand to publish defamatory matters concerning others under the appearance of free expression. As a result of the incorporation of defamation in clause (2) of Article 19, the age-old concept of individual reputation has been given a constitutional sanction and the right to maintain one's own reputation is now a constitutionally protected right in our country.

Right to reputation is guaranteed by Article 12 of the Universal Declaration of Human Rights.<sup>7</sup> Reputation is

<sup>3</sup> Henry Campbell Black, Black's Law Dictionary (5<sup>th</sup> ed., 1979) p. 1172

<sup>4</sup> Section 15(2)(b) of Notaries Act 1952, authorizes the government to make rules in the matter of certificates, testimonials or proofs as to character integrity, ability and competence which any person applying for appointment as a notary.

<sup>5</sup> D. N. Saxena, Citizenship, Development and Fundamental Duties (1 ed., 1988) p. 51

<sup>6</sup> The other grounds include sovereignty and integrity of India, security of the state, friendly relation with foreign states, public order, decency or morality, contempt of court and incitement to an offence.

<sup>7</sup> Article 12 of UDHR: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

also one of the grounds of restrictions of freedom of speech and expression permitted by the European Conventions of Human Rights (ECHR)<sup>8</sup>, International Covenant on Civil and Political Rights (ICCPR)<sup>9</sup>, American Convention on Human Rights (ACHR)<sup>10</sup> and several other national constitutions.

Just as every person possesses the freedom of speech and expression every person also possesses a right to his reputation which is considered as a property or possession. Hence nobody can utilize their freedom of speech and expression to injure another's reputation, which means this freedom does not entitle a person to diminish or injure another person's reputation or lower their esteem or to expose him to hatred, ridicule or contempt by publishing false statement regarding that other person without lawful justification. Hence laws penalizing defamation also do not constitute an infringement of the freedom of speech and expression. Then the permissible extent of the claim to reputation or the extent of free speech and expression assumes importance. This is because the freedom of speech and expression is essential for a democratic society like ours and without this freedom the democracy will not survive. Thus, a proper collaboration of these two conflicting interests is necessary for preserving the democratic set up.

The personality of an individual may very often come into conflict with the established ideals of the society. The freedom of speech and expression in modern times is part of the personality of a man. The right to think, the right to read and right to express what is conceived are all constituents of the aesthetic personality of a man.<sup>11</sup> Freedom of speech and expression is necessary for the enrichment and exertion of the individual personality of a man and this freedom should be exercised with a sense of accountability. One should be accountable to what he speaks or expresses. An individual has the freedom to express his own convictions and opinions through any medium. But the law does not allow him to publish anything defamatory concerning any person. However, this restriction disappears whenever the defamatory matter is based on true facts. But modern liberal free speech theory leans strongly towards the view that speech in the public forum whether relating to fact or opinion cannot be suppressed on the ground of its alleged falsity.<sup>12</sup>

But this theory leads to confusion when the factor opinion expressed is made with an intention to annoy any private individual. If the publication is calculated to give annoyance to any private individual without any advantage to the public, there is no rationale in allowing it. Thus, public interest or interest of the society should be the decisive factor in determining the necessity of publishing a true statement concerning a private individual. This is based on the principle that everyone who receives the protection of society owes a return for the benefit of and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists of the idea not to injure the interests of one another.<sup>13</sup> That is public interest in free speech may be subservient to other competent public interest like the protection of reputation.<sup>14</sup> Thus, it becomes necessary to restrict the freedom of speech and expression of an individual. In a welfare state like ours, absolute and unrestricted freedom cannot be given to the individual since that would affect the enjoyment of similar freedoms by others. Defamation as a reasonable restriction under Article. 19 (2) helps for preserving a law and order society and for assuring the dignity and reputation of individuals.

## **VI. RIGHT TO REPUTATION - A PART OF RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21**

Article 21 of the Constitution guarantees right to life and personal liberty to all individuals. Supreme Court through its activist nature added to this fundamental right of personal liberty so many other positive rights which are necessary for ensuring a decent and dignified life on the consideration that right to life means not mere animal existence but something more than that.

<sup>8</sup> Article 10 of ECHR which recognizes right to reputation as a restriction on freedom of speech.

<sup>9</sup> See Article 19 of ICCPR

<sup>10</sup> See Article 13 of ACHR

<sup>11</sup> Chaturvedi & Chaturvedi, *Freedom of Press - An Appraisal of Constitutional Provisions in India* (10 ed., 1989) p. 116

<sup>12</sup> Geoffrey Marshall, "Press Freedom and Free Speech Theory" P.L. (1992) p. 52

<sup>13</sup> R.B. Mc. Callum (ed) J.S. Mill, *On Liberty and Considerations on Representative Government* (10 ed., 1948) p. 66

<sup>14</sup> Halsbury's Laws of England 8 (4" ed., 1996) p. 104

In *Maneka Gandhi V. Union of India*<sup>15</sup> Chief Justice M.H. Beg observed,

The right to personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and reputation. Thus, for the meaningful enjoyment of right to life, right to reputation is a necessary element that can be included with in the concept of right to life. That is right to life means not mere intention to live but to live with human dignity.

In the words of the Apex Court,<sup>16</sup>

The right to life includes the right to live with human dignity and all that goes along with it. Every act which offends against or impairs human dignity would constitute deprivation of this right to live.

The Supreme Court had again got occasion to consider the right to reputation of an individual in *State of Bihar V. Lal Krishna Advani*.<sup>17</sup> The facts of the case showed that the government of Bihar constituted a commission to enquire into the facts and circumstances leading to the communal disturbance took place in Bhagalpur in 1989. Mr. Advani aggrieved by certain parts of the report approached the court. The respondent felt that certain remarks made in the report submitted by two members were uncalled for and were not necessary to be made looking to the terms of reference and in any case the remarks were such which impugned upon his reputation as a public man. According to him his reputation and image was adversely affected in the eyes of the people and such parts of the report were liable to be expunged and the appellant was required to be directed not to take any action in pursuance of such observations against him in the report. Regarding the importance of right to reputation, the Supreme Court observed:

It is thus amply clear that one is entitled to have and preserve one's reputation and one also has a right to protect it. In, case any authority in discharging of its duties fastened upon it under the law, traverse into the realm of personal reputation adversely affecting him, must provide a chance to him to have his say in the matter. In such circumstances, the right of an individual to have the safeguard of principles of natural justice before being adversely communicated upon by a commission of inquiry is statutorily recognized and violation of the same must bear the scrutiny of judicial review.

In the opinion of the Supreme Court it is the duty of the authority to give an opportunity to the person before any comment or opinion is expressed which is likely to affect his reputation. Right to life under Article 21 not only assures every one the right to live with human dignity and includes all those aspects of life that makes life meaningful, complete and worth living. So right to reputation is concomitant to right to life and personal liberty.

## VII. CONCLUSION

The concept of reputation signifies the opinion of man by others. It is different from character which is one's own belief about himself. The right to enjoy reputation is the fundamental right of an individual and is restrictive of the right to freedom of speech and expression because no one will be allowed to use his freedom of speech so as to injure the reputation of another. Then there is a need for balancing of these two interests. The proper weighing of these conflicting interests is necessary for the preservation of democratic set up of the country. Freedom of speech is necessary for the enrichment of human personality. But this freedom should be exercised with caution. That is, it should not injure similar rights of other individual. Law does not allow one to publish anything defamatory concerning others under the guise of freedom of expression.

Everyone who receives protection of the society is indebted to the society for living here and receiving the benefits from here. Thus, an absolute freedom of speech cannot be allowed to the individual and it would affect the enjoyment of similar freedoms by others. Accordingly, right to reputation acts as a restriction on the freedom of speech and expression. The enjoyment of the right to reputation is necessary for preserving a balance between individual interest and interest of the society. That is why defamation is included as a permissible restriction of freedom of speech and expression under Article 19 (2) of the Constitution. As right to reputation is the basic, inherent right of every individual, it comes within the right to life and personal liberty under Article 21 of the Constitution. Right to life means right to live with human dignity which includes all those aspects of life that

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<sup>15</sup> A.I.R 1978 SC 597, 608.

<sup>16</sup> Francis Corallie v. Administrator Union Territory of Delhi A.I.R. 1981 SC 746,752-753.

<sup>17</sup> A.I.R. 2003 SC 3357.



makes life meaningful, complete and worth living.

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