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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : 17.09.2018.

Date of decision :29.09.2018.

+ CM(M) 556/2018 & CM APPL. 19354/2018

SWAMI RAMDEV

..... Petitioner

Through: Mr.Neeraj Kishan Kaul and Mr.
Dayan Krishanan, Sr.Advs. with
Mr.Rohan Ahuja and Mr.Simranjeet
Singh, Ms. Sonali Dhir, Advocates

Versus

JUGGERNAUT BOOKS PVT LTD & ORS Respondents

Through: Mr.Kapil Sibal, Sr.Advocate
with Mr. Raj Shekhar Rao,
Adv., Mr. Satyajit Sarna and
Ms.Pallavi Srivastava,
Advocates for R-1
Mr. Amit Aggarwal and
Ms.Aanchal Timani, Advocates
for R-2
Mr.Vishal Rao, Adv for R-3
Ms. Shilpa Gamnani, Adv. for
R-4.
Ms.Kruttika Vijay and Ms.
Abhilasha Nautiyal, Advocates
for R-5

AND

CM(M) 557/2018 & CM APPL. 19356/2018

SWAMI RAMDEV

..... Petitioner

Through: Mr.Neeraj Kishan Kaul and
Mr.Dayan Krishanan, Sr.Advs.
with Mr.Rohan Ahuja and
Mr.Simranjeet Singh, Ms.
Sonali Dhir, Advocates.

versus

PRIYANKA PATHAK NARAIN & ORS Respondents

Through: Mr.Amit Aggarwal and
Ms.Aanchal Tikmani,
Advocates for R-1.
Mr.Kapil Sibal, Sr. Advocate
with Mr. Raj Shekhar Rao,
Adv., Mr.Satyajit Sarna and
Ms.Pallavi Srivastava,
Advocates for R-2
Mr.Vishal Rao, Adv for R-3.
Ms. Shilpa Gamnani, Adv. for
R-4.
Ms.Kruttika Vijay and Ms.
Abhilasha Nautiyal, Advocates
for R-5.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Swami Ramdev through his GPA holder Jaideep Arya, S/o Om Prakash vide the present petitions CM(M) 556/2018 and CM (M) No. 557/2018 assails the impugned orders dated

28.4.2018 and 28.4.2018 of the learned Addl. Senior Civil Judge, East District in MCA No.08/2017 and in MCA No.10/2017, filed by Ms.Priyanka Pathak Narain (hereinafter referred to as the Author) and M/s Juggernaut Books Private Limited (hereinafter referred to as the Publisher) respectively in the appeals under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, as amended, of the **BOOK** “*Godman to Tycoon-The Untold Story of Baba Ramdev*”, ISBN No.9789386228383 (hereinafter referred to as ‘the **BOOK**’) having been filed by the author (Ms.Priyanka Pathak Narain) and M/s Juggernaut Books Private Limited, the publisher of the **BOOK** respectively, against the orders of the learned Trial Court of the ACJ-CCJ-ARC (East) in CS No.619/2017 in the suit instituted by Swami Ramdev through the GPA holder against Ms.Priyanka Pathak Narain the author of the **BOOK** herein named above. M/s Juggernaut Books Private Limited (the Publisher), M/s Amazon India, M/s Flipkart Internet Private Limited and M/s Manipal Technologies Limited, arrayed as defendants No. 1, 2, 3, 4 & 5 to the said suit respectively with the prayers made therein to the effect:

“i. To pass the order against the defendants for restraining the defendants No.2,3 and 4 from publishing & selling the book titled as Godman to Tycoon; The Untold Story of Baba Ramdev as the same violates the Fundamental Right to Reputation as enshrined in Article 21 of the Constitution of India as the defendant no.1 has stated the contents without verifying the same.

ii. pass an order to the restrain the defendants with effect that the Book is nothing but an attempt

to malign the image of the_Baba Ramdev by the defendant no.2,3,4 in the eyes of the public at large, as the content/information of the book is nothing but representing the facts in a twisted manner against the plaintiff.

iii. it may be declared as objectionable content written by defendant no.1 against plaintiff in the statements in Para no.1 &2 of page no.201 of the conclusion of book (Godman to Tycoon, The untold story of Baba Ramdev) more particularly mentioned in the book are derogatory and affects the character of the plaintiff and tarnishes the reputation of the plaintiff and therefore be struck down from the said book (Godman to Tycoon, The untold story of Baba Ramdev).

iv. pass a decree of permanent injunction order to delete those paras no. 1 & 2 of page no, 201 and other paras of book on different pages of book or lines as the case may be from the said book (Godman to Tycoon, The Untold story of Baba Ramdev) and till deletion not to distribute or sell by any means the same in market and not to write any such defamatory statements about the plaintiff in future.

V. to pass an order against the defendants pending hearing and disposal of the suit defendant and his associates, agents, distributors, publishers be restrained by and order and injunction from selling, distributing parting with the book and to call for all the books from the market containing the statements referred in paras in the book (Godman to Tycoon, The untold story of Baba Ramdev) to the plaintiff.

vi. *pass a decree of temporary injunction against the defendant no.1 and in favour of plaintiff by way of restraining defendant no.1, not to give any interview in the print media, electronic media, social media or any kind of circulation, by which the content of defamation may be circulated in future.*

vii. *The Hon'ble Court after declaring to the extent as prayed above the Hon'ble court may quantify the Damages and grant the same to the plaintiff alongwith interest and other incidental charges expenses, costs and interest Pendent-lite and future, from the date of its accrual till the actual realization by the plaintiff.*

viii. *Any other relief which this Hon'ble court deems fit and proper may kindly be granted in favour of the plaintiff and against the defendants.*

ix. *to pass the order by way of declaration as objectionable book as the content of the book is against the plaintiff.*

ix. *Cost of the suit.*

X. *Any other order to pass, which this Hon'ble Court may deem fit in favour of plaintiff."*

2. Vide the order dated 4.8.2017 which was the first order passed in the suit by the learned ACJ-CCJ-ARC, an *ex parte* restraint was granted against the defendant No.2 the publisher of the said **BOOK** M/s Juggernaut Books Pvt. Ltd. (the publisher) and the defendants No.3 and 4 i.e.. M/s Amazon India and M/s Flipkart Internet Pvt. Ltd. with the direction that M/s Juggernaut Books Pvt. Ltd. (Publisher) was

restrained from publishing and selling the **BOOK** titled as ‘**Godman to Tycoon**’ bearing ISBN No. 978-93-8622-838-3 till further orders and that the defendants No.3 and 4 M/s.Amazon India and M/s. Flipkart Internet Pvt. Limited were restrained from selling the **BOOK** till further orders and any pending delivery of the **BOOK** to the buyer was directed to be stopped immediately and the defendant No.2 M/s Juggernaut Books Pvt. Ltd. (Publisher) was directed to issue directions to the vendors to prevent the sale of the **BOOK** till further orders of the Court and it was directed further that the said directions were to be issued by the defendant No.2 M/s Juggernaut Books (Publisher) by way of a public notice or any other effective means for conveying it to all. It was also held vide order dated 4.8.2017 of the learned ACJ-CCJ-ARC that the said order had been made without notice of the application filed by the plaintiff i.e., the present petitioner on his application seeking grant of an injunction because the object of granting the injunction would be defeated by the delay which would be caused during the process of serving the notice and hearing the defendants.

3. Vide order dated 27.9.2017 of the learned ACJ-CCJ-ARC, the applications under Order XXXIX Rule 1 & 2 CPC of the plaintiff, i.e., the present petitioner, and the application under Order XXXIX Rule 4 CPC filed by the defendants no.1 and 2, i.e., Ms. Priyanka Pathak Narain and M/s Juggernaut Books Pvt. Ltd. (publisher) were disposed of with the application under Order XXXIX Rule 1 & 2 filed by the plaintiff, i.e., the present petitioner, having been allowed and a

temporary injunction was granted against the defendants of the said suit as directed vide order dated 4.8.2017 in as much as the direction that the defendants had been restrained from publishing and selling the **BOOK** was reiterated with the contents of the order dated 4.8.2017 having been directed to be part of the order dated 27.9.2017. The application filed by the defendant Nos.1 and 2 i.e., Ms. Priyanka Pathak Narain and M/s Juggernaut Books Pvt. Ltd. seeking vacation of the injunction order dated 4.8.2017 was however dismissed.

4. The appeals against the order dated 27.9.2017 i.e. MCA No.8/17 filed by the author Ms.Priyanka Pathak Narain and MCA No. 10/17 filed by M/s Juggernaut Books Pvt. Ltd. against the order dated 27/9/2017 of the ACJ-CCJ-ARC East in suit No. 619/2017 were allowed by the ASCJ (East) and the directions of the ACJ-CCJ-ARC (East) dated 4.8.2017 and 27.9.2017 were set aside to the extent that the preservation/ban imposed on the publication and selling of the **BOOK**.

5. Vide the order dated 10.5.2018 in the present petitions whilst issuing notice of the petition to the respondent, a *prima facie* case for an *ad interim* protection by restraintment of the setting aside of the temporary injunction granted by the Trial Court was held to be made out, it having been observed that if there was no protection granted, it would have the potential of resulting in an irreparable loss in reputation of the petitioner and the temporary injunction granted by the ACJ-CCJ-ARC(East) was restored against the respondent till the next date of hearing which was scheduled as 9.8.2018.

6. The publisher M/s Juggernaut Books Private Limited and the author Ms. Priyanka Pathak Narian being aggrieved vide order dated 10.5.2018 in CM(M) 556/2018 and 557/2018 assailed the said order dated 10.5.2018 vide petitions in SLP(Civil) No.19050-19053/2018 before the Hon'ble Supreme Court and whilst calling upon this Court to dispose of the petitions CM(M) No.556/2018 and 557/2018 by the end of September, 2018 in view of the submissions made on behalf of the respondents, herein it was directed that whilst disposing of the Main Civil Revision, the High Court , i.e., this Court should not be influenced by the observations made with regard to the interim order and it was directed vide order dated 23.07.2018 by the Hon'ble Supreme Court to the effect:

“ though ordinarily we would have refrained from saying anything on this aspect, yet, keeping in view the contentions advanced with regard to the freedom of speech and expression and the rights of an author in writing a book, we only intend to clarify that the said observations should not influence the adjudicatory process while dealing with the matter finally.”

7. Since virtually the same question of law arise in both the petitions which relate to the impugned orders dated 28.4.2018 which are against the orders dated 27.9.2017 and 4.8.2017 of the learned ACJ-CCJ-ARC Judge, it has been considered appropriate to take up both the matters together.

8. Through the petitions CM(M) 556/2018 and CM(M) 557/2018, the petitioner submits that he is a law abiding citizen of India and is a

great man of action, blessed with a versatile genius and is a multifaceted personality. The petitioner is stated to be known as a great visionary, highly ascetic, energetic, diligent and a simple man with multidimensional skills and is selflessly engaged in the service of mankind. The petitioner further submits that his ascetic discipline and leaning towards the ancient culture and tradition has established Patanjali Yog Peeth, an institution for treatment and research in Yoga and Ayurveda, in Haridwar and that he, the petitioner has taken upon himself the onerous responsibility of demystifying and popularizing Patanjali's yoga with a view to give concrete shape to his dreams. The petitioner submits that he founded the Divya Yog Mandir (Trust) in 1995 at Kankhal, Haridwar, Uttarakhand, which was followed by the Meditation Centre at Gangotri in the Himalayas, Brahmakalpa Chikitsalaya, Divy Pharmacy, Divya Prakasha, Divya Yog Sadhana, Patanjali Yogpeeth (Trust) in Delhi in 2005, Patanjali Yogpeeth, Hardwar, Mahashaya Hiralal Arsh Gurukul, Kishangarh Ghaseda, Mahendragarh, Haryana, Yog Gram and recently the Bharat Swabhimani (Trust) in Delhi and that the petitioner is the Brand Ambassador of the Patanjali Ayurveda Ltd. having a turnover of more than Rs.10,000 Crores, and it is further submitted by the petitioner that due to his tremendous popularity, the sale of Patanjali Ayurveda Ltd. has catapulted to a level challenging all the MNCs in FMCG sectors.

9. The petitioner has further submitted that because of the constant efforts and endeavours of the petitioner, Yoga has become a

household name across the nation and because of his persistent contribution in the fields of Yoga, Ayurveda and Swadeshi, he is thus revered as a 'Yog Guru' and he has followers not only across the nation but across the globe as well. The petitioner further submits that for his highly epoch-making works, various honours/honorary doctorates have been conferred on him in India and abroad by Universities and on the invitation of the Secretary General of the U.N.O., the petitioner has led the stand-up program to pass the resolution against poverty eradication from the whole world, at the United Nation Organization's head-quarter in New York, on 15th October, 2006. It is stated that in January, 2007, KIIT University awarded the Petitioner with an Honorary Doctorate degree in recognition of his efforts at popularizing the Vedic Science of Yoga. It is averred further that the degree was presented to him in a ceremony presided over by the respected scientist and Nobel Laureate Richard Ernst. It is further mentioned that the Yoga camps organized by the petitioner attract large number of people from all walks of life in India and all over the world and that in 2017, on the third edition of the World Yoga Day over three lakh people attended the said event led by the Petitioner at GMDC grounds Ahmedabad, Gujarat which was the largest yoga event ever organized.

10. The petitioner further submits that the **BOOK** written by Ms.Priyanka Pathak Narain and published by the respondent No.2 M/s Juggernaut Books Pvt. Ltd. is an unauthorized biography on the life of the petitioner and has been published by the respondent no.2 and that

the same contains false and defamatory material which has been written without any knowledge or consent of the Petitioner and without verification of facts. It is further submitted that the **BOOK** is extremely defamatory in nature and also infringes upon the right to privacy of the petitioner as the same contains material which pertains to the private life of the petitioner and reputation which has been recognized as a fundamental right.

11. The petitioner further submits that the respondent No.2 released/published the said defamatory **BOOK** on 29.7.2017 and that on 1.8.2017 the petitioner through his followers and GPA holder learnt about the release of the said **BOOK** and thus the petitioner executed a GPA in the favour of the GPA holder.

12. The petitioner submits that the writings incorporated and the publication of the said **BOOK** containing the stated defamatory statements against the petitioner had been published with the sole objective of lowering the name, image, esteem, reputation and goodwill of the petitioner in the eyes of the common man in general and that the contents of the said **BOOK** are not only wrong, false, manipulated, misleading and *per se* defamatory, but are aimed to prejudicially affect the name, reputation and goodwill of the petitioner and further to stir a controversy in order to garner publicity for the said **BOOK**.

13. The petitioner further submits that such a vilification publication has since been deliberately intensified by the respondents

with the intention to defame and project the petitioner in a bad light. The petitioner has excerpted certain portions of the **BOOK** as follows:

“(i) At page no. 105 of the book

When Ramdev's Guru Mysteriously Disappeared...

A year after Ramdev had a successful run in the United Kingdom and delivered a speech at the United Nations in New York came plans for a yoga tour of the United States. But Ramdev himself missed something brewing in his own backyard. Amid his heady successes, and hectic travel, he failed to see that his guru Shankar Dev was ailing, increasingly unhappy and isolated in his own home, Kripalu Bagh Ashram. For instance, Shankar Dev, who was the convener of the Divya Yog Mandir Trust, was not on the boards of any of the new companies that were set up by Ramdev. But what Ramdev could not see, though it was in plain sight, many in Haridwar saw. Several remember the swiftly ageing Shankar Dev, ravaged by spinal tuberculosis, becoming increasingly frail and forlorn. It was when Ramdev was in Chicago that news came from Kankhal. On 14 July 2007, Shankar Dev disappeared. Vanished without a trace. He left, that morning for his usual walk and simply did not return. It may have been devastating news for Ramdev. Or maybe it was just 'inconvenient timing. With the Chicago schedule drawing to a close, Ramdev had to choose: Should he go on to London, where the House of Commons planned to receive and honour him, or should he send his regrets and rush back to Kankhal to lead the search for his missing guru? Usually once a disciple takes deeksha, or initiation into the sacred, from his guru, he establishes a bond with him. Ramdev had not just taken deeksha from Shankar Dev but also accepted saffron robes from him -that is, he renounced the world. From the moment he took the saffron robes from Shankar Dev, that guru-shishya relationship was meant to become the central fulcrum of his life. From that moment

onward, Ramdev was supposed to consider his guru as his spiritual and temporal father and mother.

(ii) At page no. 110 of the book

The Cryptic Note Left Behind in Shankar Dev's Room...

"There is no way of knowing what Ramdev truly felt when he heard of the disappearance or if he struggled with the decision or for how long, but in the end he decided to carry on with his tour. The day after his aides filed a missing person's report at Kankhal police station, on 18 July 2007, Ramdev attended a ceremony at the British House of Commons in his honour. An investigation began in India, but clues were scarce. A cryptic note was found in Shankar Dev's room; I have taken some loan from you for this trust but I cannot repay it Please forgive me. I am leaving. He was seventy-seven years old. The note raised more questions than/it answered: Exactly how much did this old man who continued to live as simply as before Ramdev's meteoric rise borrow that he could not repay the sum ? Why did he borrow it? When had he taken the loan? And from whom? More importantly why did Ramdev, sitting atop an empire worth at least Rs 100 crore, not repay the loan Why did Shankar Dev not ask him for help? Or had he? ...When Ramdev returned to India, more than three weeks had passed since Shankar Dev's disappearance. He summoned a press conference in Haridwar, remembers the Jansatta reporter and Haridwar resident Sunil Pandey. At the press conference he was saying how Shankar Dev was like a father to him and how sad it was ... I asked him that if he really was like a father to him, why didn't he come back?' I was in the US, conducting ramps,' answered Ramdev. 'Well, if a family member disappeared, one would come back, isn't it?' Pandey pressed Ramdev. 'If I knew he was alive, I would have,' replied Ramdev. 'So you are admitting that you know that he is dead?' demanded Pandey. That was the suspicion in everyone's minds. Stunned, realizing he had misspoken, Ramdev fell silent"

(iii) At Page No. 113-114:

"...Across the country, Ramdev's star was ascendant. It was only in October 2012, five years after Shankar Dew's disappearance, that the Central Bureau of Investigation (CBI), India's apex investigative agency, initiated a probe to find him. In his inimitable style, Ramdev welcomed the investigation on the one hand, but also attacked the CBI and the government, accusing them of a politically motivated conspiracy to frame him in the case. Given the sour relationship between Ramdev and the Union government at that time, his allegation did have some credence. Whatever the CBI's initial motivations, it was widely reported that it initiated a move to close the case in December 2014 - by this time the Narendra Modi led government had taken charge at the Centre –because the agency had failed to make any headway. The special CBI magistrate in Dehradun set the date for the next hearing as 12 January 2015 but this is where the public case file goes cold. It's hard to ascertain what happened thereafter. "

"While a right to information (RTI) request I filed with the CBI in Delhi met with the response that the CBI was not covered by the RTI, another filed in Dehradun met with the response that the CBI does not answer questions on open cases. Ergo, the case is still open."

The Respondent No. 1 has given false information in her book regarding the above-mentioned court proceedings. It has been projected as if the investigation was influenced and case file was being surreptitiously handled. However, as per the judicial records available, it is clearly evident that vide order dated 13.02.2013 the Hon'ble Court had duly accepted a Closure Report filed by the CBI. It is further submitted that the Respondent No. 1 has falsely projected that the complaint is still pending and no action has been taken since January 2015. The same is done by the Respondent No. 1 only with an intention to defame the Petitioner. It is relevant to point out that despite judicial records being publically available to the Respondents,

deliberately did not mention the same while authoring and publishing the book in question.

(iv) At page no. viii

"Ramdev's first serious falling out was with Karamveer Maharaj, his first mentor, the man who taught him how to teach yoga."

(v) At page no. 70

"As mentioned earlier, in 2003 Divya Pharmacy had abruptly changed the vaidya on its registration from Swami Yogananda to Sri Saty Pal Singh. Yogananda is said to have had a falling out with Ramdev's increasingly powerful enterprise but the reasons for this are still unknown. "

"With Yogananda's death, a key associate who had provided critical help to Ramdev in his early days was gone. The murder remains unsolved till date. Ten months later, on 25 October 2005, investigating officer B.B. Juyal filed his final report in the case - Case unsolved. Perpetrators unknown.""

14. The petitioner thus submits that such imputations made by the Respondent No. 1 are effectively projecting to the world at large that the Petitioner is not a Sanyasi and has violated his vows by indulging in greed for money and power. He submits that these statements have been made falsely without being substantiated by any particulars and constitute defamation as the said imputations made by the Respondent No. 1 are clearly to harm the reputation of the Petitioner. It is stated that the aforesaid allegations are made in a calculated manner in order to bring disrepute to the Petitioner. The petitioner submits further that false allegations have been made regarding fudging yoga camps and that the allegations have only been made with an oblique motive to

defame the Petitioner and have been made in a calculated manner in order to bring disrepute to the petitioner.

15. The petitioner has also referred to the observations at page 121 to 128 Chapter 18 “**The Astha Takeover**” written in the said **BOOK** submitting to the effect that there is no means to verify the story put forth by the author. The petitioner submits that the author projected that the petitioner took over the television Channel “Aastha” in a hostile manner and that the respondent No.1, i.e., the author, herself admitted that there were no means to verify the story of ‘Mehtas’. The petitioner further submits that vide Chapter 4 at Page No.38 the observation therein, “But the ever-pragmatic, Ramdev understood that refusal to accept discipleship could mean losing the ashram.”

16. The petitioner also placed reliance at page No.77 Chapter 11 “Old Mentor Exits” which reads as under :

“Remember, Ramdev was compelled to accept saffron robes from Shankar Dev-and take these oaths- in order to be able to inherit Kripalu Bagh Ashram.”

17. The petitioner has further drawn the attention of the Court to the objections made at page 39 which reads to the effect:

“But being a renunciate came with its own benefits: Ramdev’s new saffron robes would automatically confer upon him great respectability and ensure that people would judge ‘him by a different yardstick.”

The petitioner submits that false allegations have been an attack on the core identity of the petitioner as being a Sanyasi, and

have been made in order to cause distrust amongst his followers and lower his reputation in the eyes of the public at large.

18. The petitioner also placed reliance on excerpts in various other chapters in the **BOOK** which read to the effect as under:

(xi) At page no. 54, Chapter 7: TV Star

"From this point on, befriending government officials and politicians, both in and out of power, would become a trademark growth strategy of Baba Ramdev's."

The petitioner thus contended that the author had further made assertions that the Petitioner is an unscrupulous businessman and has succeeded through creating connections with various government officials and political personalities.

(xii) At page no. 64-65 Chapter 8: Friends in High Places

"Politicians and businessmen were quick to sense the new power rising in Haridwar. They came bearing gifts, offers of friendship, proposals for alliances. Ramdev shrewdly recognized two people who could do the most for him- the colourful chief minister of Uttarakhand, Narayan Dutt Tiwari, and fellow Yadav and chief minister of Uttar Pradesh, Mulayam Singh-both ofwhom took him under their wing."

(xiii) At page no. 95-96 Chapter 13: Enter Brinda Karat

"...politicians across the country began speaking in his defense, it was difficult not to speculate: Were parties pledging allegiance to Ramdev because they were also sensing an opportunity for a political alliance? Were they

thinking: Stay on his right side today and he can swing voters for you tomorrow?"

(xiv) At page no. 145-146, Chapter 20: Anna Movement

"Two days after the fast began, the quiet, drained Anna Hazare, was eclipsed by the colourful, orange-robed Ramdev who had a knack for drawing and mesmerizing 'an audience.'"

"Ramdev had flawlessly managed to inveigle himself on to a national stage 'and establish-himself as an integral leader of India's anti-corruption movement. He smoothly abandoned his old allies in the Congress who had helped him build Patanjali.'"

It is submitted that these assertions have been made by the Respondent No.1 without any verification and without obtaining consent from the Petitioner, The aforesaid allegations have been made against the Petitioner with the sole intent to discredit the Petitioner in the eyes of his followers and public at large.

(xv) At page 163, Chapter 22: CEO,

"when Ramdev bullied Patra into joining Patanjali Ayurved Ltd..."

However, on a reading of the same chapter it can be clearly seen that he joined the company on his own free will,

(xvi) At Page 201:

"A trail of people whose goodwill or frailties he used to further his own enrichment and pursue his own agenda, people who were left by the wayside after they had served their purpose. A trail of people who either vanished into

thin air, or died mysterious deaths, or live on in utter fear of him. A trail of decisions and political machinations driven not by the principles he espouses but by expediency."

(xvii) Page: 202

"All Ramdev's former allies, aides, supporters and mentors who had watched him rise but has fallen by the wayside at some point seemed to have been waiting for a call like mine, from anyone, at all, asking them about their time with Ramdev. They were all ready to tell their stories." "For every negative event surrounding him, he has consistently yelled foul, always choosing to lay the blame at someone else's door."

(xviii) Page 204-205:

"Ramdev strayed into politics accidentally, not by design. After he met Rajeev Dixit, it just sort of happened: he tries to harness his fame as a sadhu-cum-yoga teacher to propel himself on to a larger platform and dreamt of his own political party. But somewhere along the way Ramdev seems to have decided against trying to become a mainstream political player and instead use his political power and it is undeniably clear that he does have political power thanks to his popularity among people to further his business interest Ramdev's politics now plays a supporting role for his business empire and that's not a failure as much as a sensible, pragmatic realignment. But pragmatism and taking utilitarian, hard-boiled decisions second nature for Ramdev, It is easy to forget that Ramdev was not always a BJP ally. Once upon a time he was the protege of the Congress, willing to hijack the VHP-RSS agenda to hand over a victory to allies in, the

Grand Old Party. Without his old Congress allies, and their largess- land discounts, permissions, loan approvals- Ramdev could not have become as powerful as he had in the first place. 'Yet when he realized the Congress was a sinking ship and fell out with his earlier godfathers, he negotiated a safe landing space with the VHP-RSS-BJP combine. Smoothly, courageously, he abandoned the Congress party, becoming part of the battering ram that brought it down. Ramdev is said to have helped the BJP with the 2014 general election campaign and is now apparently reaping 'rewards for that service. In May 2017, a Reuters article alleged that according to (unpublished) documents examined by them, Ramdev has received, 46 million dollars in land allocations and discounts from BJP-led state governments.'

(xix) Page 206:

"When denied political domination, he chose to harness politics to seek economic domination."

(xx) At Page 208:

"Most important, is he willing to play by the rules of the society he lives in and hold himself up to the laws that ordinary businessmen have to adhere to? Is he ready to stop using his saffron robes as a holy shield against public scrutiny?"

19. The petitioner submits that on a bare perusal of the contents of the **BOOK**, it was evident that the respondents have deliberately published the **BOOK** with a view to damage and tarnish the reputation of the petitioner and that the respondent author has authored and the publisher has and published defamatory, derogatory

and vexatious material about him intentionally despite the same being false and untrue thus causing wrongful loss to the petitioner and gains to the respondents.

20. The petitioner further submits that the right to reputation has already been recognized as a fundamental right under Article 21 of the Constitution of India and that the entire **BOOK** is based on perceptions and interviews allegedly gathered from third parties without any authorization & permission from the petitioner. The petitioner thus submits that whatever is mentioned in the **BOOK** is merely a surmise of what the respondent author has understood from the alleged interviews. The petitioner further states that the **BOOK** has been authored and published by the respondents without any verification of the contents that have been allegedly sourced from anonymous microscopic interviews, YouTube Videos and online articles with the sole intent to discredit the petitioner in the eyes of his followers and the public at large and thus the same cannot be allowed to be made freely available for the public at large.

21. The petitioner has further submitted that the publisher M/s. Juggernaut Books Pvt. Ltd. through its author Priyanka Pathak Narain has deliberately with a view to damage and tarnish the reputation of the petitioner authored and published defamatory, derogatory and vexatious material about him intentionally despite the same being false and untrue thus causing wrongful loss to him and to his reputation by quoting alleged interviews of other persons and also relied upon on unverified news articles and it is sought to be submitted by the petitioner that through the **BOOK** published by M/s.

Juggernaut Books Pvt. Ltd. false statements had been made that the petitioner was responsible for not allowing the post-mortem of Mr. Rajeev Dixit and that it is somehow associated with the petitioner but that the medical record and death certificate of Mr. Rajeev Dixit clearly stated that he had died because of a cardiac arrest. The petitioner has submitted that these reports have never been challenged nor is there any investigation pending before any authority and that M/s. Juggernaut Books Pvt. Ltd. has chosen to publish the false and defamatory statements against him solely relying on interviews and news articles and not the public records.

22. The petitioner has further submitted that the **BOOK** is admittedly a biography by its author Priyanka Pathak Narain arrayed as the respondent no. 1 to CM(M) 557/18 and arrayed as the respondent no. 2 to CM(M) 556/18 and submits that the **BOOK** contains various chapters of his personal life and thus before such publication, consent ought to have been taken from him by and that this fact was also evident from the authors' note which is to the effect:-

“I imagined that their memories, anecdotes, tales of how Ramdev inspired and transformed their lives would be far more interesting story than Ramdev's version of it.”

23. The petitioner has further submitted that the publication by the respondents no. 1 & 2 about the details of the personal life of the petitioner without his consent and due authorization is a violation of his fundamental right to the privacy and the reputation under Article 21 of the Constitution of India and that the said respondents i.e. M/s.

Juggernaut Books Pvt. Ltd. and Priyanka Pathak Narain have incorrectly alleged that the information published about the petitioner was completely verified and had sought to justify the contents of the **BOOK** mentioned between pages 209 to 234 of the **BOOK**. The petitioner further submits that the said **BOOK** has been authored and published by the respondents without any verification of the contents sources from unanimous interviews, YouTube videos and online articles and the sources are the hearsay evidence and reliance would not be placed upon them.

24. The petitioner further submits that the learned Trial Court of the ACJ-CCJ-ARC(East) had rightly granted an ad interim injunction in favour of the petitioner whereby restraining the respondents publishing, distributing and selling the said **BOOK** and that the application under Order 39 Rule 4 CPC that had been filed by the respondents had also been declined appropriately vide order dated 27.09.2017 by the learned ACJ-CCJ-ARC (East) but that vide order dated 28.04.2018 in MCA No. 8/2017 and MCA No. 10/2017 which had been filed by the author and the publisher respectively, the learned ASCJ-GJ erroneously set aside the order dated 04.08.2017 and 27.09.2017 of the learned ACJ-CCJ-ARC (East) in complete disregard to the settled principles of law with regard to the writing of unauthorized biographies and the right to privacy and reputation of an individual.

25. It was further submitted by the petitioner that the respondents have incorrectly alleged that the information published about the

petitioner is derived from public records and have sought to justify the contents of the **BOOK** by relying upon sources mentioned between pages no. 209 to 234 of the **BOOK**. The petitioner submits that the sources mentioned in the **BOOK** are in the nature of magazine and newspaper publications, online articles, YouTube videos and some unverified private interviews and that these sources are in the nature of hearsay evidence and no reliance can be placed upon them in order to establish the contents of the **BOOK** and that the same are completely unconfirmed and inherently opinionated under Section 74 of the Indian Evidence Act, 1872, which is reproduced to the effect : -

“74. Public documents.-The following documents are public documents:-

[1] Documents forming the acts, or records of the acts

[i] of the sovereign authority,

[ii] of officials bodies and tribunals, and

[iii] of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or a foreign country;

[2] Public records kept [in any State] or private documents.”

26. The petitioner further submits that the author has relied on unverified personal interviews, around 139 online articles websites, magazines, and around 39 YouTube Videos and only 15 official documents and such reliance is completely misplaced on the basis of which the publication has been done by M/s. Juggernaut Books Pvt. Ltd. and the same cannot be treated as public records nor can the same be accepted as legally admissible evidence. The petitioner has further

submitted that the *mala fides* of the respondents in authoring and publishing these defamatory and false allegations is evident from their refusal to refer to official documents that clearly belie their innuendos and that it has been published by the respondents at pages 105, 110 and 113-114 of the offending publication that the petitioner had something to do with the disappearance of Shankar Dev and that subsequently the investigation into the incident was influenced by the government due to which it is unclear from the public record as to what happened thereafter and the petitioner submits that the respondents no. 1 & 2 have mischievously and with an intent to defame the petitioner not made any reference to order of the Special Judicial Magistrate (CBI)/ACJM(I) Dehradun dated 13.02.2015 whereby the Magistrate after due application of mind has accepted the closure report of the CBI thus belying all claims and innuendos authored and published by the respondents no. 1 & 2.

27. It has also been submitted by the petitioner that it was not out of place to mention that the same was freely and publicly available much prior to the publication of the **BOOK** and the Respondents were duty bound to report the same but have instead chosen to conceal it with a view to create false allegations and suspicion on the Petitioner and project a view that the investigation was somehow influenced and the case file was being surreptitiously handled and that the Petitioner was somehow responsible for the disappearance of Swami Shankar Dev.

28. The petitioner further submits that the respondents had made false allegations while presenting even official documents so as to

raise an aura of suspicion and that it was mentioned at page 70 of the offending publication by the respondents that the petitioner had something to do with the murder of Swami Yogananda and that the petitioner further submits that it had been represented as if the Investigating Officer had filed some variety of an extra-ordinary report by stating that the perpetrators were unknown and that there was mischief by the respondent no. 1 with the sole intention of creating an aura of suspicion so as to defame the petitioner in not clarifying that such reports are called 'Untrace Reports' which are common place.

29. The petitioner further submits that the *mala fides* of the respondents in authoring and publishing these defamatory and false allegations is evident from the fact that the allegations and insinuations are baseless and there is no material to support them and that there are no materials to support in relation to the innuendo that the petitioner has friends in high places and has been benefiting from political largesse, published at Page 64- 65, 95-96, 145-146 and 204-206 of the offending publication putting forward that there has been no impropriety in the relationship of the petitioner with any political figure, past or present, and no aspect of his relationship has ever been called into question by investigation. The petitioner further submits that the petitioner had approached the court as soon as the contents of the **BOOK** in question came to the knowledge of the petitioner in as much as the **BOOK** was launched on 29.07.2017 and the suit was filed on 03.08.2017 and the the Ld. ACJ had granted an *ex parte* injunction in favour of the petitioner on 04.08.2017.

30. The petitioner further submits that he had no prior knowledge of the release of the **BOOK** as the respondents had never sought any consent from him. The petitioner further submits that after the order dated 28.04.2018, the respondent No.1 in order to leave no stone unturned to defame and further cause irreparable loss and injury to him had started distributing the **BOOK** in question for free on its Website and Mobile Application till 01.05.2018 as per the knowledge of the petitioner and that thereafter, the respondents in continuation of their nefarious designs are selling the **BOOK** at Rs. 50/- as compared to the M.R.P. of Rs. 300/- printed on the **BOOK** itself with the sole intention of increasing the circulation of the **BOOK** in order to defame him.

31. Through the written submissions that had been submitted on behalf of the author before the learned Trial Court, it was submitted that the author stood by the **BOOK** and categorically asserted that nothing contained therein is false and all statements made in the **BOOK** can be justified and that the **BOOK** has been written with journalistic objectivity in a fair and impartial, manner and in good faith for public good. The author emphatically submitted that nothing contained in the **BOOK** was defamatory to Plaintiff and submitted that the **BOOK** has to be read as a whole and stray sentences cannot be picked out whilst determining whether a work such as the **BOOK** is defamatory or not. The author further submitted that the entire **BOOK** is fully protected amongst others under Article 19(1)(a) of the Constitution of India guaranteeing freedom of speech and expression to all citizens and the grant of reliefs claimed in the plaint will

infringe the freedom of profession and occupation of the author guaranteed under Article 19(1)(g) of the Constitution of India as a journalist and a writer. The author further submitted that the question of freedom of speech and expression involved, in the instant case was not only of the author or of the parties to the instant case but also of the thousands of others (of their right to read and right to know) who are not party to the present suit, and who may eventually be deprived of the opportunity of reading and analyzing for themselves the contents of the **BOOK**. The author further submits that citizens and non-citizens have legitimate and substantial interest in knowing about, reading about and scrutinizing the conduct of the public figures including the events and mysteries surrounding their allies or, acquaintances and the Public has an interest, and in fact a deep interest, in knowing all sides to the persona of and events surrounding a public figure and that no illegality has been committed by the author in authoring and getting the **BOOK** published and that in contemporary democratic societies, public speech has to be diverse, and a speech of value will perforce be critical of public institutions and individuals.

32. *Inter alia*, the author has put forth her credentials submitting that the author has graduated from Columbia Journalism School, in 2007, and she had written about the business of religion at Mint (a widely circulated national newspaper) between 2007 and 2013 and she is the winner of CNN Young Journalist Award for her coverage of the Setusamudram channel, project in 2007. The author further submitted that she is a contributing writer for *Dharavi: The City*

Within, and occasionally writes for the New York Times and the Conde Nast Group and has adopted a methodology for the **BOOK** which is consistent with the recognized methods of journalism and that the methodology adopted for the **BOOK** by her is best summed up in her 'Note' (as noted in Author's Note' in the Book):

"...The only way to tell his story, I believed, was to tell it through the voices of all the people he worked with along the way to building his empire, those who'd had a chance to meet him in unguarded moments. I imagined that their memories, anecdotes, tales of how Ramdev inspired and transformed their lives would be a far more interesting story than Ramdev's own version of it....

....

.....

.... For a complete list of interviewees and sources for each chapter, please refer to 'Sources' at the end of the book."

33. *Inter alia*, the author submitted that an individual, least of all a public figure like the Plaintiff, i.e, the present petitioner, who is "worshipped as a Godman" as per averments in paragraph 2 of the plaint, who himself claims to have followers "not only across the nation but across the globe" as per the averments in paragraph 2 of the plaint, should not seek to silence any speech or expression merely because it is not what he may want to hear and in any case and that the **BOOK** has not been and cannot be perceived to be defamatory by any reasonable person, that substantial contents of the **BOOK** are fairly laudatory of the Plaintiff, i.e. the present petitioner, whenever the

context so warranted and that the public figures like the Plaintiff i.e. the present petitioner cannot be too thin skinned in reference, to the comments or observations or opinions expressed to them or events related to them even if they have nothing to do with them. The author further submitted that the factum that the plaintiff of the suit, i.e. the present petitioner herein, is a public figure having exceedingly wide following and media presence as depicted in the **BOOK** itself by the following portions which have not been objected to by the plaintiff to the suit, i.e. the present petitioner herein,

"...Soon after Patanjali launched noodles, Ramdev began spending on traditional advertising in a big way. For nine of the following twelve weeks, Patanjali topped the weekly list of total ad insertions, according to the television viewership measurement agency Broadcast Audience Research Council (BARC) India. Its weekly television ads more than doubled from 11,897 in the first week of January 2016 to 24,050 in the week ended 25 March. During the same period, Ramdev appeared 2,34,934 times across TV channels, which means he was on air every 30 seconds on one channel or another. He never looked back...."

34. The author has further submitted that she stands by the truth of the statements contained in the **BOOK** which she states have been written based on publicly available documents and recorded interviews and have been published after due verification to the maximum extent possible for a journalist. The author further submits that in any case, truth itself is a multilayered phenomenon, as one person's truth is other person's falsity and that what one Court finds as

truth from a set of circumstances, statements and evidences, the Appellate Court may not, and so on and so forth and that from the same set of circumstances different Courts have been long known to come to different findings and that there is nothing known as absolute truth. The author further submits that assuming what emerges out of the process of judicial trial is a truth, should the freedom to express or write or publish or to read and know be made contingent upon every set of events and circumstances being put to a judicial trial first and which is not the only way to ascertain the truth or else, the country or societies will not have any newspapers or magazines and that the truth is a matter of perception, and in a democratic society the standard has to be a reasonable one or fair reporting as a matter of law. The author further submits that the speech and expression which is premised on honest belief or which amounts to fair comment, should not be silenced and cannot be silenced and that the burden to prove that it is not so, rests solely on the shoulders of the Plaintiff.

35. The author has further submitted that various portions/aspects of the **BOOK** which seem objectionable to the Plaintiff, i.e., the present petitioner herein, which are not necessarily actionable in law, according to the author have also been stated in words far more uncharitable to the Plaintiff, i.e. the present petitioner herein, in different forms previously by the media (print and electronic media) and have remained in public domain and that the Plaintiff, i.e., the present petitioner herein, a public figure, cannot be ignorant of these prior publications. The author further submits that the Plaintiff, i.e., the present petitioner herein, has waived his right to object to it and

also acquiesced in the publications/statements contained in the **BOOK** and that the Plaintiff i.e., the present petitioner herein, is guilty of suppression of the previous publications which amounts to suppression of facts and the Plaintiff i.e., the present petitioner herein, should not be permitted to proceed any further on this ground alone. The author further submits that the plaintiff's statement i.e., the present petitioner herein, that the **BOOK** is not based on public records is false, and has been made dishonestly by suppressing the relevant media reports and documents. The author further submits that the Plaintiff's action, i.e., the present petitioner herein, also suffers from delay and laches and considering the media reports on various aspects of the **BOOK** which seem to have been objected to in the plaint have remained in public domain for long and that the Plaintiff i.e., the present petitioner herein cannot, complain of any legal injury having been caused to him by the publication and circulation of the **BOOK** or being caused by further circulation of the **BOOK**.

36. The author has put forth the extracts of a few publications stated to be existing in the public domain prior to publication of the **BOOK** are as under:

“

1.	'Baba Ramdev killed and chopped off his Guru Shankar Dev "...A man named Rakesh has leveled sensational charges against Baba Ramdev, saying that the yoga guru had conspired to kill his Guru Shanker Dev, who is missing since 2007, The man said that Ramdev killed his guru, chopped him off and	Daily Bhaskar, April 08, 20.13 Available at weblink http://daily.bhaskar.com/news/NAT-TOP—baba-ramdev-killed-and-chopped-off-his-guru-shankar-dev—4229921-NOR.html (Weblink last visited on 29 August 2017)
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	<p>immersed his remains in river Ganga. He also said that he was present with Ramdev when the entire conspiracy was hatched..."</p>	
2	<p>Centre asks CBI to probe disappearance of Swami Ramdev's guru Shankar Dev.</p> <p>Ramdev's guru-Shankar Dev. ..The Congress government in Uttarakhand had on October 13 last year ordered a CBI probe into the case. Swami Shankar Dev suddenly disappeared from the Kripalubagh Ashram in Haridwar on 14th July, 2007, when Swami Ramdev was abroad..."</p>	<p>India TV, February 5, 2013 Available at weblink http://www.indiatvnews.com/news/india/centre-asks-cbi-to-probe-disappearance-of-swami-ramdev-s-guru-20646.html (Weblink last visited on 29 August 2017)</p>
3	<p>If The Pose Holds</p> <p>"An Outlook - IBN investigation, conducted over several months, catches policemen and others spilling the beans on the shoddy investigation into the disappearance of Swami Shankar dev, Baba Ramdev's guru"</p> <p>"...It remains unclear what really happened in July 2007—or in the run-up to it. Ramdev, the present head, was himself out of the country at the time. Swami Shankardev's 'final letter'—addressed to Ramdev's brother-in-law. Yash Dev Shastri—would have people believe that the guru, who suffered from tuberculosis of the spinal cord and possibly of the lungs, "left" because he could not repay, his "loans". One inmate alleges that Shankardev was reduced -to selling cardboard and styrofoam boxes</p>	<p>Outlook, The Magazine, 15 October 2012 Available at weblink https://www.outlookindia.com/magazine/storv/if-the-pose-holds/282475 (Weblink last visited on 29 August 2017)</p>

	<p>of medicines to foot his medical bills during his last few months at the ashram....</p> <p>.... .and yet, his disappearance did not create much of a flutter. The ashram showed little urgency in trying to trace its own founder, who had voluntarily given up the reins of the ashram in 1995 to his far more 'worldly-wise and nationally known disciple, Baba Ramdev..."</p>	
4	<p>बाब रे बाबा कैसा है यह बाबा गुरु को लेकर बड़ा सवाल</p> <p>"....रामदेव के गुरु शंकरदेव का गायब होना आज भी रहस्य है. आज तक उनका कुछ पता नहीं चला है. आरोप लगा क उनके गायब होने के पीछे ट्रस्ट की संपत्ति पर कब्जा करने वालो का हाथ है. इस ट्रस्ट की संपत्ति बाद मे रामदेव और उनके सहयोगी बालकृष्ण के नियंत्रण मे आई। अब रामदेव को लेकर जब भी कोई विवाद खड़ा होता है तो उनके गुरु शंकरदेव का नाम चर्चा मे ज़रूर आता है..."</p>	<p>Pratirodh, June 7, 2012 . Available at weblink</p> <p>http://www.pratirodh.com/%E0%A4%AC%E0%A4%BE-E,0.%A4%AC%E0%A4%BE-%E0%oA4%B0%E0%A5%87-%E0%A4%AC%E0%A4%BE-%E0%A4%AC%E0%A4%BE-%E0%A4%95%E0%A5%88%E0%A4%B8%E0%A4%BE%E0%A4%B9%E0%A5%88-%E0%A4%AF%E0%A4%B9%E0%A4%AC%E0%A4%BE%oE6%A4%AC/ (Weblink last visited on 29 August 2017)</p>
5	<p>Baba Ramdev's guru leaves ashram due to "unbearable pain" "...Police investigating a complaint about the swami who went missing from the ashram four days ago, said the swami had given a account of his poor health in a letter recovered by them from his room last evening.'</p> <p>In the letter, Swami Shankar Dev Maharaj said that he was leaving the</p>	<p>One India, July 19, 2007</p> <p>Available at weblink</p> <p>http://www.onemdia.com)/2007/07/19/baba-ramdevs-guru-leaves-ashram-due-to-unbearable-pain-1184846062html (Weblink last visited on 29 August 2017)</p>

	<p>Patanjali Yogpeeth in Kankhal here as the pain due to his ailments had become unbearable for him. The report about the missing swami was lodged at Kankhal police station, three days after he went missing under mysterious circumstances.</p> <p>Baba Ramdev mentor missing</p>	
6	<p>Baba Ramdev mentor missing</p> <p>Ramdev is in the UK, where he held a session in the House of Commons yesterday, telling lawmakers and prominent citizens about the scientific aspects of yoga. He has been intimated about the disappearance, sources said.</p> <p>Balakrishna said anxiety over Shankerdev's fate was running high. "We have informed his disciples and we are waiting for information from them."</p> <p>Ramdev is scheduled to conduct a six-day yoga camp in Scotland's Glasgow from tomorrow. There was no word from the organisers if Shankerdev's disappearance would prompt Ramdev to rush back home. Ramdev considers Shankerdev his mentor, saying he has learnt everything about yoga and spiritualism from him..."</p>	<p>The Telegraph, July 19, 2007 Available at weblink https://www.telegraphindia.com/1070719/asp/nation/story.8078132.asp (Weblink last visited on 29 August 2017)</p>
7	<p>Ramdev for CBI probe into missing guru</p> <p>"...Since his disappearance, the Divya Yog Mandir Trust is owned by those close to Baba Ramdev and his aide- Balakrishna. "Both have deliberately avoided taking interest in the case," alleged Krishnan, adding although Balakrishna</p>	<p>The Times of India, Oct 14, 2012 Available at weblink http://timesofindia.indiatimes.com/india/Ramdev-for-CBI-probe-into-missing-guru/articleshow/16802753.cms?from=mdr (Weblink last visited On 29 August 2017)</p>

	registered a missing report in'2007, they did not get the case investigated by police as it could expose their involvement..	
8	<p>Ramdev alleges conspiracy, to link him to death of an associate</p> <p>"....Dixit had died in .November 2010 in Chattisgai'h. "Rajiv had died of a heart attack. Everybody knows .it. But efforts are on to blame-me for the death. I have come here to tell you the truth," Ramdev said.</p> <p>He alleged that the leader was also trying to link him for disappearance of Shankar Dev.</p> <p>"How can one think of it. Can a pupil do such a henious crime. In fact people have been given money to defame me for this also," Ramdev said..."</p>	<p>The Economic Times, August 29,2017</p> <p>Available at weblink http://economictimes.indiatimes.com/news/politics-and-nation/ramdev-alleges-conspiracy-to-link-him-to-death-of-an-associate/articleshow/16324989.cms (Weblink last visited-on 29 August 2017)</p>
9	<p>Baba's 'plan' that went bust "... Even before the RSS snub, Ramdev's political ambitions had suffered a setback when his close aide, Rajiv Dixit, suddenly took ill and died on November 30, 2010, in Bhilai in Chhattisgarh. The cause of death, according to Patanjali sources, was a "cardiac arrest". But neither was a post-mortem done nor the media told of his passing.</p> <p>The cremation was done by Ramdev and Rajiv's brother Pradeep. There are believed to have been uneasy murmurs among the late activist's associates..."</p>	<p>The Telegraph, June 20, 2016</p> <p>Available at weblink http://www.telegraphindia.com/1160620/isp/nation/story/92222.isp (Weblink last visited on 29 August 2017)</p>
10	7 of India's Most Controversial Deaths In Recent Times	India Times, December 04, 2015

	<p>“...6. Rajiv Dixit</p> <p>“...Some people believe Ramdev could’ve been involved in his death in some way or the other. Although not by the media, many questions did arise on the internet. Like why Ramdev did not say anything when it was evident that Dixit hadn’t died of a heart attack. Like why his body was taken to Patanjali and not to Sevagram (Rajiv Dixit home), as it was the place from where Dixit worked for his whole life.</p> <p>One of Dixit’s old friends from the Azadi Bachao Andolan said that they all went to Patanjali the night after the death and saw that the whole body was blue and black. Then he, and 9 more friends from Mumbai, went to Ramdev’s office. Here he was told by Ramdev that Rajiv had died in front of him. if that is actually true, Ramdev perhaps holds the answers to a lot of very important questions...</p>	<p>Available at weblink http://www.indiatimes.com/culture/who-we-are/7-of-india-s-most-controversial-deaths-in-recent-times-247989.html (Weblink last visited on 29 August 2017)</p>
11	<p>Dr. Rajiv Dixit’s death: Silence of media.</p> <p>“... His death has been portrayed natural citing the reason of cardiac arrest. No post mortem was done after his death. The blue- black body of Rajiv bhai (name by which he was famous among the people) however speaks a different story. The country which has numerous 24-hr news channels was silent about his death and no political party including the main opposition party BJP pushed for such an investigation.</p> <p>Acharya Pramod Krishnam,</p>	<p>“Wikileaks Forum, March 14, 2011</p> <p>Available at weblink http://www.wikileaks-forum.com/india/68/dr-rajiv-dixits-death-silence-of-media/518/ (Weblink last visited on 29 August 2017)</p>

	Adhyaksha- Akhil Bhartiya Sant Samiti, Uttar Bharat, has raised several questions about the role of Baba Ramdev behind the mysterious death of Rajiv Dixit...	
12	<p>Media silent on. the death of Rajiv Dixit</p> <p>"...His death has been portrayed natural citing the reason of cardiac arrest. No post mortem was done after his death. The blue-black body of Rajiv bhai (the name by which he was famous among the people) however speaks a different story. The country which" has numerous 24-hr news channels was silent about his death.,."</p>	<p>Merinews, December 22,2010 Available at weblink, http://www.merinews.com/article/media-silent-on-the-death-of-rajiv-dixit/15838320.shtml (Weblink last visited on 29 August 2017)</p>
13	Did Ramdev kill (or organise the killing of) Rajiv Dixit?	<p>Quora Available at weblink https://www.quora.com/Did-Ramdev-kill-or-organise-the-killing-of-Rajiv-Dixit (Weblink last visited on 29 August 2017)</p>
14	<p>Ramdev spreading nepotism: Baba Karamveer</p> <p>"...Baba Karamveer, one of the founders of Divya Yoga Mandir and Patanjali Yoga Peeth, today charged Yoga Guru Baba Ramdev with promoting nepotism in both the organizations..."</p>	<p>Web India- August 29, 2017 See weblink at https://news.Webindia123.com/news/articles/India/20110413/1728794.html (Weblink last visited on 29 August 2017)</p>
15	<p>Capt miffed over grant of donated land to Baba's trust</p> <p>"Punjab Pradesh Congress Committee president Capt Amarinder Singh has written to Himachal Pradesh Chief Minister Prem Kumar Dhumal urging</p>	<p>Indian Express, June 10, 2011 Available at weblink http://indianexpress.com/article/cities/chandigarh/capt-miffed-over-grant-of-donated-land-to-babas-trust/ (Weblink last visited on 29 August 2017)</p>

	him to revoke the orders of leasing 28 acres of land at village Sadhupul to yoga guru Ramdev.”	August 2017)
16	Baba Ramdev is a fraud: Amrinder.	Headlines Today; June 9, 2011 Available at weblink http://indiatoday.intoday.in/video/ramdev-amrinder-singh-slams-himachal-pradesh-government/1/140964.html (Weblink last visited on 29 August 2017)
17	Did Maharashtra give land to Baba Ramdev at a throwaway price? High Court wants to know "...Bombay High Court wants all papers and details pertaining to the land allotment to Patanjali..." "...The Bombay High Court today asked the BJR government in Maharashtra whether they gave away over 600 acres of land in Nagpur to Baba Ramdev's Patanjali Ayurveda at a throwaway price..."	India Today, May 5, 2017 Available at weblink http://indiatoday.intoday.in/story/maharashtra-government-gave-land-to-patanjali-mumbai-highcourt/1/946883.html (Weblink last visited on 29 August 2017)
18	Ramdev Baba is the biggest fraud I have seen in my life, says Digvijay. "Yoga guru Baba Ramdev may be occupying more space in media now but he is a fraud and such people do not last long in public life. Congress General Secretary Digvijay Singh"	India TV, June 9, 2012 Available at weblink http://www.indiatvnews.com/politics/national/ramdev-baba-is-the-biggest-fraud-digvijay-singh-4466.html (Weblink last visited on 29 August 2017)
19	Ramdev is a Fraud, Probe His Properties: Digvijay "...Baba-Ramdev is a fraud and I don't	Outlook, The Newswire, 21 June 2011 Available at weblink

	consider, him as a saint. I also don't consider his close associate Balkrishana as Acharya," he said ...”	https://www.outlookindia.com/news/wire/story/ramdev-is-a-fraud-probe-his-properties-digvijay/725567 (Weblink last visited on 29 August 2017)
20	81 cases filed against Ramdev "...A spokesman of the Patanjali Yog Peeth said that the Congress Government was trying to harass Swami Ramdev as he was speaking against corruption and seeking the return of black money in foreign banks.....”	The Hindu, November 20, 2013 Available at weblink: https://www.thehindu.com/news/national/other-states/81-cases-filed-against-ramdev/article5372104.ece (Weblink last visited on 29 August 2017)
21	Is Ramdev a 'dhongi' baba? "...Congress leader Digvijay Singh has described Ramdev as a "thug" and a "fraud". In turn, Ramdev has accused the centre of trying to murder him, and called senior minister Kapil Sibal "a liar and a cunning man". His supporters, or at least men claiming to be his supporters, have attacked Digvijay Singh's house in Bhopal. The Congress has promptly dubbed Ramdev a secret agent of the BJP. As you can see, a full-fledged war" is on ...”	Yahoo News, June 6, 2011 Available at weblink: https://in.news.yahoo.com/blogs/bo-xpopuli/ramdev-dhongi-baba-080416795.html (Weblink last visited on 29 August 2017)
22	Reuters report exposes quid pro quo between Modi, Raihdev "... Since Narendra Modi came to power, yoga guru and entrepreneur, Baba Ramdev's company has received more than an estimated \$46' million in discounts for land acquisitions in states controlled by the BJP, an investigative	National Herald, May 24, 2017 Available at weblink https://www.nationalheraldindia.com/corruption/reuters-report-exposes-quid-pro-quo-between-modi-and-ramdev-patanjali-bip-land-acquisition

	report by Reuters has revealed...."	(Weblink last visited on 29 August 2017)
23	<p>As Modi and his Right Wing Hindu base rise, so too does a celebrity yoga tycoon</p> <p>".....In the BJP-controlled states,</p> <p>Patanjali received a discount on the land purchased of 77 percent off market prices, according to state government documents, interviews with officials and land values provided by local real estate agents.....</p> <p>Official reporting of land transactions in India is patchy, especially of deals involving smaller acreages. But some do surface. For , example, Patanjali</p> <p>received a discount of more ,than \$10 million, or 88 percent, on a 40-acre plot in the BJP state of Madhya Pradesh last year, according to interviews with a state official and real estate brokers.</p> <p>Neither the prime minister's office nor Patanjali executives, including Ramdev, responded to written questions about the transactions,</p> <p>which were, lawful..... "</p>	<p>Reuters, May 23, 2017</p> <p>Available at weblink</p> <p>http://www.reuters.com/investigates/special-report/india-modi-ramdev</p> <p>(Weblink last visited on 29August 2017)</p>
24	<p>Business booming for billion dollar</p> <p>Baba! The Modi-Ramdev partnership reveals the inner workings of money and influence in the BJP's India</p> <p>"...Since Modi came to power, Ramdev's company has received more than an estimated \$46 million in discounts for land acquisitions in states</p>	<p>Mail Today, 23 May 2017</p> <p>Available at weblink</p> <p>http://www.dailymail.co.uk/indiahome/indianews/article-453369/As-Modi-Hindu-base-rise-does-yoga-tycoon.html</p> <p>Weblink last visited on 29 -August 2017)</p>

	<p>controlled by the BJP, according to a Reuters review of state government documents, interviews with officials and real estate estimates.</p> <p>It gained access to other land free of charge. The firm, Patanjali, has also received something of an official imprimatur-from a newly created ministry and BJP leaders..."</p>	
25	<p>Ramdev's Patanjali benefited from \$46 million in discounted land acquisitions in BJP states:</p> <p>Reuters</p> <p>"...The revenue of self-styled godman and businessman "Baba" Ramdev's company, Patanjali, has soared under Prime Minister Narendra Modi's administration. The company's revenue has increased from \$156 million (approximately Rs 1,011 crore) in the financial year that ended in 2013 to over \$322 million (approximately Rs 2,087 crore) in March 2015.</p> <p>A Reuters report said Ramdev's company benefited from more than \$46 million (Rs 297 crore) in discounts 'through land acquisitions in Bharatiya Janata Party-ruled states, since Narendra Modi assumed office..."</p>	<p>Scrollin, May 24, 2017</p> <p>Available at weblink https://scroll.in/latest/83.8584/ramdevs-revenues-from-patanjali-have-soared-since-narendra-modi-came-to-power-reuters</p> <p>(Weblink last visited on 29 August 2017)</p>
26	<p>Ramdev's Company Got \$46 Million In Discounts For Land Acquisitions</p> <p>Since Modi Came To Power; Reuters</p> <p>"...Since Modi came to power, Ramdev's company has received more</p>	<p>Huffpost, May 24, 2017</p> <p>Available at weblink http://www.huffingtonpost.in/2017/05/24/how-baba-ramdevs-business-has-boomed-since-modi-</p>

	<p>than an estimated \$46 million in discounts for land acquisitions in states-controlled by the BJP, according to a Reuters review of state government documents, interviews with officials and real estate estimates. It gained access to other land free of charge...."</p>	<p>came-to-power a 22106711/ (Weblink last visited on 29 August 2017)</p>
27	<p>A TRIBUNE EXCLUSIVE</p> <p>"...Meet Ramdev, the landlord How Uttarakhand Govt gave Baba 644 acres at throwaway prices</p> <p>Many Acres of Ramdev's realty</p> <ul style="list-style-type: none"> • In 2008, vide the government Order letter nO. 56/18(1)707 dated JulyT, 2008, 50 hectares land was given to Baba Ramdev's Patanjali Yogapeeth Trust in Aurangabad, Shivdaspur, Teliwala, Shantarshah and Bahadrapur for "Panchkarm , Ayurvedic medicine manufacturing research laboratory". • In less than a month, vide the government order letter no. 139/18(1)/07 dated August 8, 2008, Baba Ramdev's Patanjali Yogapeeth Trust was again given 56.468 hectares land at Mustafabad for "medicine manufacturing and research". • Two years later, 155 hectare land was again given to the yoga guru's , Patajanli University and Yogapeeth Trust in Aurangabad, Shivdaspur and Teliwala vide letter no.57/XVIII (II)/IO dated February 26, 2010. • Much of the land was either community land or gram panchayat land. The panchayats were not consulted before the allotment of the land by the Haridwar district authorities..." 	<p>The Tribune, June-7, 2011</p> <p>Available at weblink http://www.tribuneindia.com/2011/20110607/main2.htm (Weblinc last visited on 29 August 2017)</p>

28	<p>Baba's black sheep and the golden fleece</p> <p>"...While the land ceiling law is very stringent in Uttarakhand, Baba Ramdev seems an honourable exception. Two government orders in the month of July 2008 allowed the trusts and companies run by Baba Ramdev to buy 1,700 bighas (1 bigha is ,800 sq m). Out of this, Baba asked the government to convert the 800 bighas in Mustafabad into industrial land. The n trust has bought this land at a low price and property dealers of the area say that if the land is n converted to industrial use, it, will be pure, gold..."</p>	<p>Tehelka, June 10, 2011</p> <p>Available at weblink http://www.tehelka.com/2011/Q6/babas-black-sheep-and-the-golden-fleece/ (Weblink last visited on 29 August 2017)</p>
29	<p>Baba Ramdev's epic swindle</p> <p>"...Now the question which arises is that how can the same Ramdev, who is accusing the government of protecting black money, be involved in black Money himself?</p> <p>The investigation done by Tehelka shows, that the movement created by Ramdev is a classic case of pot calling the kettle black...</p> <p>Several officers of the State Tax department believe that after the raid a lot of pressure was exerted on Rana. The pressure was so much that Rana was forced to take retirement 4 years before his tenure was to come to an end. Rana at the time was considered as one of the brightest and upright officers. After this raid by the \$IB, no other state or Central department could gather enough courage to raid Ramdev's empire again. Consequently, his empire grew several times after</p>	<p>Tehelka 19 March 2012</p> <p>Available at weblink http://archive.tehelka.com/story_main52.asp?filename=Wsl90312Black_money.asp (Webliik last visited on 29August 2017)</p>

	that..."	
30	<p>Congress, BJP accuse each other over Baba Ramdev's land deal</p> <p>"...Heated exchanges were witnessed in the Himachal Pradesh Assembly on Wednesday on the issue of allotment of 22 acres to Baba Ramdev's Patanjali Yogpeeth at Sadhupul in Solan district in 2009.</p> <p>State Revenue Minister Kaul Singh Thakur revealed that the Cabinet had on February 17 given its nod to n reconsider the lease of land to the Yogpeeth that was earlier cancelled by it in February 2013..."</p>	<p>The Hindii, March 16,2017</p> <p>Available at Weblink http://www.thehindu.com/news/national/other-states/congress-bjp-accuse-each-other-over-baba-ramdevs-land-deal/article17469116.ece (Weblink last visited on 29 August 2017)</p>
31	<p>Dig at Baba Ramdev triggers Congress-BJP duel</p> <p>"...He is now not a Baba Ramdev but "Seth Ramdev" as he has now turned a businessman," said Dalai, inviting anger of BJP MLAs..."</p>	<p>Indian Express, March 10, 2017 ,</p> <p>Available at weblink http://indianexpress.com/article/cities/chandigarh/dig-at-baba-ramdev-triggers-congress-bjp-duel-45652854/ (Weblink last visited on 29 August 2017)</p>
32	<p>Should BJP now promote Baba Ramdev as the next president of India?</p> <p>'</p> <p>"....As he is more likely to be called "LALA RAMDEV", he is more interested in doing business in the name of Yog Guru. Don't be surprised when you see a new title in years to come as "Chemical free CEO" of a newly dawned Indian Herbal - multinational Inc. "We better send him to some big corporate and not to presidency...."</p>	<p>Quora, April 17, 2017</p> <p>Available at weblink https://www.quora.com/Should-BJP-now-promote-Baba-Ramdev-as-the-next-president-of-India (Weblink last visited on 29 August 20-17)</p>

33	Baba Ramdev becomes Lala Ramdev. 212.5% increase in Patanjali Gas Haran Churan in six months.	India News, November -8, 2010 . Available. at weblink https://www.reddit.com/r/indianews/comments/5dm39o/baba_ramdev_becomes_lala_ramdev_2125_increase_in/ (Weblink last visited on 29 August 2017)
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37. The author has further submitted that the plaintiff, i.e. the petitioner herein, has in fact twisted and misrepresented the facts in the plaint and various paragraphs which have been quoted in the plaint are in fact assimilation by the Plaintiff, i.e., the present petitioner, of different portions of the **BOOK** in an unfair manner, and sub-headings to the portions quoted in the plaint in fact do not even exist in the **BOOK**.

38. The author further submits that the statements in the plaint are extremely vague, and adversely impacts the author in conduct of her defence in as much as the Plaintiff i.e., the present petitioner herein, has not pleaded with any clarity or specificity of the alleged defamatory/objectionable portions of the **BOOK** or the meanings of the portions of the **BOOK** that the plaintiff i.e., the present petitioner herein, considers to be defamatory. The author further submits that the entire plaint on a meaningful reading does not disclose any cause of action in relation to the **BOOK** and that even if the entire plaint is to be taken in its face value, the Plaintiff, i.e., the present petitioner herein, is not entitled to any relief.

39. *Inter alia*, the author submitted that the suit has not been

properly instituted and has been instituted on a power of attorney which has not been duly executed.

40. The author further submits that the plaintiff i.e., the present petitioner herein, has not valued the suit nor valued the suit properly and the relief of damages has not even been quantified and that the requisite court fees has not been paid by the plaintiff, i.e., the present petitioner herein, on the plaint and that a suit which is not valued properly and which is accompanied with insufficient court fee is *non est* in law and immunity from litigation unless appropriate court fees has been paid on the plaint is a valuable right of the defendant, i.e., the respondent No.1 to the present petition, i.e., the author. The author further submits that no useful purpose would be served by the grant of relief of permanent injunction or declaration as prayed for in the plaint by the Plaintiff, i.e., the present petitioner herein, that many copies of the **BOOK** have already been sold and circulated by the publisher prior to the date of the *ex parte ad interim* injunction order dated 04.08.2017.

41. Reference was further made by the author to the requisite articles published in Economic Times or articles or those available on internet www.devbhoomi.com/god-man-to-tycoon. It is further submitted that the excerpt "*pair dabakar sant bane, gala dabakar mehan, kuch yun bataya gaya baba ramdev ka sach*" is not a part of the **BOOK** and is not even alleged to be a part of the **BOOK**. The author further contended that whether it would be slanderous or not if it were to be a part of the **BOOK** therefore, does not even arise. The author further denied that defendant No.1, i.e., the respondent herein,

has selectively picked and chosen the instances out of the context to make them slanderous to malign the reputation of the Plaintiff.

42. The author further submitted that the plaintiff, i.e., the present petitioner herein has not sought any relief against any information published by third parties by the social media or internet or any other medium which thus precluded him from claiming the reliefs sought from the same against the respondents.

43. *Inter alia*, the author has challenged the invocation of the territorial jurisdiction of this Court by the plaintiff, i.e., present petitioner herein.

Written Statement of the Publisher.

44. The Publisher, i.e., M/s Juggernaut Books Pvt. Ltd. through its written statement dated 1.9.2017 contends that no portion of the contents of the **BOOK** are defamatory in nature and thus no cause of action arises to the plaintiff, i.e., the present petitioner herein, to seek action for defamation and that the plaint has been filed dishonestly with an intention to get the relief by misleading the Court.

45. Substantially, the contentions of the Publisher, i.e., M/s Juggernaut Books Pvt. Ltd are virtually the same as those had been put forth by the author. The Publisher, i.e., M/s Juggernaut Books Pvt. Ltd further submits that the **BOOK** is not even the first full length **BOOK** about the plaintiff, i.e., the present petitioner herein, and that at present a number of full length books about the respondent No.1 which include *From Moksha To Market- The Baba Ramdev Phenomenon* by Kaushik Deka, *Ramdev Baba- 7 Life lessons* by V J Gartier, *Ek Yogi, Ek Yoddha* by Sandeep De, *Gurus-Stories of Indias*

Leading Babas by Bhavdeep Kang, *Yog Guru Swami Ramdev* by Ashok Raj, *The Life and Times of Baba Ramdev* by Ashok Raj, *Baba Ramdev and The Resurgence of the New India Movement* by K C Mahendru and *Baba Ramdev Ke Sapnon Ka Bharat* by K C Mahendru.

46. The Publisher, i.e., M/s Juggernaut Books Pvt. Ltd further submits that the even the petitioner has himself published variety of issues – e.g. *Yog; It's Philosophy and Practice* and it has been contended by the Publisher, i.e., M/s Juggernaut Books Pvt. Ltd. that it was in public interest that there should be as many views as possible circulating in the marketplace of ideas, especially when the matter relates to the figures and issues of national importance. The Publisher, i.e., M/s Juggernaut Books Pvt. Ltd further submits that the **BOOK** is a biography that traces Baba Ramdev's journey from humble beginnings to teaching yoga to people and his rise to fame and widespread influence.

47. The Publisher, i.e., M/s Juggernaut Books Pvt. Ltd, i.e. the respondent No.1, to CM(M) 556/2018 and respondent No.2 to CM(M) 557/2018 submits that it is a renowned publishing house based in New Delhi which brings high quality books to the readers and its address has been incorrectly reproduced in the Complaint and it is Juggernaut Books Pvt. Ltd. 4th Floor, K.S. House, No. 118, Shahpur Jat, New Delhi 110049 and that Respondent No.3 (M/s Amazon India Ltd.) and the respondent No. 4 (M/s Flipkart Internet Pvt. Ltd.) to the present petition are online stores which are well known and carry out a busy trade in products and services and that they are third parties who are

in no way under the control or supervision of the Publisher, i.e., M/s Juggernaut Books Pvt. Ltd.

48. The Publisher has further submitted no portion of the **BOOK** or even of the supplied passages when dealing with Shanker Dev's disappearance is defamatory at all and states that the entire text explains that (a) there was a disappearance, (b) the finger of suspicion had been pointed by some persons towards the Plaintiff, i.e. the petitioner herein, (c) there was an investigation and court hearings regarding the matter, (d) the Plaintiff, i.e., the petitioner herein, had dismissed all allegations as being concocted and politically initiated and that the CBI had investigated the entire matter and that every statement made is substantially true.

49. *Inter alia*, the publisher submits that the average reader of the **BOOK** through the internet is a person who would read pages 201 and 202 of the **BOOK** and would shut the **BOOK** and that reader would have read 200 pages would have almost certainly finished reading the next 6 pages and by cherry picking, portions, sentences and statements, the Plaintiff, i.e., the present petitioner, has misrepresented the case entirely, and made it appear as if the tone of the **BOOK** is purely, negative, critical or as if the defendants, i.e. the respondents have some secret agenda.

50. *Inter alia*, the publisher submits that the portion pertaining to the fact that Acharya Karamveer has had a falling out with the Plaintiff, i.e., the petitioner herein, and they no longer agreed on many things and the Publisher conducted extensive interviews with Acharya Karamveer and has direct and irrefutable statements recorded

regarding the Plaintiff, i.e., the present petitioner herein, and even that fact, that two people disagree, which can have no possible impact on anybody's reputation, has been part of the public domain for years and has been commented on by the media.

51. The Publisher, i.e., M/s Juggernaut Books Pvt. Ltd further submits that the fifth allegedly offending portion of the **BOOK** released, which is not extracted, but merely alluded to, relates to the untimely death of Rajeev Dixit and that no statement made in the chapter on the death of Rajeev Dixit, being Chapter 19 of the **BOOK** is false, or untrue. The Publisher further submitted that the sixth allegedly defamatory portion is the mention of the murder of Swami Yogananda and submits that all that has been stated in the **BOOK** about Swami Yogananda is that (a) Swami Yogananda was a close associate of the Plaintiff and that they shared business ties and (b) that Swami Yogananda was found dead murdered by knife. This information was gleaned from (a) publically available sources listed at Pages 214-215 of the **BOOK** and (b) FIR and the closure report in the investigation by the police.

52. The publisher further submitted that that Swami Yogananda was found dead as murdered by knife and there was no other eye witness and the closure report was filed.

53. The Publisher reiterates that the claims of the plaintiff, i.e., the present petitioner, have been far more explicitly, dealt with by contemporary reports in newspapers, TV channels in India and any other media and if there was ever any question of defamation, the Plaintiff has acquiesced over and over again, and the plaintiff, i.e., the

present petitioner, would have even rebutted allegations when confronted and those rebuttals and comments from the Plaintiff, i.e., the present petitioner and his team have all been reported on and treated fairly in the **BOOK** and a number of the sources for these portions have been filed along with the written statement.

54. *Inter alia*, the Publisher submits that the basis of the **BOOK** includes references to more than 180 press articles, more than ICQ documents obtained from the Registrar of Companies, 28 taped interviews and many Right to Information requests and each of the facts that have been cited in the order of the learned Trial Court of the ACJ-CCJ being as controversial has been the subject of press speculation and even been debated in legislative assemblies of States and that the **BOOK** merely reports these facts, in a holistic context and that the statements made in the **BOOK** are about a public person, in public interest and are clearly the Author's own opinion and are fairly made on the basis of available information and they have in no way been made with malice.

55. The Publisher, i.e., M/s Juggernaut Books Pvt. Ltd, arrayed as respondent No.1 in CM(M) 556/2018 and respondent No.2 in CM(M) 557/2018 has submitted that the publisher and the author have operated within the legitimate sphere of activity protected under Article 19(1)(a) of the Constitution of India and they have reported on facts and offered their view points, opinions or critiques, concerning matters that they *bona fide* believe in their editorial discretion to be in the larger interests of the general community and that the contents of the disputed Article which have been challenged by the plaintiff,

i.e., the present petitioner, are thus, in any event, protected by the doctrine of fair comment.

56. The publisher further submitted that as laid down in several landmark cases, to determine whether something is 'fair comment', one must assess whether the opinion however exaggerated, obstinate or prejudiced it might be honestly held by the person expressing it and that any further inference drawn from facts truly set out in a news report of article must only be a fair and reasonable inference, and it is not necessary that they must be an inevitable inference and that the Article targeted by the plaintiff, i.e., the present petitioner, falls well within the realm of "fair comment"—which is a manner of speech and expression that is constitutionally protected under Indian law and that such articles concerning the affairs of famous and powerful persons are common place in Indian society, and rightly so—in many a case have rightly helped unearth the illegalities also.

57. The publisher has further submitted that it is well settled that the grant of injunction both, interim or permanent, as provided under Order XXXIX Rule 1 & 2 CPC and Order XXXVIII of the Specific Relief Act cannot be used to negate the legitimate reporting by the media/press, even if such report is pointed or harshly worded nor should the law be allowed to choke the fair warning to the public if the public interest stands threatened in some way.

58. *Inter alia*, it has been submitted on behalf of the publisher that in a case of injunctive reliefs against allegedly, defamatory news articles in every case seeking the relief of injunction the Plaintiff, i.e., the present petitioner has to cogently establish that the book or article

complained of is *prima facie* defamatory and that for injunctive reliefs against allegedly, defamatory news articles in every case seeking the relief of injunction the Plaintiff, i.e., the present petitioner has to cogently establish that the book or article complained of is *prima facie* defamatory and the balance of convenience must also be established. The publisher further submitted that before getting into all other issues, the plaintiff of course bears the onus of proving that defamatory words concerning him were at all published –for which it is simply not sufficient for him to merely show that he has a reputation or that he is the subject of the article or that he personally disagrees with the contents of the article and that the article unfairly casts him in a false light, and that it is factually not true, and that the opinions of the author expressed therein "*are not at all*" warranted by facts or otherwise protected by the doctrine of '*fair comments*'.

59. The publisher further submits that in jurisdictions having robust Constitutionally guaranteed free speech rights for the media, as in India, it is now well-established that law suits filed solely with the intent of censoring, intimidating and silencing critics by burdening them with the costs of legal defence, until they abandon their criticism or opposition - which are known by the commonly-used acronym of "SLAPP" (i.e., strategic lawsuit against public participation) –are not be entertained by the courts of law. It, is further submitted that the suit if pending before the ACJ-CCJ-ARC (East) had been so filed precisely with the intent of removing legitimate commentary about possible conflicts of interest of the Plaintiff, i.e., the present petitioner from, the public domain - and hence ought not to be entertained.

60. The publisher has denied that the Plaintiff, i.e., the present petitioner, has not in any way established that the contents of the **BOOK** authored by the author, i.e., the respondent Priyanka Pathak Narain are either *prima facie* defamatory to the plaintiff, i.e., the present petitioner, or that there was a specific intent on the part of the defendants, i.e., the respondents No.1 and 2 herein, to defame the Plaintiff, i.e., the present petitioner, by maliciously publishing untruths about him and that the **BOOK** published by the publisher, only seeks to report on certain facts about a well known public figure— which reporting is not only within the rights of the defendants, i.e., the respondent herein (and every citizen), but also one of the media's, most important duties' towards the society and it has also been submitted that the contents of Paragraph 9 of the Plaint are false and misleading and therefore denied. It is further denied that the contents of the **BOOK** are malicious and scandalous or out of context with an ulterior motive.

61. The Publisher submits that in fact, the extract "*Ramdev's first serious falling out was with Karamveer Maharaj, his first mentor, the man who taught him how to teach yoga*" has been maliciously extracted from the **BOOK** by the Plaintiff without providing the context in which these lines have been written. The publisher further denied that the publisher has wrongly attributed any accusation to Karamveer which he has not made, and the making of which is not in the public domain.

62. It is denied that any cause of action arose on 29th July 2017 and it is further denied that any cause of action arose on 30th July 2017 due

to the interview of the author in Economic Times. It is further denied that the **BOOK** is causing any loss of reputation to the Plaintiff, i.e., the present petitioner, or that it has a bearing on Patanjali Ayurveda Ltd. Co. The publisher further denied that the cause of action is '*a continuing one*' and stated that no cause of action has been shown to arise in the present dispute as the Patanjali Ayurveda Ltd. Co. has not even been made a party to the suit.

63. The publisher has further denied that the **BOOK** violates the plaintiff's right and reputation and has denied that there is a strict fundamental right to reputation and has also denied that the **BOOK** makes any assertions which are not verified. The publisher further submits that the petitioner has made contradictory and mutually destructive pleas and that on one hand prayed for an injunction against the selling and publishing of the **BOOK** as a whole whereas on the other hand he has prayed for deletion of only certain paragraphs of the **BOOK**. *Inter alia* the publisher has submitted that the prayer made by the petitioner seeking that all the books in the market be called back in as much as the books have been lawfully sold to third party vendors/distributors/book sellers etc.

64. The petitioner through submissions made on behalf of the petitioner both orally and through his written synopsis, seeks to contend as under : -

(i) That the approach of the learned Trial Court in the impugned order dated 28.04.2018 was totally contrary to the settled principles of law that the Appellant Court would not normally interfere with the

exercise of discretion of the Court of first instance and would not substitute its own discretion. The petitioner further submits that except findings of the Appellate Court that the findings of the Trial Court was incorrect in relation to the valuation of the suit no reason has been recorded in the impugned order as to why the order of the Trial Court was perverse so as to not be a possible view.

(ii) Reliance in this regard was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in **Wander Ltd v. Antox India P. Ltd.** 1990 (Supp) SCC 727 [Paragraph 13 & 14]

“13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown

to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in [Printers \(Mysore\) Private Ltd. v. Pothan Joseph](#) :

... These principles are well established, but as has been observed by Viscount Simon in Charles Oseption & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the

application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle.”

and the verdict of the Supreme Court in ***Mohd. Mehtab Ktean v. Khushnuma Ibrahim Khan*** (2013) 9 SCC 221 with specific reliance to para 20 of the same to the effect: **[Paragraph 20]**

“20. In a situation where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the Trial Court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd.”

65. It was also contended by the petitioner that the appellate Court had erred in its finding that the balance of convenience was not in the favour of the Petitioner as the said finding is based solely on the fact that there was publication prior to the order of injunction on 04.08.7.2017 and that this finding totally ignores that the publication in question came to the knowledge of the Petitioner only on 29.07.2017 and the Petitioner had moved the Court within four working days from the date of knowledge, clearly indicating the urgency on the part of the Petitioner to protect his fair reputation and privacy. It was also submitted on behalf of the petitioner that it is pertinent to point out that in response to this averment of the Petitioner, there has been no categorical date of publication provided by the Respondent and that this finding is perverse in as much as it is placing a burden on the Petitioner to seek a prior restraint on a book, despite the Petitioner not having any knowledge of the contents of the book until the same was to enter the market, as publication of the same took place without reference to him and without his consent. *Inter alia*, the petitioner submits that the Ld. Appellate Court has completely erred in its finding that there are no pleadings to support the case of the Petitioner and rather submitted that it had specifically been argued by the petitioner that in relation the claim of privacy that the right to privacy and the right to reputation are in fact two sides of the same coin and are both founded in Article 21 of the Constitution of India and that the common law right of privacy has an identical content to the constitutional right. Reliance in this regard was placed on behalf of the petitioner on the verdicts of the Hon'ble Supreme

Court in *Justice Puttuswamy v. UOI* (2017) 10 SCC 1, Paragraph 298 and on the verdict of Hon'ble Mr. Justice Chandrachud J.), Paragraph 397 — 398 and on the verdict of Hon'ble Mr. Bobde J., Paragraphs 623 & 624, (Kaul J.)] and in *Subramanian Swamy v. Union of India* (2016) 7 SCC 221, Paragraphs 35, 48,133

66. The petitioner thus submitted that the Petitioner having pleaded his right to reputation as well as violation of his fundamental rights under Article 21 and the finding of the Ld. Appellate Court that the Petitioner had not impliedly pleaded the right to privacy was erroneous and it was also submitted on behalf of the petitioner that the learned Appellate Court in the impugned order has erred in its finding that there were no pleadings on the part of the Petitioner that the allegations were false, as a bare perusal of the plaint reveals that the petitioner has clearly averred that the allegations were false, malicious, misleading, slanderous twisted, incorrect and defamatory.

67. It was submitted on behalf of the petitioner that extensive reliance had been placed by the Learned Appellate Court on judgments of this Hon'ble Court in *Khushwant Singh v. Maneka Gandhi* (2001) SCC Online Del 1030, *Tata Sons v. Greenpeace International* 2011 SCC Online Del 466, *Sardar Charanjeet Singh v. Arun Purie & Ors.* 1983 (4) DRJ 86, *Dr. Shashi Tharoor v. Arnab Goswami* 2017 SCC Onling 12049 to observe to the effect that in suits of the kind filed by the petitioner, the Civil Court should grant an injunction for publication of the alleged defamatory contents not as a rule, but as an exception, only when the defence of the defendant appears to be completely meritless and it has been submitted on behalf

of the petitioner that the said observations are applying the English Common Law in *Bonnard v. Perryman* [1891 2 (Ch) 269] as observed by Lord Coleridge CJ, which reads to the effect : -

“that there was a particular need not to restrict the right of free speech in libel cases by interfering before the final determination of the matter by a jury otherwise than in a clear case of an untrue libel, saying: ‘But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.

In the particular case before us, indeed, the libellous character of the publication is beyond dispute, but the effect of it upon the Defendant can be finally disposed of only by a jury, and we cannot feel sure that the defence of justification is one which, on the facts which may be before them, the jury may find to be wholly unfounded; nor can we tell what may be the damages recoverable.”

68. It was however submitted on behalf of the petitioner that the Appellate Court has not taken into account the verdicts relied upon by

the petitioner and did not consider the judgment of the Hon'ble Supreme Court in *Justice K.S Puttuswamy v. UOI (2017) 10 SCC 1* nor in *Subramanian Swamy v. Union of India (2016) 7 SCC 221* and that the judgments have not accounted for the balancing of the expanded rights of reputation and privacy as explained in these aforementioned judgments, against the right of freedom of speech and expression and must accordingly be viewed with caution.

69. It was submitted on behalf of the petitioner that the impact of the judgment in *Justice K.S. Puttaswamy v. UOI (2017) 10 SCC 1* on the restraint of defamatory publication has been explained by the Hon'ble High Court of Madras in *Kanimozbi Karunanidhi v. Thini P.Vardarajan (CS No. 705 of 2014, dated 16.05.2018)* reported whilst placing reliance on paragraphs 36, 37, 40, 41, 42, 43 thereof, which read to the effects : -

“36. In view of the above stated position of law declared by the Hon'ble Supreme Court, the facts of the present case need to be examined in the light of the pronouncement of the Hon'ble Supreme Court in Justice K.S.Puttaswamy's case. I am alive to the fact that Justice K.S.Puttaswamy's case, was with reference the nature and scope of the Right to Privacy of an individual vis-a-vis the State. At the same time, I am of the considered opinion that the principles laid down therein on the scope of the Right to Privacy as well as in attempting the balance between the Right to Privacy and Right to Free Speech, can be safely applied to the case on hand, in as much as, the Hon'ble Supreme Court was also concerned with the Right to Free Speech, enshrined the Article 19(1)(a) of the Constitution of India, while discussing the scope of the Right to Privacy,

37. I am also alive to the fact that the applicant as well as the many of her immediate family members are prominent public figures and have been holding high public offices in the State for quite some time now. Will that alone provide a license to others, particularly the Press and Media, to write something defamatory (either true or false) about them, on the ground that such information is in the public interest. As has been pointed out by Hon'ble Mr. Justice Sanjay Kishan Kaul in Justice K.S. Puttaswamy's case, all matters in which the public interested may not be in public interest. In A.Raja and Another v. P.Srinivasan, Publisher and Printer of Junior Vikatan, Vasan Publications Private Limited, Chennai and Others, reported in (2009) 8 MLJ 513, a Division Bench of this Court had considered the right of the family of a Politician/a Union Minister to be protected from invasion by the Press and Media. In fact the course of the said Judgment, a Division Bench has observed as follows:

"Equally, the contention put forth by the learned senior counsel for the respondents that they enjoy freedom of press and hence they could publish anything and everything cannot be countenanced. The respondents cannot be allowed to take shelter under the Doctrine of Freedom of Press, and the same cannot also be extended to publishing exclusively private affairs of the appellants calling it as connected to or concerned with public life."

40. The theory that there cannot be a prior restraint or a gag order upon the Press or Media stands diluted, after the judgment of the Hon'ble Supreme Court in Justice K.S. Puttaswamy's case. The observations of Hon'ble Mr. Justice Sanjay Kishan Kaul, extracted earlier would show that the Media cannot in the guise of public interest publish anything and everything, which may be interesting.

41. As opposed to the plea of the respondents in R.Rajagopal @ R.R.Gopal @ Nakkheeran Gopal and others v. J.Jayalitha's case, cited supra, that the defence of truth is conspicuously absent in the pleadings of the respondents in the case on hand, all that is stated in the counter affidavit is that, the articles are being published based on information provided by reliable sources, including persons belonging to the very close family of the applicant. The source of that information has not been disclosed, therefore, the respondents in this case have not specifically taken the defence of truth. Of course, truth may be a defence to action for defamation, but whether publication of all truth about an individual particularly relating to his/her personal life is in public interest or not is a larger question that may arise.

42. In balancing the two rights viz. the Right to Privacy and the Right to Freedom of Speech, the element of public interest is always based as a touch stone. The fact, as to whether, the former husband of the applicant is or was the owner of an estate near the location, where the fire accident happened recently may be of some interest to the public, but definitely cannot be said to be in public interest. Similarly, there are several other articles published by the respondents, which suggest strained relationship between her and her brother (who also happens to be a prominent politician), some talk of her relationship between her and a Police Officer, some attributing certain motives in her meeting with a Union Minister and certain cartoons and caricatures, which refer to the detention of the applicant etc. Of course, the veracity of those statements made in those articles or the question as to whether they are defamatory in nature or not will have to be decided only after trial, but at the same time the respondents, in my considered opinion, cannot be allowed to go on publishing articles, which do not relate to the public life of the applicant, as a member of the parliament or as a

leader of the political party or as a daughter of the former Chief Minister or as a sister of the former Deputy Chief Minister.

43. Therefore, in my considered opinion, in the light of the law laid down by the Hon'ble Supreme Court in Justice K.S.Puttaswamy's case, relating to the Right to Privacy, I am constrained to conclude that though there cannot be a blanket injunction as rightly contended by Mr. Sathish Parasaran, at the same time, there cannot be an order in favour of the respondents enabling them to publish anything and everything in the guise of public interest. I am therefore, of the opinion that the order of injunction granted of 05.01.2014 and modified by the order dated 25.04.2016 is to be made absolute, subject to the following conditions.

(i) The respondents shall not publish anything regarding the private life of the applicant, viz., her family, her marriage, procreation, motherhood, child-bearing and education, without the consent of the applicant.

(ii) Whenever, the respondents propose to publish any article relating to the private life of the applicant, claiming that it is in public interest, the respondents shall forward their queries/gist or the full article to the applicant to her email ID (to be furnished) and await for her response. If any response is received within 48 hours, the response shall also be published with the same prominence of the article. If no response is received within the 48 hours, the respondents will be at liberty to go ahead and published the article."

70. It was thus submitted on behalf of the petitioner that as laid down in *Justice K.S. Puttaswamy v. UOI (2017) 10 SCC 1* by Hon'ble Mr. Justice Sanjay Kishan Kaul that all matters in which the

public is interested may not have an element of public interest and breaches into privacy thus made cannot be overlooked observing to the effect that the public does not have an interest in knowing all information that is true and that the public has no justification for all truthful information being made available to the public and that every individual should have a right to be able to exercise control over his / her common life and image as public to the writing and to control commercial his / her identity and may be permitted to prevent from using his image, name and other aspects of his / her personal life and identity for commercial purposes without his /her consent.

71. It is essential to bring forth paragraphs 623, 624, 625, 626,627 and 639, 646 of the said verdict which are as follows:

“623. An individual has a right to protect his reputation from being unfairly harmed and such protection of reputation needs to exist not only against falsehood but also certain truths. It cannot be said that a more accurate judgment about people can be facilitated by knowing private details about their lives – people judge us badly, they judge us in haste, they judge out of context, they judge without hearing the whole story and they judge with hypocrisy. Privacy lets people protect themselves from these troublesome judgments.

624. There is no justification for making all truthful information available to the public. The public does not have an interest in knowing all information that is true. Which celebrity has had sexual relationships with whom might be of interest to the public but has no element of public interest

and may therefore be a breach of privacy.¹⁹ Thus, truthful information that breaches privacy may also require protection.

625. Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent.²⁰

626. Aside from the economic justifications for such a right, it is also justified as protecting individual autonomy and personal dignity. The right protects an individual's free, personal conception of the 'self.' The right of publicity implicates a person's interest in autonomous self-definition, which prevents others from interfering with the meanings and values that the public associates with her.²¹

627. Prosser categorized the invasion of privacy into four separate torts :

- 1) Unreasonable intrusion upon the seclusion of another;*
- 2) Appropriation of another's name or likeness;*
- 3) Unreasonable publicity given to the other's private life; and*
- 4) Publicity that unreasonably places the other in a false light before the public* From the second tort, the U.S. has adopted a right to publicity.

.....x.....x.....x.....x.....x

....x.....x.....x.....x.....x

The Restrictions

639. *The right to privacy as already observed is not absolute. The right to privacy as falling in part III of the Constitution may, depending on its variable facts, vest in one part or the other, and would thus be subject to the restrictions of exercise of that particular fundamental right. National security would thus be an obvious restriction, so would the provisos to different fundamental rights, dependent on where the right to privacy would arise. The Public interest element would be another aspect.*

.....x.....x.....x.....x.

.....x.....x.....x.....x

646. If the individual permits someone to enter the house it does not mean that others can enter the house. The only check and balance is that it should not harm the other individual or affect his or her rights. This applies both to the physical form and to technology. In an era where there are wide, varied, social and cultural norms and more so in a country like ours which prides itself on its diversity, privacy is one of the most *important rights to be protected both against State and non-State actors and be recognized as a fundamental right. How it thereafter works out in its inter-play with other fundamental rights and when such restrictions would become necessary would depend on the factual matrix of each case. That it may give rise to*

more litigation can hardly be the reason not to recognize this important, natural, primordial right as a fundamental right.

72. The observations made in the **R.Rajagopal @ R.R.Gopal @ Nakkheeran Gopal and others v. J.Jayalitha and another** reported in 2006 (2) LW 377 are to the effect : -

“38. Even assuming that the articles published by the appellants amount to character assassination of the respondents, there is no justification for granting a blanket injunction restraining the appellants from publishing any articles, in future. It would not be appropriate for us to examine the articles at this stage on the touchstone of defamation, but what we do observe is that they are not of such a nature warranting a restraint order especially when the appellants are willing to face the consequences in a trial in case the same are held to be defamatory and the plea of the appellants of truth is yet to be analysed by the Court. But the very same Division Bench, in the later portion of the judgment has observed as follows:

We agree with Mr.Jothi that the scrutiny of public figures by media should not also reach a stage where it amounts to harassment to the public figures and their family members and they must be permitted to live and lead their life in peace.”

(emphasis supplied)

73. Specific reference was also placed on behalf of the petitioner on the observations of the Hon’ble Division Bench in **R.Rajagopal v. State of Tamil Nadu**, reported in 1994 (6) SCC 632 which reads to the effect : -

“29. Applying the above principles, it must be held that the petitioners have a right to publish, what they allege to be the life story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorisation. But if they go beyond that and publish his life story, they may be invading his right to privacy and will be liable for the consequences in accordance with law. Similarly, the State or its officials cannot prevent or restrain the said publication. The remedy of the affected public officials/public figures, if any, is after the publication, as explained hereinabove..””

74. The observations in paras 39 & 40 of the *Kanimozbi Karunanidhi v. Thini P.Vardarajan* (CS No. 705 of 2014, dated 16.05.2018) read to the effect : -

“39. After observing so a Division Bench had after referring to R.Rajagopl v. State of Tamil Nadu, reported in 1994 (6) SCC 632, has observed that:

“whenever the appellants therein proposed to publish any article purely concerning personal life of the first respondent or the second respondent or both, the appellants shall forward their queries and/or the gist of the proposed article, as the case may be to the fax number furnished by the learned counsel appearing for the respondents. The first respondent or the second respondent or both as the case may be shall respond to the queries of the appellants in relation to their proposed article to the fax number of the appellants. Therefore, a limited right to publish was granted by the

Division Bench. To a specific query from the Court as to the relevancy of the ownership of an estate by the former husband of the applicant in the Kurangani Forest, where the forest fire broke out recently killing nearly 23 people, the startling response of the Senior Counsel for the respondents, upon instructions, was that the respondents have to sell their magazines. This, in my considered opinion, exposes the mind of the respondents to write anything and everything, which is even remotely connected to the applicant, in order to enhance their commercial interest. I am unable to accept this as a responsible journalistic approach. An unfortunate fire accident, which took place in the Forest is sought to be related to somebody, who was connected with the applicant some 30 years back, only with a view to enhance the sale of the magazine. It is this wild imagination that is called responsible journalism.

40. The theory that there cannot be a prior restraint or a gag order upon the Press or Media stands diluted, after the judgment of the Hon'ble Supreme Court in Justice K.S.Puttaswamy's case. The observations of Hon ble Mr.Justice Sanjay Kishan Kaul, extracted earlier would show that the Media cannot in the guise of public interest publish anything and everything, which may be interesting."

to bring forth that the theory that there cannot be a prior restraint or a gag order upon the Press or Media stands diluted, after the judgment of the Hon' ble Supreme Court in Justice K.S.Puttaswamy's case. It is contended on behalf of the petitioner that the observations of Hon'ble Mr.Justice Sanjay Kishan Kaul, extracted earlier would show that the media cannot in the guise of public interest publish anything and everything.

75. It was further observed in para 41 of the said verdict in *Kanimozbi Karunanidhi v. Thini P.Vardarajan* (CS No. 705 of 2014, dated 16.05.2018) which reads to the effect : -

“41. As opposed to the plea of the respondents in R.Rajagopal @ R.R.Gopal @ Nakkheeran Gopal and others v. J.Jayalitha’s case, cited supra, that the defence of truth is conspicuously absent in the pleadings of the respondents in the case on hand, all that is stated in the counter affidavit is that, the articles are being published based on information provided by reliable sources, including persons belonging to the very close family of the applicant. The source of that information has not been disclosed, therefore, the respondents in this case have not specifically taken the defence of truth. Of course, truth may be a defence to action for defamation, but whether publication of all truth about an individual particularly relating to his/her personal life is in public interest or not is a larger question that may arise.” ,

which brings forth categorically that truth may be a defence to action for defamation, but whether publication of all truth about an individual particularly relating to his/her personal life is in public interest or not is a larger question that may arise.

76. The observations in paragraphs 43 and 44 of the said verdict of *Kanimozbi Karunanidhi v. Thini P.Vardarajan* (CS No. 705 of 2014, dated 16.05.2018) read to the effect:-

“43. Therefore, in my considered opinion, in the light of the law laid down by the Honble Supreme Court in Justice K.S.Puttaswamy’s case, relating to the Right to Privacy, I am constrained to conclude

that though there cannot be a blanket injunction as rightly contended by Mr.Sathish Parasaran, at the same time, there cannot be an order in favour of the respondents enabling them to publish anything and everything in the guise of public interest. I am therefore, of the opinion that the order of injunction granted of 05.01.2014 and modified by the order dated 25.04.2016 is to be made absolute, subject to the following conditions.

(i) The respondents shall not publish anything regarding the private life of the applicant, viz., her family, her marriage, procreation, motherhood, child-bearing and education, without the consent of the applicant.

(ii) Whenever, the respondents propose to publish any article relating to the private life of the applicant, claiming that it is in public interest, the respondents shall forward their queries/gist or the full article to the applicant to her email ID (to be furnished) and await for her response. If any response is received within 48 hours, the response shall also be published with the same prominence of the article. If no response is received within the 48 hours, the respondents will be at liberty to go ahead and published the article.

44. It is made clear that the above restrictions are only with reference to any publication, which involved some matter which is exclusively private. It is not extended to the functions of the applicant as a Member of the Parliament or as a Leader of the Political Party.”

77. It has been submitted on behalf of the petitioner that the strict application of the rule in *Bonnard v. Perryman* [1891 2 (Ch) 269] is being doubted even in the United Kingdom in light of the recognition of the right to reputation as well as privacy and thus reliance has been placed on *Gatley on Libel and Slander* (Sweet & Maxwell, 12th Edition), *Taveta Investments Limited vs. Financial Reporting Council* [2018] EWHC 1662 (Admin) and *Sunderland Housing Company Ltd v. John Baines* [2006] EWHC 2359 (QB) wherein in Section 4 thereof, the rule has been analyzed with observations in para 25.6 to the effect : -

“25.6 Defence of justification. The general rule has been that where the defendant contends that the words complained of are true, and asserts that he will plead and seek at trial to prove the defence of justification, the court will not grant an interim injunction, unless, exceptionally, the court is satisfied that such a defence is one that cannot succeed. This was the decision in Bonnard v Perryman. Lord Coleridge explained:

“The right of free speech is one which it is for the public interest that individuals should possess and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed.”

This statement of the law has been endorsed and applied consistently since 1891. In recent times the rigidity of the rule has been criticized as incompatible with the proper application of ECHR law, which requires the court to strike a balance between competing rights, notable art.8 (respect for private life) and art.10 (freedom of expression). But though it has been judged that it is not enough for a defendant in the face of a statement of the claimant that the words are untrue merely to assert that the words are true or to state that he intends to justify without identifying the ambit or extent of that defence, the Court of Appeal has unequivocally re-asserted the absolute nature of the rule in defamation cases which it held was unaffected by the Human Rights Act 1998. For the moment, therefore, the proposition that the claimant cannot obtain an interim injunction to restrain the publication of defamatory words in the face of a statement from the defendant, verified as true, that he can and will justify the alleged libel, can be regarded as an invariable rule, unless it is plain that the plea of justification is bound to fail. The claimant need not state that he will justify the particular words or allegation comprising the alleged libel: it is sufficient for him to declare his intention to justify the core or sting of the alleged libel, provided, of course, that the core or sting is a wider or more general meaning than that conveyed by the particular matters described in the words complained of, and is a meaning the words are capable of bearing.”

78. It was submitted on behalf of the petitioner that in the verdict of ***Taveta Investments Limited vs. Financial Reporting Council [2018] EWHC 1662 (Admin)*** the verdict of the Queen’s Bench Division, Administrative Court of the Royal Courts of Justice, Strand,

London, WC2A 2LL dated 29.6.2018 of its very recent judgment observing vide paragraphs 95 & 97 which are as under: -

“95. However, the test for the grant of injunctions in public law cases is higher than that applied in private law proceedings. In R (Interim Executive Board of X) -v- Ofsted [2017] EMLR 5, Stuart-Smith J attempted to draw together the relevant principles from the sometimes “incongruent” case law. i) there is a significant public interest in publication of reports by public bodies, particularly when they are under a duty to publish ([32]; Cambridge Associates in Management -v- Ofsted [2013] EWHC 1157 (Admin) [60]; and R (City College Birmingham) -v- Ofsted [2009] ELR 500 [28]; ii) in such cases the grant of an injunction requires “pressing grounds”: R (Matthias Rath BV) -v- Advertising Standards Authority [2001] EMLR 22 [30]; “the most compelling reasons [are required] to prohibit a public body which is embarked on a quasi-judicial task... from publishing its decision”: R (Debt Free Direct Ltd) -v- Advertising Standards Authority [2007] EWHC 1337 (Admin) [24]; or “exceptional circumstances” R (J) -v- A [2005] EWHC 2609 (Admin) [23]; iii) where, as in Taveta’s case, what is sought to be restrained is allegedly defamatory allegations, then the Court should have regard to the fact that, in private law cases, the principle in Bonnard -v- Perryman [1891] 2 Ch 269 would usually prevent the grant of an order to restrain publication of defamatory statements where the respondent contends that the proposed publication was defensible: [34]; and R -v- Advertising Standards Authority ex parte Vernons Organisation Ltd [1992] 1 WLR 1289, 1293E-1294B.

97. Laws J's express linking of the public law approach to *Bonnard -v- Perryman* has led, as I have noted above, to the threshold for injunctions restraining publication of reports of public authorities to be set very high indeed. The cases in which interim injunctions are granted in private law defamation claims are vanishingly few. Respectfully, however, I have serious reservations as to whether setting the bar so high is still correct or can be justified. i) Although the principle from *Bonnard -v- Perryman* has been approved, post Human Rights Act 1998, by the Court of Appeal in *Greene -v- Associated Newspapers* [2005] QB 972, one of the bases of doing so was that the determination of meaning (so often the heart of a defamation claim) was reserved to the jury ([57]). The Court distinguished the authority of *In re S (A Child)*, stressing "the distinction between a defamation case (where the claimant's right to a reputation has been put in issue and the issue cannot be effectively resolved before the trial) and a case which raises direct issues of privacy or confidentiality" [79]-[81]. ii) Since the decision in *Greene*, the right to trial by jury in defamation claims has been removed (s.11 Defamation Act 2013). A key plank of the justification for retaining the rule in *Bonnard -v- Perryman* has therefore gone. In any event, when an issue arises in public law proceedings concerning the alleged publication of defamatory statements, the matter has always been resolved by a judge sitting alone and not by a jury. iii) Application of the rule in *Bonnard -v- Perryman* and (the equivalent, in public law) *Vernons* gives a presumptive priority to Article 10 (freedom of expression) right over Article 8 (including the right to reputation). It has been held in private law litigation that such presumptive priority is not

justifiable, being inconsistent with the jurisprudence of the ECHR: Douglas -v- Hello! Ltd [2001] QB 967 [133], [135] per Sedley LJ, approved by the House of Lords in Campbell -v-MGN Ltd [2004] 2 AC 457 [55] per Lord Nicholls; [111] per Lord Hope; [138]-[139] per Baroness Hale and in In re S (A Child) [17] per Lord Steyn. The authorities identify the correct test whenever Article 10 and Article 8 interests conflict as that in In re S (A Child) [17] and the test to be applied at the interim stage as that provided by Section 12 Human Rights Act 1998.

and also reference to the paragraph 103 of the said verdict to the effect: -

“103. Therefore, for the reasons set out in this judgment I refuse Taveta’s claim for interim relief. Given my view of the merits of the underlying claim, I am minded to grant Taveta permission to bring its claim for judicial review, but as I have not heard the parties on that latter point I will not make a final decision until the FRC has had a chance to make any further submissions it wishes to make on this issue after considering the judgment. I will invite the parties to agree an order reflecting the decisions I have made and further case management directions.”

to contend that the learned Mr. Justice Nicklin who wrote the judgment himself expressed that he had reservations for the threshold for injunctions restraining publication of reports of public authorities being set so high in ***Bonnard v. Perryman [1891 2 (Ch) 269]*** and that the authorities, identify the correct test wherever Article 10 (freedom of expression) is involved, the presumptive priority to the right to

freedom of speech and expression is held to be not justifiable and the test to be applied at the interim stage is by Section 12(3) of the Human Rights Act, 1998.

79. The verdict in *Sunderland Housing Company Ltd v. John Baines* [2006] EWHC 2359 (QB) of the Court Queen's Bench Division whilst taking into account the Human Rights Act, 1988 and whilst referring to Article 10 thereof of the free speech rights and Article 8 of the same which deals with the rights of protection and reputation and privacy and integrity of a person. It was observed vide paragraphs **15, 16, 17, 18, 19 & 20** thereof to the effect : -

“15. Mr. Price is arguing effectively that the Article 10 free speech rights of his client trump the claimant's Article 8 rights to the protection of reputation and privacy and the integrity of the personality. It is necessary to remember that clear denials of all the defamatory allegations have been made by Mr. Walls in his two witness statements. There is nothing at this stage to suggest that I should treat his evidence as false or dishonest as to its content. Is it right in those circumstances to refuse an injunction merely when there has been an expression of an intention to justify and then to permit a defendant to go on publishing widespread allegations which are as various and grave as these?

*16. There is no doubt that *Bonnard v. Perryman* is powerful authority which has been endorsed not only in modern times but also subsequent to the coming into effect of the [Human Rights Act](#) . Some weight, of course, must now be given to Article 8 interests where they are engaged, especially in the light of the proposition*

advanced by their Lordships in Re S to the effect that when such rights are engaged no one Article will necessarily automatically prevail over another. There is no doubt that Article 10 will always weigh very powerfully, but Article 8 cannot simply be put out of account altogether.

17. It seems to me at least right for a defendant who seeks to resist an injunction against publication of defamatory words to identify the defamatory meaning or meanings which he intends to justify, and also to state in a witness statement verified by a statement of truth that he believes in the truth of the words in that meaning or those meanings. That, it seems to me, must be the very minimum. Of course, there is nothing to prevent a defendant, if he or she wishes, from adducing evidence to show the supposed strength of a proposed plea of justification but that is not something which is a necessary ingredient.

18. With respect to Davis J. it is not necessary in order to resist an injunction to produce "cogent evidence", although that phrase was used in the course of the last hearing when Davis J. was discussing the matter before giving his ruling, I think with Mr. Baines. Where there are many and various defamatory allegations, some of which are undoubtedly very serious, alleging criminal misconduct and matters undoubtedly of great public interest (which, in a sense, cuts both ways) it seems to me that it must be right that a defendant should be required at least to identify the extent to which he proposes and intends to justify. It will not do simply to put in a blanket statement of intention or hope and leave it at that. It is, in my judgment, too cavalier.

19. So far that has not been done. I will

therefore grant the injunction against the first defendant, or rather continue the injunction against the first defendant unless and until the time comes when those basic requirements which I have identified have been complied with. At that stage, it is entirely open to the first defendant and his advisers to make an application to vary or discharge the injunction. But that will have to be addressed on its merits as and when the application is made.

*20. Until that happens, it seems to me that there is absolutely nothing in the scales to set against Mr. Walls' very clear denials in his witness statement. At this stage it is not possible for me to say that there is a clear issue which has to be left to trial. At the moment, it is all too vague. That moment may come. *Bonnard v. Perryman* may then prevail, but at the moment it seems to me too early to give it that priority."*

80. It was thus submitted on behalf of the petitioner that the common law rule in *Bonnard (supra)* as laid down in *Sardar Charanjeet Singh v. Arun Purie & Ors.* 1983 (4) DRJ 86 with specific reference in para 23 is to the effect : -

*“(23) Learned counsel for the defendants submits that they intend to defend the article to be published by them on the grounds of justification, fair comment and qualified privilege and as such no temporary injunction should be issued. In *Gatley on Libel and Slander* 8th edition para 1574 page 641 it has been observed, "when once a defendant says that he is going to justify, the words complained of, there is an end of the case so far as an interim injunction is concerned". In *Halsbury's Laws of England*, 4th edition vol. 28 para 163 page 87 it is observed, "it is well settled*

that no injunction will be granted if the defendant states his intention of pleading a recognised defense, unless the plaintiff can satisfy the court that the defense will fail. This principle applies not only to the defense of justification but also the defenses of privilege, fair comment, consent and probably any other defense". In Fraser-w.Evans and others, 1909(1) All England Law Reports 8 the newspaper admitted that the article to be published would be defamatory to the plaintiff but said that, if they were sued, they would plead justification and fair comment. The injunction was discharged on appeal and it was observed that the court would not restrain the publication of an article even though it was defamatory, when the defendants said that they intended to plead justification or fair comment. Observations to the same effect were also made in Woodward and others v.Rutchins and others, 1977(1) Weekly Law Reports, 760."

81. Reliance was also placed on behalf of the petitioner on the verdict of Hon'ble Supreme Court in *Khushwant Singh v. Maneka Gandhi* (2001) SCC Online Del 1030 with specific reference in paragraph 68 wherein it has been observed to the effect that : -

"68. It is also relevant to state that the Supreme Court in R. Rajagopal's case (supra) was concerned with the preventive action sought for by governmental authorities. Even there the Supreme Court did not rule in their favor. The observation in New York Times' case (supra) popularly known as Pentagon's case succinctly laid down the correct view in this behalf i.e., that there is a heavy burden on governmental authorities to show justification for imposition of a prior restraint. The remedy

would thus be by way of damages and not an order of restraint.”

82. Reference was made *inter alia* on behalf of the petitioner to the observations in ***Tata Sons v. Greenpeace International 2011 SCC Online Del 466*** with specific reference in paragraphs 30, 35, 36 & 37, which are to the effect : -

“30. The English common law precedent on awarding interim injunctions in cases of defamation is set out by the case of Bonnard (supra). In Bonnard it was decided that an interim injunction should not be awarded unless a defence of justification by the defendant was certain to fail at trial level. The Court's observations, widely applied in subsequent judgments are as follows:

“...[T]he subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right

at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions... In the particular case before us, indeed, the libellous character of the publication is beyond dispute, but the effect of it upon the Defendant can be finally disposed of only by a jury, IA No.9089/2010 in CS(OS) No.1407/2010 Page 16 and we cannot feel sure that the defence of justification is one which, on the facts which may be before them, the jury may find to be wholly unfounded; nor can we tell what may be the damages recoverable."

35. In *Holley v. Smyth*, [1998] QB 726, where the potency of the rule (in *Bonnard*) was reaffirmed the Court reiterated the principle as follows:

"I accept that the court may be left with a residual discretion to decline to apply the rule in Bonnard v . Perryman in exceptional circumstances. One exception, recognised in that decision itself, is the case where the court is satisfied that the defamatory statement is clearly untrue. In my judgment, however, that is a discretion which must be exercised in accordance with established principles."

36. The *Bonnard* rule (against interim injunction restraining publication) was affirmed in *Martha Greene v. Associated Newspapers Ltd.*, [2004]

EWCA Civ 1462, in the following terms, after quoting and relying on Halsbury's Laws of England, 4th Ed, vol 28, para 167:

"The Law of Prior Restraint in Defamation Actions: the Rationale of the Rule This survey of the caselaw shows that in an action for defamation a court will not impose a prior restraint on publication unless it is clear that no defence will succeed at the trial. This is partly due to the importance the court attaches to freedom of speech. It is partly because a judge must not usurp the constitutional function of the jury unless he is satisfied that there is no case to go to a jury. The rule is also partly founded on the pragmatic grounds that until there has been disclosure of documents and cross-examination at the trial a court cannot safely proceed on the basis that what the defendants wish to say is not true..."

....Because of the court's reluctance to fetter free speech and because the questions that arise during the proceedings, such as whether the meaning is defamatory, whether justification or fair comment are applicable and as to malice, are generally for the jury, interlocutory injunctions are granted less readily in defamation proceedings than in other matters and according to different principles..."

37. From the above reasoning it follows that the Court will invariably not grant an interim injunction to restrain the publication of defamatory material as it would be unreasonable to fetter the freedom of speech before the full trial takes place, where each of the parties can argue in detail with the help of additional evidence. Similarly in this matter, it is incumbent IA No.9089/2010 in CS(OS) No.1407/2010 Page 18 upon this Court to decide whether it would be reasonable to fetter the reasonable criticism, comment, and parody directed at the plaintiff, which to a large extent is protected by the Constitutional guarantee to free speech, to all the citizens of India. This point of view was also strengthened by a recent challenge to the old common law rule of *Bonnard* in the case of *Greene v. Associated Newspapers Limited*, 2005 (1) All.ER. 30, where it was decided that if it is a known fact that the true validity of the defamation claims will only be tested at trial level then it would only be appropriate for the Court not to award an interim injunction to the plaintiffs as it would otherwise put an unreasonable burden on the concept of free speech. After an elaborate survey of the law on the issue, it was held that:

"This survey of the caselaw shows that in an action for defamation a court will not impose a prior restraint on publication unless it is clear that no defence will succeed at the trial. This is partly due to the importance the court attaches to freedom of speech. It is partly because a judge must not usurp the constitutional function of the jury

unless he is satisfied that there is no case to go to a jury. The rule is also partly founded on the pragmatic grounds that until there has been disclosure of documents and cross-examination at the trial a court cannot safely proceed on the basis that what the defendants wish to say is not true. And if it is or might be true the court has no business to stop them saying it. This is another way of putting the point made by Sir John Donaldson MR in Khashoggi, to the effect that a court cannot know whether the plaintiff has a right to his/her reputation until the trial process has shown where the truth lies. And if the defence fails, the defendants will have to pay damages (which in an appropriate case may includes aggravated and/or exemplary damages as well)".

83. Reference was also made on behalf of the petitioner on the verdict of this Court to the observations in ***Dr. Shashi Tharoor v. Arnab Goswami 2017 SCC Online 12049*** with specific reference in paragraphs 53 & 87 wherein it has been observed to the effect that : -

“53. Another general rule in England is where the defendant contends that the words complained of are true, and asserts that he will plead and seek at trial to prove the defence of justification, the court will not grant an interim injunction, unless, exceptionally, the court is satisfied that such a defence is one that cannot succeed. This was the decision in Bonnard v.

Perryman, (1891) 2 Ch. 269. Lord Coleridge explained:

"The right of free speech is one which it is for the public interest that individuals should possess and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed."

"It ought to only be exercised in the clearest cases, where any jury would say that the matter complained of was libellous and where, if the jury did not so find, the Court would set aside the verdict as unreasonable. The Court must also be satisfied that in all probability the alleged libel was untrue, and if written on a privileged occasion that there was malice on the part of the defendant. It followed from those three rules that the Court could only on the rarest occasion exercise the jurisdiction."

87 . This Court has also held in Khushwant Singh v. Menaka Gandhi, MANU/DE/1012/2001 : AIR 2002 Delhi 58 that where the defendant contends that the words complained of are true, and asserts that he will plead and seek at trial to prove the defence of justification, the court will not grant an interim injunction, unless, exceptionally, the court is satisfied that such a defence is one that cannot succeed.

84. It is essential to advert to the conclusion in ***Dr. Shashi Tharoor v. Arnab Goswami 2017 SCC Onling 12049*** with specific reference in paragraphs 96, 97, 98, 99 & 100 wherein it has been observed to the effect that : -

“96. Keeping in view the aforesaid mandate of law and the prima facie findings, this Court is of the opinion that in the present case the defendants have the right to air their stories and the same cannot be curbed, but it has to be tempered and balanced.

97. This Court is of the view that it is important that when criminal investigation has commenced, media reporting should be sensitive to the indeterminacy of the questions raised in the proceedings. Press cannot 'convict anyone' or insinuate that he/she is guilty or make any other unsubstantiated claims. Press has to exercise care and caution while reporting about matters under investigation or pending trial.

98. This Court refrains from saying anything more as Mr. Sandeep Sethi, learned senior counsel for defendants had assured this Court on 29th May, 2017 that the defendants in future would exercise restraint as well as bring down the 'rhetoric' and even according to Mr. Salman Khurshid, learned senior counsel for plaintiff, subsequent to the said statement the 'previous vitriolic attack' was missing. The statement made by Mr. Sandeep Sethi is accepted by this Court and defendants are held bound by the same.

99. However, before airing any story pertaining to the plaintiff, the defendants shall give the plaintiff

a written notice, by electronic mode, asking for his version. If the plaintiff refuses or does not reply within a reasonable time, he will not be compelled to speak and the story will be aired with the disclosure that the plaintiff has refused to speak to the defendants.

100. This Court clarifies that all observations in the present case are prima facie in nature and are in the context of the disputes between the parties hereto. None of the observations in the present case shall be used in any criminal proceeding, if any, filed by the State."

(emphasis supplied)

85. On behalf of the petitioner it was submitted that it is essential to observe that in the impugned order itself the learned Trial Court had returned a finding that the proposed defences were weak and furthermore, the respondents had not made a categorical assertion in their written statements that the allegations are true in as much as the author has claimed that that '*truth is a multi layered phenomenon*' and the publisher claims that allegations are a '*legitimate surmise*' and thus it has been submitted on behalf of the petitioner that a proper application of the *Bonnard Rule* would grant the Petitioner herein the injunction.

86. The petitioner has thus submitted that the defamatory allegations made in the **BOOK** written by Ms. Priyanka Pathak Narain and published by the publisher Juggernaut Books Pvt. Ltd. i.e. the respondents to the present petition specifically are to the effect that:

a. **In re Shankar Dev (Guru)**

- Allegation in Chapter 16: Mystery 2: Guru's Disappearance [Page 458 at 463, Vol. III] that the Petitioner was somehow involved or complicit in the disappearance of his guru, Shri Shankar Dev and further the Petitioner using his influence with the Government was able to scuttle the investigation which was not handled in a transparent and fair manner.
- This allegation is totally unfounded in as much as the Learned Special Judicial Magistrate, CBI, Dehradun has by order dated 13.02.2015, accepted the Closure Report filed by the CBI, in this matter, which aspect has not even been adverted to by Defendant No.1 [Page 565 at 568, Vol. III]. In light of this Closure Report, there is no way for the Respondents to prove that the allegation was true in trial, and accordingly no defence would no succeed in this relation.
- It is pertinent to point out that that the author has claimed to follow the case file until 12.01.2015, and thereafter claims that the file 'goes cold'. [Page 463, Vol. III] It is respectfully submitted that this is a most incredulous claim and is ex - facie false, considering the order accepting the closure report was the next month i.e. 13.02.2015. This is particularly unbelievable when compared to her general standard of research, where she claims that she scoured the medical records of an entire region to identify the birth date of the Petitioner. [Page 413, Vol. III]

b. In Re Yoganand (Associate)

- a. Allegation in Chapter 9: Mystery: 1 The Ally's Murder [Page 440, Vol. III] that the Petitioner was somehow involved or complicit in the death of his key associate, Swami Yogananda and that the subsequent investigation was not conducted with due vigour.
- b. It has been insinuated, that the Petitioner had something to do with the murder of Yogananda on account of a falling out between die Petitioner and Yogananda. It has been further represented as if the investigating officer has filed

some variety of extra-ordinary report, by stating that the perpetrators were unknown. [Page 441] The mischief of the Defendant No. 1 in not clarifying that such reports are called Un - Trace Reports' and are common place, is with the sole intention of creating an aura of suspicion so as to defame the Petitioner. In light of the Untrace Report which is admitted by the Author (Respondent No. 2) it is clear that there is no way for the Respondents to prove that the allegation was true in trial, and accordingly no defence would no succeed in this relation,

- c. It is submitted that in order to understand the mischief played by the Respondent's herein, it would be worthwhile to contrast the tone and tenor of this Chapter [Page 440, Vol. III] with another portion of the same book where the author while discussing one Kitit Mehta's version of event, clarifies that the allegations are completely contrary to the public record. [Page 469, Vol. III]

c. In Re Rajeev Dixit (Mentor):

- a. Allegation in **Chapter 19: Mystery 3: Mentor's Sudden Death [Page 470 at 472 - 476, Vol. III]** That there was some foul play in relation to the death of Shri Rajiv Dixit, and that the Petitioner was unwilling to permit the conducting of a post mortem, in a bid to cover up this foul play.
- b. This allegation is totally unfounded in as much as the death certificate of Shri Rajeev Dixit clearly discloses that he died a natural death caused by an acute myocardial infraction (heart attack). [Page 98, Vol. I] This certificate has never been challenged nor is there any pending investigation in this relation, despite which such baseless allegations have been made. In light of the Death Certificate it is clear that there is no way for the Respondents to prove that the allegation was true in trial, and accordingly no defence would no succeed in this relation.”

87. Most of the written submissions that have been made by the author are already incorporated in the written statement of the author which has already been adverted to elsewhere hereinabove.

88. Through the written submissions submitted on behalf of the author Ms. Priyanka Pathak Narain it has been submitted that the impugned order suffers from no perversity or material infirmity, and consequently the revision petitions are liable to be dismissed and that even if this Court may hold a view different than that of the Ld. Appellate Court, unless the view of the Ld. Appellate Court is perverse, no interference with the same ought to be made.

89. It is further submitted on behalf of the author that the impugned order expressly noted the perversity and capriciousness in the order of the Ld. Trial Court and also noted in the impugned order that the findings in this paragraph have been given keeping in view the law laid down in ***Ramdev Food Products (P) Ltd. v Arvindbhai Rambhai Patel***, (2006) 8 SCC 726 and ***Wander Ltd. v Antox India P. Ltd.***, 1990 Supp SCC 727.) and the learned trial Court's order has thus been set aside vide the impugned order on the grounds enumerated in ***Wander Limited v. Antox 1990 Supp SCC 727.***

90. It was further submitted on behalf of the author that insufficient and vague pleadings do not give rise to any cause of action and an attempt to defame as alleged by the Petitioner is not an actionable cause of action and it was thus submitted on behalf of the author that in a suit for defamation, it is obligatory upon a Plaintiff to specifically identify and indicate (whether by way of reproduction in the plaint verbatim or otherwise by giving sufficient and clear indication of the

portions alleged to be defamatory) the portions that he/she alleges to be defamatory. It was further submitted on behalf of the author that furthermore, where a portion of publication or sentence is not defamatory per se, it is obligatory upon the Plaintiff, in addition to pleading the allegedly defamatory portion, to plead the innuendo or the secondary meaning and that on a meaningful reading of the plaint as submitted on behalf of the author it was contended that neither was there a specific pleading to which portion of the **BOOK** was alleged to be defamatory nor was the alleged defamatory innuendo pleaded and that thus there was no cause of action whatsoever for the grant of any injunction as claimed by the Petitioner. *Inter alia* it was submitted on behalf of the author that the Court could not take into account portions of a publication which the Plaintiff himself had not identified in his plaint to be defamatory and by considering portions extraneous to the plaint, the Court would be said to be stepping into the shoes of a Plaintiff which course is totally impermissible in law and that the alleged defamatory portions had to be affirmed by way of affidavit in the Plaint. The author has further submitted that indicating vaguely some portions of the **BOOK** as defamatory in the plaint, expanding on the same during the different stages of arguments was a never ending exercise and was totally impermissible.

91. It was also submitted on behalf of the author that the requirement of identifying the alleged defamatory portions was also founded upon principles of natural justice so that the defendant had an opportunity to meet the case propounded and that a Plaintiff could not be permitted to play hide and seek and disclose what it alleged to be

defamatory portions only during the course of arguments. *Inter alia* the author submits that the plaintiff i.e. the petitioner herein in various portions of his plaint had stated that an '*attempt*' had been made to defame or that an '*attempt*' had been made to raise a finger of suspicion but that a mere attempt unlike criminal law, was not actionable in civil law. It was further submitted on behalf of the author that the plaintiff i.e. the petitioner herein had not made any specific allegation of falsity in the plaint and that in the absence of categorical and clear allegations of falsity, no case of defamation or seeking injunction could be said to have been made. The author further referred to the factum that the plaintiff i.e. the Petitioner herein had in his plaint misrepresented the contents of the **BOOK** and had under the garb of reproducing the extract @ page 113 to 118 of CM (M) 556/2018:

- (a) *Invented headings / sub-headings which do not exist in the Book;*
- (b) *Mischievously joined paragraphs and sentences appearing in different portions of the book, as one seamless continuing paragraph.*

92. The author has further submitted that the petitioner as plaintiff of the suit had also suppressed various materials available in the public domain prior to publication of the **BOOK** and that the plaintiff had neither made any reference to these prior publications nor had adduced the same before the learned trial Court and that thus the petitioner herein was not entitled to any interim relief.

93. It was also submitted on behalf of the author that as the author had filed her own affidavit in support of her stand and had categorically stated more than once that nothing contained in the **BOOK** was false and also pleaded justification through various modes for different portions of the **BOOK** such as fair comment, fair reporting, journalistic privilege, honest beliefs etc., no injunction could be granted for publication of the **BOOK**. It was also submitted by the author that in view of the verdict in *Khushwant Singh and His Holiness Shamar Rimpoché* as laid down by this Court that once the Author was willing to face trial and was willing to justify the publication, even if the publication was defamatory, the injunction could not be and ought not be granted and the only remedy for a plaintiff would be to seek damages. It was also submitted on behalf of the author that the rule was absolute and was based upon judicial experience of matters relating to defamation where actions are invariably initiated as a method to stifle freedom of speech.

94. The author further submitted that no injunction could be and should be granted since the plaintiff had adequate remedy to seek damages and that the Court should invariably not grant an injunction to restrain the publication of defamatory material (assuming that such is the case, for arguments) as it would be unreasonable to fetter the freedom of speech before the full trial takes place.

95. The author has further submitted that the **BOOK** itself contains a detailed list of sources and interviews of persons who she had interviewed which has not been denied by the plaintiff. *Inter alia* the author submitted that prior publications in print and electronic media

numerous times in past from which the author has drawn and which have drawn from the prior publications and remained in public domain without any objections from the plaintiff. It is further submitted that the plaintiff i.e. the petitioner herein is a person about whom innumerable publications had been made and it was impossible for any person to even attempt to collate all of them or to file them before the Court and that the Court must also take judicial notice of the prior publications and material available in public domain about the Plaintiff, i.e., the petitioner herein especially his own authorized biography and other books on him. It has been submitted on behalf of the author that the petitioner i.e. the plaintiff of the suit having not stated about alleged objectionable portions of the **BOOK** having been reported previously and having been in public domain and having suppressed the various prior publications and information available in public domain, such suppression by itself is a ground for dismissal of the plaint. The author further submitted that the Petitioner having suppressed the factum of his having participated in addressing the alleged controversies in media i.e. print and electronic wherein he had publicly spoken of and addressed these by airing his perspective/point of view and that many times the plaintiff referred to such controversies to be "*politically motivated*" or having been made at the behest of then ruling Government or being "*wicked conspiracy*" and had addressed them in many press conferences and that the **BOOK** has very candidly and fairly given the version of the Plaintiff as well.

96. *Inter alia* it has been submitted on behalf of the author that the factum of prior publication leads to a conclusion that at least for the purpose of injunction that:

“(a) No further injury can be caused by the circulation of the Book, and balance of convenience remains in the favour of the Defendant/Author;

(b) There is delay on the part of the Plaintiff in approaching the court which would disentitle the Plaintiff to seek injunction before a full-fledged trial;

c) There is acquiescence in the prior publications, and also a waiver of any right to object.”

The author thus referred to the book wherein it is stated that it was only in October 2012, five years after Shankar Dev's disappearance, that the Central Bureau of Investigation (CBI), India's apex investigative agency, initiated a probe to find him and that in his inimitable style, Ramdev welcomed the investigation on the one hand, but also attacked the CBI and the Government, accusing them of a politically motivated conspiracy to frame him in the case and that given the sour relationship between Ramdev and the Union government at that time, his allegation did have some credence.

97. It is however essential to observe that the disappearance of Shankar Dev, the petitioner's mentor is depicted in the **BOOK** as follows:

Mystery 2: The Guru's

Disappearance

Haridwar, June 2007

A year after Ramdev had a successful run in the United Kingdom and delivered a speech at the United Nations in New York came plans for a yoga tour of the United States. India's foremost yoga guru was scheduled to start his tour in New York on 30 June 2007 and wind it up in Coventry in the UK on 8 August, rumbling through New Jersey, Chicago, Glasgow and London in between.

Animesh Goenka, then president of Heritage India, a small charitable organization that was involved with the planning of Ramdev's tour, had told the media that the US leg of the tour, estimated to cost \$350,000, was to be funded exclusively through charitable donations from private individuals and corporations. The sale of tickets to the yoga camps, priced between \$100 and \$500, was expected to raise half a million dollars. This money, Goenka had asserted, would be funnelled into research on amla and developing a product for which a patent could be sought.

While Ramdev prepared for his international tour, Balkrishna was making certain critical and far-reaching changes. On 18 May 2007, fifteen months after its formation, Patanjali Ayurveda Pvt. Ltd dropped the word 'private' from its name. This was a critical move if the company wanted to list itself on the stock market. Patanjali's shareholding also changed around this time, as would happen frequently over the years, with several of Ramdev's key associates coming on board as shareholders, albeit minor ones, at this point. As before, and as with Vedic Broadcasting Pvt. Ltd, Ramdev's pliant and trustworthy Balkrishna remained the largest shareholder by far.

Notable among these new shareholders were Krishan Kumar Pittie and Sarvan Poddar Pittie would eventually play a major role in Ramdev's quest for media domination and Poddar would buy a Scottish island, Little Cumbrae, for GBP 2.1 million in September 2009 and donate it to Patanjali Yogpeeth's UK trust.

Balkrishna also converted Vedic Broadcasting Pvt. Ltd into a public limited company.

Kirit Mehta and his partners at Aastha were too busy struggling to survive to notice the dramatic changes that were taking place in Vedic Broadcasting's story. Had they been a little more alert they would have sensed that something wasn't quite sitting right. Ramdev was preparing to take over Aastha.

But Ramdev himself missed something brewing in his own backyard. Amid his heady successes, and hectic travel, he failed to see that his guru Shankar Dev was ailing, increasingly unhappy and isolated in his own home, Kripalu Bagh Ashram. For instance, Shankar Dev, who was the convener of the Divya Yog Mandir Trust, was not on the boards of any of the new companies that were set up by Ramdev.

But what Ramdev could not see, though it was in plain sight, many in Haridwar saw. Several remember the swiftly ageing Shankar Dev, ravaged by spinal tuberculosis, becoming increasingly frail and forlorn. Spinal tuberculosis causes the patient to cough blood, lose weight, get night sweats and chills, and experience a loss of appetite, fatigue and fever, and it can sometimes impair mobility as a result of pain in the spine and damage to the joints.

Like in many small towns, friendships and kinship survive long years in Kankhal Sushant Mahendru's family, friends of Shankar Dev, continued looking out for him even after he stopped coming to their house when his old friend died. 'I have seen him several times during those months when he had TB, He was alone and ignored in a little room in Kripalu Bagh Ashram.... cooking for himself, washing his own clothes and utensils. The only difference was that he took rickshaws to commute because he could no longer cycle because of the TB. But even that was difficult for him

These people [Ramdev and Balkrishna] had a Nissan Terrano at the time, but not one person in Kankhal has any memory of Shankar Dev sitting in any of their cars. He was always on a cycle or in a rickshaw,' says Mahendru.

The anguish of watching Shankar Dev deteriorate is etched on Mahendru's face. From being the master of his

ashram, Shankar Dev was reduced to a sidestepped has-been in Kripalu Bagh.

ShankarDev is still the subject of hushed conversations in Kankhal today. Those who remember tell of his trials and speak of his tribulations in lowered voices — no one wants to cross the now all-powerful Ramdev. In a small place like Kankhal, word can get around. They are right to be worried. For instance, when I asked about Shankar Dev's deteriorating standard of living Balkrishna became positively belligerent and furious at me.

Ramdev's tour began successfully in New York when a thousand people, mostly Indian Americans already familiar with his yoga through Aastha USA, attended his inaugural camp at Nassau Community College — some from as far as California.

At the Garden State Exhibit Center in Somerset, New Jersey, there was a groundswell of fan support — 3000 people attended. The state Senate and the General Assembly passed a resolution that this Legislature honors Swami Ramdev for his firm belief that good health is the birthright of all human beings, and extends best wishes for a successful yoga camp in the US'.

It was when Ramdev was in Chicago that news came from Kankhal. On 14 July 2007, Shankar Dev disappeared. Vanished without a trace. He left that morning for his usual walk and simply did not return.

It may have been devastating news for Ramdev. Or maybe it was just inconvenient timing. With the Chicago schedule drawing to a close, Ramdev had to choose: Should he go on'to London, where the House of Commons planned to receive and honour him, or should he send his regrets and rush back to Kankhal to lead the search for his missing guru?

Usually once a disciple takes deeksha, or initiation into the sacred, from his guru, he establishes a bond with him. Ramdev had not just taken deeksha from Shankar Dev but also accepted saffron robes from him — that is, he renounced the world. From the moment he took the saffron robes from Shankar Dev, that gurushishya relationship was meant to

become the central fulcrum of his life. From that moment onward, Ramdev was supposed to consider his guru as his spiritual and temporal father and mother.

There is no way of knowing what Ramdev truly felt when he heard of the disappearance or if he struggled with the decision or for how long, but in the end he decided to carry on with his tour. The day after his aides filed a missing person's report at Kankhal police station, on 18 July 2007, Ramdev attended a ceremony at the British House of Commons in his honour.

An investigation began in India, but clues were scarce. A cryptic note was found in Shankar Dev's room: 'I have taken some loan from you for this trust but I cannot repay it. Please forgive me. I am leaving.' He was seventy-seven years old.

The note raised more questions than it answered: Exactly how much did this old man who continued to live as simply as before Ramdev's meteoric rise borrow that he could not repay the sum? Why did he borrow it? When had he taken the loan? And from whom? More importantly - why did Ramdev, sitting atop an empire worth at least Rs 100 crore, not repay the loan on his behalf? Why did Shankar Dev not ask him for help? Or had he?

Even though Karamveer had left the organization, Shankar Dev, who missed him dearly, often called him - sometimes for financial help. 'I used to send whatever little I could so he could get by,' says Karamveer. Vipin Pradhan, a former aide and Karamveer's nephew, says, 'By then, the trust was being run by ... relatives of Ramdev who had come in from outside and had no intention, of serving any interest other than their own. They treated Shankar Dev badly and he was very unhappy.'

Karamveer says that once when he was visiting Haridwar and staying with an old friend in Tripura Ashram, 'Shankar Dev came to meet me. They had sent two people after him to do his CID [that is, to spy on him]. They waited at the gates while we met. I'm not sure why... they [Ramdev and Balkrishna] had doubts [about Shankar Dev] in their minds at the time... who knows what doubt... what they were thinking at

the time. It must have been a very difficult situation for Shankar Dev.'

But it is Radhika Nagrath's appraisal of the situation that is most damning. Remember, Nagrath is the one who designed Divya Pharmacy's website in its early days. She is still associated with Patanjali and has an obvious soft spot for Ramdev, whom she speaks of with affection, though she is unhesitatingly honest. She says, 'Shankar Dev was a real saint - a very gentle guy. He felt ousted in his own home. He did not get any compassion because these people were in a race for something else. It was once his home, his shelter. He used to sign all the expense cheques for the trust at first [but] now the authority was taken away from him and he was not happy with the way things had shaped out. He had given these people shelter and now they had no time for him ... they had no use for an old man any more.'

An uneasy silence always follows questions about Shankar Dev among Kankhal residents. People always ask, 'Can I trust you? Are you writing for him or against him? You see, Ramdev has become too powerful. And look what-happened to his guru ...'

After his pit stop at the House of Commons, Ramdev continued his tour, travelling to Glasgow then back to London, and finally ending his tour in Coventry on 8 August 2007. When he returned to India, more than three weeks had passed since Shankar Dev's disappearance. To outside observers it seemed as though Ramdev was too busy chasing fame and fortune, making them wonder: did he even care?

After his return, Ramdev summoned a press conference in Haridwar, remembers the Jansatta reporter and Haridwar resident Sunil Pandey. At the press conference he was saying how Shankar Dev was like a father to him and how sad it was ... I asked him that if he really was like a father to him, why – didn't he come back?

"I was in the US, conducting camps, answered Ramdev.

'Well, if a family member disappeared, one would come back, isn't it?' Pandey pressed Ramdev.

'If I knew he was alive, I would have,' replied Ramdev.

'So you are admitting that you know that he is dead?'
demanding Pandey.

That was the suspicion in everyone's minds.

Stunned, realizing he had misspoken, Ramdev fell silent.

'Then his people just took over and changed the subject. Though a lot of people were present at the press conference,' recalls Pandey.

Little of this murky business was reported in the national media at that time. Across the country, Ramdev's star was ascendant.

It was only in October 2012, five years after Shankar Dev's disappearance, that the Central Bureau of Investigation (CBI), India's apex investigative agency, initiated a probe to find him. In his inimitable style, Ramdev welcomed the investigation on the one hand, but also attacked the CBI and the government, accusing them of a politically motivated conspiracy to frame him in the case. Given the sour relationship between Ramdev and the Union government at that time, his allegation did have some credence."

98. It is further submitted on behalf of the author that every **repetitive publication** may or may not give rise to a fresh cause of action but that in the instant case, there is no case made out for grant of injunction and the contention of the petitioner herein that every repetition gives rise to a fresh cause of action he seeks to mischaracterize the issue at hand inasmuch as the question involved in the present matter is not whether in a case repetition of publication gives rise to cause of action but whether injunction should be granted in a scenario where there have been multiple prior publications. The author further submitted that no further damage could be caused by

re-publication or repeating the publication so as to warrant the injunction to restrain the freedom of speech. The author further submits that the conclusion of the **BOOK** is in the nature of a comment i.e. a fair comment which is arrived after 24 chapters of the **BOOK** and that the **BOOK** is an extremely balanced account and contains various portions which are laudatory of the Petitioner also. It is essential to advert to the conclusion of the **BOOK** which reads to the effect that:

*“My search for the people who had worked with Ramdev, who were presumably inspired by him, his vision and his empire, was interesting and rewarding. Of course, I found many who were energized and motivated by Ramdev and his story. **But the man also leaves behind a trail of a different sort.***

A trail of people whose goodwill or frailties he used to further his own enrichment and pursue his own agenda, people who were left by the wayside after they had served their purpose. A trail of people who either vanished into thin air, or died mysterious deaths, or live on in utter fear of him. A trail of decisions and political machinations driven not by the principles he espouses but by expediency. A trail blazing into the post-truth world where reality was mutable and the trusting millions who believe in him could be manipulated through his television channels. Finally, a trail of shirked responsibility.

(emphasis supplied.)

For every negative event surrounding him, he has consistently yelled foul, always choosing to lay the blame at someone else's door — the government's or his detractors', accusing them of conspiring against him and fabricating evidence to pull him down. On some occasions, he may have even been right, but he has overused the argument to such an extent that it has lost its credibility.

All Ramdev's former allies, aides, supporters and mentors who had watched him rise but had fallen by the wayside at

some point seemed to have been waiting for a call like mine, from anyone at all, asking them about their time with Ramdev. They were all ready to tell their stories.

Yet for all the dubious choices he has made since his rise to fame and fortune, no one can take away or belittle the legacy of this farmer's son. Ramdev took yoga and Ayurveda out of the restrictive realm of religion and made it an accessible practice of preventive health care for millions of Indians. He reminded them that the pursuit of spirituality has little meaning if the body is unhealthy. Even today, despite the pressures of running a growing business, he continues to hold yoga camps in Haridwar. He's still on television every day, thanks to a combination of reruns and fresh shoots.

Most important, he drew attention to India's own health care heritage - Ayurveda. Leaving aside how it was all executed, Ramdev's charisma reminded people that not every ailment needs a modern doctor. There are other options that are less intrusive.

Today, preventive health care is the new buzzword for the health-care industry globally. Prevention is better than cure may be an old adage, but India's beleaguered 60-billion-dollar health-care industry, groaning and creaking under the staggering pressure of 1.2 billion people, is recognizing the worth of that ancient wisdom now. Ramdev has undoubtedly played a vital role in making Ayurveda and yoga relevant and accessible to millions of Indians.

In pursuit of that goal of offering healthy living options to the market, his astute business instinct has also spawned India's fastest-growing company. The sheer speed of growth of his company and the breathtaking ambition of it as he chases another impossible-sounding target of doubling revenues to Rs 20,000 crore in 2017-18 will always inspire entrepreneurs. Whatever the future may bring for Patanjali, young people without degrees and money will draw inspiration from its dazzling ascent. The tales of how a homegrown company shook up multinational corporations out of a stupor, forced them to change their strategy, take notice of Ayurveda as a source of new products will also endure.

Nothing can take this legacy away from Ramdev. It is his to keep.

While Ramdev's legacy relating to television, Ayurveda, yoga and business is fairly clear, what is his political legacy? Every venture he has touched in his life has been a success but popular opinion may suggest that he failed in his political ambition.

Ramdev strayed into politics accidentally, not by design. After he met Rajeev Dixit, it just sort of happened: he tried to harness his fame as a sadhu-cum yoga-teacher to propel himself on to a larger platform and dreamt of his own political party. But somewhere along the way Ramdev seems to have decided against trying to become a mainstream political player and instead use his political power — and it is undeniably clear that he does have political power thanks to his popularity among people — to further his business interests. Ramdev's politics now plays a supporting role for his business empire — and that's not a failure as much as a sensible, pragmatic realignment.

But pragmatism and taking utilitarian, hard-boiled decisions is second nature for Ramdev. It is easy to forget that Ramdev was not always a BJP ally. Once upon a time he was the protege of the Congress, willing to hijack the VHP-RSS agenda to hand over a victory to allies in the Grand Old Party. Without his old Congress allies, and their largesse — land discounts, permissions, loan approvals — Ramdev could not have become as powerful as he had in the first place. Yet when he realized the Congress was a sinking ship and fell out with his earlier godfathers, he negotiated a safe landing space with the VHP-RSS-BJP combine.

Smoothly, courageously, he abandoned the Congress party, becoming part of the battering ram that brought it down. Ramdev is said to have helped the BJP with the 2014 general election campaign and is now apparently reaping rewards for that service. In May 2017, a Reuters article alleged that according to (unpolished) documents examined by them, Ramdev has received 46 million dollars in land allocations and discounts from BJP-led state governments.

But do not take this to be a permanent realignment. Ramdev is a hardheaded ally who can blow hot and cold at will.

Today, even as he reiterates his support for the BJP government, Ramdev is quietly mending fences with his former allies-turned-foes, holding public and private meetings with Lalu Prasad Yadav, Akhilesh and Mulayam Singh Yadav and the Congress politicians. If he ever needs to abandon the BJP, his old alliances may well be restored enough to make the transition possible. Ramdev's ability to nurse new dreams, pursue them and abandon them if needed, his fluidity, makes it impossible to categorize his political flirtation as a complete failure. His ability to adapt and respond to changing landscapes is formidable - and admirable. When denied political domination, he chose to harness politics to seek economic dominion.

Yet, Ramdev and the empire he has built now stand at a crossroads. However beguiling it is to believe in the fairy tale of one man's ability to build an empire from nothing in almost no time, his success is far from assured.

A seething rivalry between his brother and his deputy threatens his empire. Ram Bharat and Balkrishna, who always banded together against any third ascending power in Ramdev's empire, do not enjoy a close relationship. One gets the impression that for Ramdev blood is thicker than water and so Balkrishna, given to insecurity and jealousy, has long been envious of Ram Bharat - for instance, all those years ago, when Karamveer was still around, Balkrishna was upset with Ramdev for buying Ram Bharat a bike and a house.

These two men have long been Ramdev's lieutenants, executing his orders on the ground. Ram Bharat has always been in charge of the purse strings. Balkrishna oversees the Ayurveda and to lesser extent the FMCG side of the empire, under Ramdev's watchful eye.

But Balkrishna, a man who knows everything about Ramdev, is also seen to be attention-hungry and desires a prominent public profile, like Ramdev's — that's why he is so active on social media, building his own brand, even making claims of discovering the mythical sanjeevani buti, the herb described in

the Ramayana as one that can raise the dead to life. Ramdev and Balkrishna's shared history apparently forced Ramdev's hand to give him space on the masthead of the company and on their advertisements.

But don't be fooled into thinking they're equals. Balkrishna is without a doubt Ramdev's pliable and controllable deputy. It was nothing but expediency that led Ramdev to put 94 per cent of Patanjali in Balkrishna's name — his long-standing subordinate could be controlled as neither Ramdev nor his family could sit at the helm without a backlash.

It is generally speculated that Ram Bharat is not particularly thrilled with this arrangement. Yet, because he continues to control the finances of the company, he is mollified. This division of real and perceived power keeps their rivalries from spilling over. For now.

But it is hard not to feel as though this house of cards may come crashing down.

For Ramdev, the stakes have never been higher. And there are some questions he needs to consider. Will he find the courage to distance his unpredictable family, particularly his brother, from the company? Will, he be able to stand up to people within his organization and prevent them, from pursuing unfair trade practices with his distributors and suppliers? Can he rein in his advertising juggernaut from misleading and mis-selling to the public? Is he willing to own the mistakes made in the past and correct them? Most important, is he willing to play by the rules of the society he lives in and hold himself up to the laws that ordinary businessmen have to adhere to? Is he ready to stop using his saffron robes as a holy shield against public scrutiny?"

99. A further submission raised on behalf of the author is that for judging a publication the standard ought to be not that of a over-sensitive man and that furthermore the standard in relation to a public figure where the public persona is extremely high, and higher the persona, higher is the threshold for defamation and it is submitted by

the author that nothing contained in the **BOOK** is defamatory and the **BOOK** is to be read as a whole and stray sentences cannot be picked out. The author further submits that public figures like public officials have to be subjected to searching criticism and further submits that public has an interest, and in fact a deep interest, in knowing all sides to the persona of, and events surrounding, a public figure and that public figures like the Plaintiff i.e. the petitioner herein seek to shape public opinions, canvass for political parties in elections and participate in all kinds of public debates, influence the lives of millions, are emulated by others, and therefore all aspects of their lives must, in a democratic society be scrutinized closely. The author further submitted that there is a lot of value in engaging in uninhibited debate about the actions and omissions of public figures and taking into account the factum that public figures have access to mass media, and the opportunity of counter criticism of their views and activities, the public officials / public figures cannot seek to silence or restrain the speech. The author nevertheless submits that in any event the **BOOK** gives an extremely balanced account where the version of the plaintiff i.e. the petitioner herein has been duly noted and published. The author further submits that without prejudice to her submissions that there is nothing defamatory in the **BOOK** and that public figures like the plaintiff i.e. the petitioner herein cannot be too thin skinned in reference to the comments or observations or opinions or any other matter as regards them or in respect of events surrounding them and that the standard in law for defamation in relation to public figures is that of a "crank" and "an enthusiast" and law rather mandates that

even if public figures know from the bottom of their hearts that publications are undeserved, they must even submit to be misunderstood. The author further submits that this approach has been rightly adopted in law to give freedom of speech widest amplitude which is the most cherished freedom in a democracy.

100. The author further submits that the verdicts of this Court in *His Holiness Shamar Rimpoche*, *Shashi Tharoor*, *Khushwant Singh* show that inferences of defamation are not to be drawn easily and that injunctions are invariably never granted in the cases of public figures. The author further submits that there is a vital public interest in obtaining information about a public figure and that public interest is the matter of freedom of speech and is to be construed liberally and furthermore, an approach which does not chill the speech needs to be adopted. The author further relied on the verdict in *Khushwant Singh and Indu Jain* to contend that **BOOK** is in public interest and to judge whether a publication is in public interest or not, each sentence or paragraph or chapter is not to be analysed to ascertain if the same would serve any 'public interest', and to attempt to identify what that public interest / public goal might be and that such a microscopic approach is totally impermissible and unwarranted in law. The entire publication is to be read as a whole. The author further submits that in law, a matter which is "of interest to public" is also in public interest, and the standards for "public interest" from different arenas e.g. public interest petitions etc are not to be imported in the matters of freedom of speech.

101. It has been submitted on behalf of the author that if the public figure is to be construed too rigidly or if the authors are to be held liable for every inaccuracy and that nothing contained in the **BOOK** is inaccurate, the same would amount to 'chilling' of speech which is a widely accepted constitutional principle and that in such a situation not only false speech will be deterred but the authors will be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in Court or fear of the expense of having to do so. The author further submits that in such an event no author would even want to then ever write or talk about anything that is controversial for the fear of being unable to prove and that on account of this, even in defamation actions, the law does not even require 'truth' to be 'absolute truth' but only 'substantial truth' and that in any case, the truthfulness or falsity are to be determined only in trial.

102. The author further submitted to the effect that no consent of the plaintiff i.e. the petitioner herein is at any stage required and that there is no violation of the right to privacy inasmuch as freedom of speech cannot be made conditional on the mercy of the subject about whom something is sought to be written and that if consent were to be mandatory for any writing to be made on public figures that would be the end of freedom of speech as seldom would a public figure allow something that does not soothe his/her ears or does not propagate his/her agenda and further submits that unless the matters pertain to and impinge on the right to privacy of an individual, consent for any publication is not mandatory from the person concerned. The author

further submits that the Petitioner herein i.e. the plaintiff of the suit apart from having not claimed any right to privacy had in fact waived/relinquished the same by his conduct for all times. The author further submits that the Petitioner himself has his authorized biography written by Sandeep Dev- **Swami Ramdev- Ek Yogi – Ek Yodhha** in which he has given a detail of his own family life and life in early childhood, details of his education and educational institutes he attended, friendship with Acharya Balkrishna, and injuries of Baba Ramdev. It is submitted by the author that it has been revealed in detail in the said biography that he was called 'petul' in his childhood for being fat, he belonged to a poor family, and that he was regularly beaten up by his father or that once he was alleged to be a thief etc.

103. *Inter alia* the author submits that the plaintiff of the suit i.e. the petitioner herein is not affirmed any pleadings himself on oath and has taken no stand on affidavit himself and if any averment is found to be false, who would the Court proceed against and it is thus submitted by the author that the suit has not been duly instituted and has also not been appropriately valued for the purpose of injunction. *Inter alia* the author submits that though there are certain inaccuracies in the **BOOK**, the inaccuracies cannot be termed to be defamatory.

104. The written submissions submitted on behalf of the publisher i.e. Juggernaut Books Private Limited and Anrs. and submissions made, seek to contend that the scope of revision in the present petitions i.e. CM(M)556/18 & CM(M)557/18 is limited to the narrow examination of whether the impugned order of the learned Appellate Judge was absolutely perverse, arbitrary or unsustainable and the said

jurisdiction ought not to be traversed by this Court. The publisher further submits that the learned Appellate Judge was duty bound to overturn the injunction of the impugned order as the learned Trial Court has completely overlooked the settled principles of law and ignored the pleading and documents on the record.

105. The publisher further submits that there is a binding law on injunctions inasmuch as law in Delhi follows the Bonnard principle as laid down by this Hon'ble Court in *Khushwant Singh v. Maneka Gandhi, Tata Sons Ltd. V. Greenpeace International, His Holiness Shamar Rimpoche v. Lea Terhune, and Indu Jain v. Forbes Inc.* The publisher further submits that where a defendant in a civil suit for defamation pleads justification, then no interim injunction can be granted, and in the event that the said defendant were to fail in his defence, damages would be an adequate remedy and states that the remedy even in U.K. would be adequate damages. The publisher further contended that both the author and the publisher have unequivocally committed to standing by the truth of the statements made in the **BOOK** and the fairness of comments and conclusions reached, both before the Trial Court and the Appellate Court bring forth the justification has been arrived at and submits further that none of the allegedly defamatory statements had been made for the first time inasmuch as there was acquiescence and no irreparable harm could possibly be caused to the reputation of the petitioner. The publisher contends that the petitioner has contended that his right to privacy has been infringed but that this claim is not made in the plaint by the plaintiff i.e. the petitioner herein and is thus irrelevant and that

the petitioner being a public figure, the facts of his life are already in public domain and that he has also authorized his biographies and given television serials about his life and he volunteered his life for public examination. The publisher further submits that the author has taken news articles and books placed on record by the petitioner which pertains to the facts to which the petitioner has now taken umbrage after knowingly not responding to the criticism for decades and cannot now claim to be entitled to an injunction against the defendant. *Inter alia* the publisher submitted that the repetition rule is irrelevant and whether or not repetition of a libel would still be libel is a separate question, but the fact that it has been often repeated and acquiesced to would be sufficient to deny the petitioner an injunction.

106. The author further submits that the judgments of this Court in *Sardar Charanjit Singh v. Arun Purie* 1983 (4) DRJ 86, *Khushwant Singh v. Maneka Gandhi* AIR 2002 Del 58 and *Indu Jain v. Forbes Inc.* 2007 SCC Online Del 1424 caution Courts from granting injunctions where public persons are the subject, because,

(a) it is in public interest that people know about their doings, even in their personal lives, because they may affect public interest and ;

(b) they exercise disproportionate control over the media and can issue correctives and widely publish denials and comments and it has further been submitted on behalf of the publisher that in term of verdict in “**Phoolan Devi Vs. Shekhar Kapoor**” 1995 (32) DRJ, there is now no meaningful defence between public officials and public figures and law.

107. The publisher further submits that the contention of the petitioner that because the publisher has placed a standard disclaimer

in the **BOOK**, the publisher has no right to claim justification is insufficient to bring forth that the disclaimer has never been treated as a defence by the publisher and that the defence has been waived in the written statement and furthermore, the publisher has already stated that it categorically stands by the **BOOK** and if there is anything defamatory in the **BOOK**, damages are the only remedy. The publisher further reiterates that there is no infirmity in the impugned order of the Appellate Court and that it proceeds on the principles in vacating the injunction that are endorsed in “**Wander Ltd. v Antox India P. Ltd., 1990 Supp SCC 727.**” inasmuch as the order of the Trial Court was bad because

- i. The plaint and the application were neither specific nor categorical of falsity;
- ii. That the suit was bad for valuation;
- iii. That the Trial Court did not discuss the law placed before it;
- iv. That the Trial Court did not deal with the voluminous documents placed on the record;
- v. and that the balance of convenience lay fully in favour of the respondents i.e. the publisher and the author as 25,000/- copies of the **BOOK** were already in the market.

108. It has further been submitted on behalf of the publisher that the **BOOK** was not a defamatory **BOOK** of the petitioner and was rather laudatory in tone and wherever it discussed the criticism of the petitioner, it presents the defence or response of the petitioner as well.

The publisher further submits that it was not defamatory to discuss the fact that a person was criticized nor was it necessarily defamatory when one criticized a person and that when facts were stated, those facts were true, and where a comment was made, that comment was a fair one.

109. The publisher further submits that as of now at the stage of revision from appeal, the petitioner has sought to build a case on the basis of a documents which were not formally on record before the Trial Court or the Appellate Court and that the order of the CBI Court was only formally filed before the Trial Court and that even if it was assumed without conceding that it was at variance with any statement, no conclusion of libel can be drawn from it. *Inter alia* the publisher submits that the death certificate of Mr. Rajeev Dixit has been produced for the first time before this Court in revision and in any case does not directly contradict any fact stated in the **BOOK**. The publisher further submits that the contention of the petitioner with regard to the murder of Swami Yogananda is even less persuasive and that the report of the police officer reported in the **BOOK** must necessarily be called an untrace report is merely a difference in nomenclature and not even a whisper of falsity is borne out and that all these facts or documents are best tested at trial, and not at the stage of ad-interim injunction.

110. It is essential to advert to Chapter IX of the **BOOK** which reads as follows:

*“A day after the Asian tsunami swept up
the shorelines of fourteen countries, killing*

nearly a quarter of a million people, an intriguing event occurred in Kankhal. In the darkening winter evening of 27 December 2004, a scuffle broke out in the single-storey Yogananda Ashram, home to Swami Yogananda, the man whose licence had enabled Divya Pharmacy to function and grow for eight years since its inception in 1995 till 2003.

Yogananda's neighbours are cagey about discussing it even today but they say they heard raised voices coming from his house that eventful evening. No one imagined, though, that Yogananda — the lonely man who lived without a telephone or even electricity — was being knifed to death. One Vasant Kumar Singh discovered his lifeless body shortly after and called the police. Along with other neighbours, the young Tarun Kumar went in with the police. 'I remember it still. He was there, in that dark room when I went in.... lying in a pool of his own blood.'

As mentioned earlier, in 2003 Divya Pharmacy had abruptly changed the vaidya or its registration from Swami Yogananda to Sri Saty Pal Singh. Yogananda is said to have had a felling out with Ramdev's increasingly powerful enterprise but the reasons for this are still unknown.

With Yogananda's death, a key associate who had provided critical help to Ramdev in his early days was gone. The murder remains unsolved till date. Ten months later, on 25 October 2005, investigating officer B.B. Juyal filed his final report in the case - Case unsolved. Perpetrators unknown."

111. In rejoinder to the submissions that have been made on behalf of the author and the publisher, on behalf of the petitioner it has

been submitted that the contentions raised by the respondents that the excerpts as reproduced in the plaint are not present in the **BOOK** and are rearranged to be produced in the Court is an erroneous submission and that the excerpts are identical to articles either authorized by the respondent i.e. the author which aspect has been adverted to in the plaint which reads to the effect:-

“That some of the contents of one of the interview of defendant no.1 regarding the excerpts of her controversial book are being reproduced hereunder so as to project before the Hon'ble court, an on her part to make the contents of the book juicy/slanderous and controversial with a sole purpose and motive to enhance the sale of book at the cost of the reputation of the plaintiffs. The following are few of the said paragraphs:-

"When Ramdev's Guru Mysteriously Disappeared...

A year after Ramdev had a successful run in the United Kingdom and delivered a speech at the United Nations in New York come plans for a yoga tour of the United States. But Ramdev himself

Missed something brewing in his own backyard. Amid his heady successes, and hectic travel, he failed to see that his guru Shankar Dev was ailing, increasingly unhappy and isolated in his own home, Kripalu Bagh Ashram. For instance, Shankar Dev, who was the convener of the Divya Yog Mandir Trust, was not on the boards of any of the new companies that were set up by Ramdev. But what Ramdev could not see, though it was in plain sight, many in Haridwar saw. Several remember the swiftly ageing Shankar

Dev, ravaged by spinal tuberculosis, becoming increasingly frail and forlorn. It was when Ramdev was in Chicago that news came from Kankhal, On 14 July 2007, Shankar Dev disappeared. Vanished without a trace. He left that morning for his usual walk and simply did not return. It may have been devastating news for Ramdev. Or maybe it was just 'inconvenient timing. With the Chicago schedule drawing to a close, Ramdev had to choose: Should he go on to London, where the House of Commons planned to receive and honour him, or should he send his regrets and rush back to Kankhal to lead the search for his missing guru? Usually once a disciple takes deeksha, or initiation into the sacred, from his guru, he establishes a bond with him. Ramdev had not just, taken deeksha from Shankar Dev but also accepted saffron robes from him – that is, he renounced the world, From the moment he took the saffron robes from Shankar Dev, that guru- shishya relationship was meant to become the central fulcrum of his life. From that moment onward, Ramdev was supposed to consider his guru as his spiritual and temporal father and mother.

The 'Cryptic Note' Left Behind in Shankar Dev's Room...

There is no way of knowing what Ramdev truly felt when he heard of the disappearance or if he struggled with the decision or for how long, but in the end he decided to carry on with his tour. The day after his aides filed a missbig person's report at Kankhal police station, on 18 July 2007, Ramdev attended a ceremony at the British House of Commons in his honour. An investigation began in India, but clues were scarce. A cryptic note was found, in. Shankar

Dev's room: 'I have taken some loan from you for this trust but I cannot repay it. Please forgive me. I am leaving.' He was seventy seven years old. The note raised more questions than it answered: Exactly how much did this old man who continued to live as simply as before Ramdev's meteoric rise borrow that he could not repay the sum? Why did he borrow it? When had he taken the loan? And from whom? More importantly - why did Ramdev, sitting atop an empire worth at least Rs. 100 crore, not repay the loan. Why did Shankar Dev not ask him for help? Or had he? ...When Ramdev returned to India, more than three weeks had passed since Shankar Dev's disappearance. He summoned a press conference in Haridwar, remembers the Jansatta reporter and Haridwar resident Sunil Pandey. 'At the press conference he was saying how Shankar Dev was like a father to him and how sad it was.... I asked him that if he really was like a father to him, why didn't he come back?' 'I was in the US, conducting camps,' answered Ramdev. 'Well, if a family member disappeared, one would come back, isn't It?' Pandey pressed Ramdev. If I knew he was alive, I would have,' replied Ramdev. 'So you are admitting that you know that he is dead?' demanded Pandey. That was the suspicion in everyone's minds. Stunned, realizing he had misspoken, Ramdev fell silent.

A Case Still Open...

...Across the country, Ramdev's star was ascendant. It was only in October 2012, five years after Shankar Dev's disappearance, that the Central Bureau of Investigation (CBI), India's apex investigative agency, initiated a probe to find him. In his inimitable style, Ramdev welcomed the investigation on the one

hand, but also attacked the CBI and the government, accusing them of a politically motivated conspiracy to frame him in the case. Given the sour relationship between Ramdev and the Union government at that time, his allegation did have some credence. Whatever the CBI's initial motivations, it was widely reported that it initiated a move to close the case in December 2014 - by this time the Narendra Modi-led government had taken charge at the Centre –because the agency had failed to make any headway. The special CBI magistrate in Dehradun set the date for the next hearing as 12th January 2015 but this is where the public case file goes cold. It's hard to ascertain what happened thereafter.

While a right to information (RTI) request I filed with the CBI in Delhi met with the response that the CBI was not covered by the RTI, another filed in Dehradun met with the response that the CBI does not answer questions on open cases. Ergo, the case is still open."

And also the content of the book vide Page No.201, Content title Conclusion 25 Para No. 1 & 2 reveals the following content-

"My search for the people who had worked with Ramdev, who were presumely inspired by him, his vision and his empire was interesting and rewarding of course, I found many who were energized and motivated by Ramdev and his story. But the man also leaves behind a trail of a different sort.

A trail of people who goodwill or frailties he used to further his own enrichment and purpose his own agenda, people who were left by the wayside after they had served their purpose. A trail of people who either vanished into thin Air

or Died mysterious death or live an utter fear of him",

and thus the petitioner contends that these above stated contents make it evident that the author had deliberately mislead the masses to gain popularity on the strength of twisted facts.

112. On behalf of the petitioner it is submitted that the contention raised on behalf of the respondent that the petitioner could not seek a restraint of further publication in view of the prior publications of purportedly stated allegations by third parties, alleging that the petitioner had acquiesced to the defamatory allegations could not be contended in common law submitting to the effect that the rule of repetition provides that if one repeats a rumour, one cannot say it is true by simply proving that the rumour in fact is in existence, but rather one would have to prove that the subject matter of the rumour is true and reliance was once again placed on behalf of the petitioner on **“Gatley on Libel and Slander (Sweet & Maxwell, 12th Edition),** paragraph 11.18 which reads to the effect:-

“11.18 The basic rule. *As a general rule, the law does not allow a person to evade liability by attributing a statement to some other person. If D states, “C murdered X”, then a defence of truth requires D to show that C did murder X. If, however, D states that “A told me that C murdered X” or that “there is a rumour that C murdered X”, D is still required to prove that C did murder X in order to establish the defence. It does not matter that, taken literally, the statement is true in the sense that D can show that he or she was told the information by A or that such a rumour does exist. In short, “If you repeat a rumour you cannot say it is true by proving that the rumour in fact existed; you have to*

prove that the subject matter of the rumour is true". The "repetition rule" "reflects a fundamental canon of legal policy in the law of defamation.... That words must be interpreted, and the implications they contain justified, by reference to the underlying allegations of fact and not merely by reliance upon some second-hand report of assertion of them".

This is because "repeating someone else's libelous statement is just as bad as making the statement directly", and therefore "for the purpose of the law of libel a hearsay statement is the same as a direct statement". This would seem to accord with reality, for if:

"A says to B that C says that D is a scoundrel, B will think just as ill of D as if he had heard the statement directly from C. If moreover, A is a respectable newspaper, D's position will be worse in part because there will be many more Bs, and in part because responsible newspapers do not generally repeat serious allegations unless they think there is something in them so that the very fact of publication carries a certain weight."

The same approach is taken where D, rather than purporting to report what someone else has said, simply asserts that he believes that C murdered X--- no matter how honest that belief and no matter how accurately it states the "fact" of his state of mind, again he must prove that C murdered X. This does not mean that wherever D makes a statement implicating C with wrongdoing it must be proved that C was guilty of the wrongdoing: on its proper interpretation, the statement may convey merely that there are reasonable grounds to suspect C or grounds for investigation of his conduct, and then D succeeds on justification by proving the truth of the words in that level of meaning rather than guilt. It is, therefore, necessary to determine what meaning

the words can convey to the reasonable person for it is only such a meaning that the defendant is required to justify. Thus it would seem that a statement that proceedings for conspiracy have been issued against the claimant may be justified by proof that proceedings have been issued, and the defendant is not required to prove that the claimant has committed the wrong alleged in them.”

and on the verdict in “**Rosalyn Jane Mark V. Associated Newspapers (2002) EWCA Civil 772** with specific reference to Para 29 & 35 thereof which read to the effect:-

“29. Although, therefore, it is true to say, as indeed I said in Stern -v- Piper, that the repetition rule, where it applies, “dictates the meaning to be given to the words used”, that is by no means to say that the meaning dictated is an artificial one. Rather the rule accords with reality. If A says to B that C says that D is a scoundrel, B will think just as ill of D as if he had heard the statement directly from C. If, moreover, A is a respectable newspaper, D’s position will be worse than if B had merely heard the statement directly from C. It will be worse in part because there will be many more Bs, and in part because responsible newspapers do not generally repeat serious allegations unless they think there is something in them so that the very fact of publication carries a certain weight. If, of course, in retelling C’s statement, A says that C is often unreliable so that B should not suppose the statement necessarily to be true, that would certainly mitigate the gravity of the libel. Just as it would aggravate the libel if A said that C’s statements ordinarily turned out to be true. But in either event, D’s reputation would be damaged and the repetition rule precludes A

from pretending the contrary (ie, justifying by asserting that what he said was true, the only defamer being C).

35. In short, whilst I am certainly prepared to recognise that the approach adopted in AlFagih may need to be taken further still - rather than perhaps confined merely to the reporting of statements (attributed and unadopted) by both sides to a political dispute- I reject entirely the argument that the repetition rule as such needs changing. To regard reportage as being incapable of harming a person's reputation would be to introduce into the law a fiction which the repetition rule is designed to avoid. Furthermore, as I sought to point out in both Stern -v- Piper and Al-Fagih, abolishing the repetition rule would make a nonsense of the law of qualified privilege.

113. The petitioner further contended that it is also a settled rule of common law rule that consent must be clear and unequivocal and the nature of publication would be relevant for ascertaining such consent with reference made to Paragraph 19.10 & 19.11 in “**Gatley on Libel and Slander (Sweet & Maxwell, 12th Edition)**” with reference to Section 3 which reads to the effect:-

“19.10. Consent. It is a defence to an action for defamation that the claimant consented to the publication of which he now complains by participating in or authorizing it. Thus, if the claimant has consented, expressly or impliedly or by conduct, to the publication of the words substantially as they were used, or to the findings of a tribunal in a specified newspaper, whatever the findings

might be, there is a good defence to the action; but the proof of consent must be clear and unequivocal. Carrie V Tolkien neatly illustrates this defence. The defendant published a potentially defamatory comment on the claimant's blog. The claimant discovered this a maximum of four hours 19 minutes later but allowed it to remain there for 22 months. He had therefore acquiesced in the publication of the libel from the time of discovery and there was no evidence in the short, initial period of any substantial publication to others.

19.11. Limits of doctrine. Consent, as in other areas of the law of tort, is a narrow defence. Thus, it has been held not to apply where the publication was not substantially the same as that to which the claimant consented, nor where the publication was to a wider audience. While republication by the claimant himself would not usually ground an action, it has been held otherwise where the claimant was under a duty to republish the matter of which he complained. The mere submission by the claimant of a matter to public discussion neither authorizes a defamatory response, nor even necessarily gives rise to any qualified privilege, unless he has been party to an attack on the defendant which justifies a public reply. A person who authorizes publicity for his book does not authorize every statement made in publicizing it, and while a person who comes to a "talk-show" to rebut rumours assents to their repetition for that purpose, he does not consent to telephoned repetitions from

listeners. Refusal to respond to an accusation is not consent to its repetition.”

114. The petitioner further submits that there is a substantial difference in a newspaper article which is never republished and a **BOOK** which is written by purportedly a Swami Ramdev Expert and an internationally acclaimed journalist.

115. The petitioner has further submitted that in any event prior publications were distinguishable inasmuch as the respondents did not point out that each of these publications were prior to the acceptance of the CBI closure report dated 13.02.2015 and were in most instances entirely non-descript web pages and web sites and it could not be expected that the petitioner herein is supposed to search for such obscure web sites and conversations on social media platforms to see whether people were defaming him. The petitioner has further submitted that the contention of the respondents that the impugned publication was based on numerous sources including interviews conducted with the petitioner had not been pleaded in the written statements of the author and the publisher that had been submitted before the learned Trial Court and that the defence sought to be put forth is a complete afterthought made for the first time to the Court and is contrary to the author's own stand in the **BOOK**.

ANALYSIS

PUBLIC PERCEPTION

116. As regards the contention raised on behalf of the respondents that it is the standard of a normal reasonable person of the public which has to be gauged to ascertain whether the **BOOK** or its

portions are *prima facie* defamatory, it is essential to advert to the perceptions of members of the public which have been perused by this Court as indicated to be uploaded on the internet prior to the restraint order of the ACJ-cum-CCJ-AR, KKD, Delhi dated 04.08.2017, e.g. an article dated 07.12.2017 by one Mr. Sanjeev Kotnala who after reading the **BOOK** gives a review on the **BOOK** stating that he purchased the **BOOK** before it was banned which reads to the effect.....

“there is hardly a place where the author pushes her point of view or tries to bias the reader. Nevertheless, there seems to be a skew in this reporting. And that is what makes Baba wanting to prevent you from reading it. As a reader, it makes you question circumstantial evidence and murky happenings. Ramdev’s life story is dotted by a mysterious murder, an odd disappearance, and a death under curious circumstances. He seems to have associated with people for his benefit and serving his ambitions. Once they have fulfilled the need and are no longer required, he has been quick enough to dissociate. The book makes him a power hungry political ambitious person lurking behind a legitimate or otherwise Ayurveda business. Good enough a description for a villain.”

(emphasis supplied)

117. A **BOOK** review dated 05.10.2017 of the **BOOK** by one Mr. Amit Dass *inter alia* states to the effect that the suspicious death of Swami Yogananda/Rajeev Dixit, to the less talked about marginalization of Shankar Dev. The review dated 13.08.2017 of the **BOOK** of one Mr. Ankit Agarwal concludes as follows:-

“The book reveals a number of unsavory facets of his business that fill one with revulsion and disgust. To put it in short, I am never buying a Patanjali product ever again. Thankfully, have ever used only his toothpaste and honey so far so no great harm done.”

(emphasis supplied)

118. A review dated 27.08.2017 uploaded despite the Court injunction dated 04.08.2017 states:-

....“At this point of time in the contemporary history of our country, the book (and the controversy of censorship around it) is very relevant. Only time will tell if it’s too late for this juggernaut (hah) to be made accountable for their wrongdoings and rhetoric which is being used to fool gullible people falling prey to substandard and harmful products peddled in the name of nationalism”

119. The article uploaded on the internet dated 18.08.2017 with reference to the Court order banning the publication of BOOK of the publisher states:-

“This is an interesting read in the manner of a long form journalistic piece. It is not the definitive Ramdev biography that lays bare his motivations, and the workings of his sharp mind. But it does give us a clearer view of one of India’s most successful yoga gurus. As the injunction shows, the baba is unhappy about that.”

PROTECTION OF HUMAN RIGHTS ACT, 1993

120. The Protection of Human Rights Act, 1993, Section 2 (d) thereof defines human rights which reads to the effect:-

“2. Definitions (1) In this Act, unless the context otherwise requires-

(a) xxx;

(b) xxx;

(c) xxx;

(d) “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.”

121. In terms of the verdict of the Hon’ble Supreme Court in *Vishakha vs. State of Rajasthan, AIR 1997 SC 3011* and the verdict of this Court in *Neelam Katara Vs. Union of India & Ors. (2003) ILR 2 Delhi 377*, till the time there is a legislation made, the international covenants ratified by India though not yet legislated in the absence of any domestic legislation to the contrary, would be enforceable by the Courts in India.

122. Thus, the right to reputation in terms of the Human Rights Act, 1998 and the European Convention on Human Rights, Article 8 and Article 10 falls within the rights and fundamental freedoms set forth in the schedule in terms of Section 1 (3) of the said enactment enacted on 09.11.1998 which is adverted to hereinbelow which vide clause 2 of Article 10 circumscribes the exercise of the freedom of expression since it carries with its duties and responsibilities subject to

such formalities, conditions, restrictions or penalties as prescribed by law and are necessary in a democratic society *inter alia* for the protection of the reputation or rights of others and there being no domestic law in violation of the terms of the said International Covenant, the said International Covenant in terms of the verdict of the Hon'ble Apex Court in *Vishakha's case (supra)* as laid down by the Hon'ble Supreme Court and in *Neelam Yadav's case (supra)* and as laid down in the verdict in *Justice Puttuswamy v. Union of India (supra)* as explained by the Hon'ble High Court of Madras in *Ms. Kanimozhi Karunanidhi vs Thiru. P. Varadarajan (supra)*, the right to reputation falls within the expanded right of privacy, violation of which right of privacy as contended by the petitioner is to be in violation of his fundamental rights.

123. Articles 8 & 10 of the Schedule-I of Part-I of the Human Rights Act, 1998 framed in terms of the European Convention on Human Rights read to the effect :

Article 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

.....
.....
....

Article 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the **protection of the reputation** or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

APPLICABILITY OF ARTICLE 227 AND SECTION 115 OF THE CPC

124. As regards the contention raised on behalf of the respondents to the effect that this Court ought not to go into the merits or demerits of the contentions raised by the parties in exercise of its revisional jurisdiction or supervisory jurisdiction in terms of Article 227 of the Constitution of India under which the petitions have been filed or read with Section 115 of the Code of Civil Procedure, 1908, inasmuch as this Court ought not to impose its own view on consideration of the

record merely because another view may be taken, it is essential to observe that both in terms of Section 115 (1) (b) and Section 115 Sub-clause (1)(c) this Court may make such order as it thinks fit where it appears to this Court that the Court subordinate to it appears to have failed to exercise jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or qua material irregularity, or in terms of Article 227 of the Constitution which confers *inter alia* judicial superintendence over the subordinate Courts apart from administrative, though undoubtedly the jurisdiction vested under Article 227 of the Constitution of India and under Section 115 of the Code of Civil Procedure ought to be exercised sparingly and only in an appropriate case, the aspect of consideration of the same cannot be obliterated and has necessarily to be assessed and ascertained by this Court on consideration in exercise of jurisdiction in accordance with law. It is thus on this threshold of the impugned order being in accordance with law or otherwise and being in exercise or otherwise of jurisdiction vested in the Court which ought to be exercised when such jurisdiction exists and circumstances so warrant, that the contentions raised on behalf of either side, shall be considered herein.

**BALANCING OF THE RIGHT TO REPUTATION WITH
THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION**

125. The contention of the respondents has been that freedom of speech and expression under Article 19(1)(a) of the Constitution of India is supreme and cannot in any manner be qualified by the contentions raised in civil disputes contending that the right to

freedom of speech and expression be regulated in a manner that it does not circumscribe or impinge on another's right to reputation. The said contention clearly cannot be accepted. This is so in as much as ruled in *Charu Khurana v. Union of India*: AIR (2015) 839, dignity is a quintessential quality of a personality, for it is a highly cherished value as observed by the Hon'ble Supreme Court in *Subramniam Swamy v. Union of India*: 2016 7 SCC 227 laying down further vide paragraph 133 thereof, thus perceived the right to honour, dignity and reputation are the basic constituents of the right to life under Article 21. The verdict in *Subramniam Swamy (supra)* categorically observes that to state that the right to reputation can be impinged and remains unprotected *inter se* private disputes pertaining to reputation would not be correct and also lays down vide paragraph 144 of the said verdict that "reputation" of one cannot be allowed to be crucified at the altar of the other's right of free speech and that the balance between the two rights needs to be struck and that the reputation being an inherent component of Article 21 of the Constitution of India, it should not be allowed to be sullied only because another individual can have its freedom. Undoubtedly, when there is an abridgement and the reasonable restrictions imposed so that both right exists, such an abridgement or restriction has only to be to the extent what is absolutely necessary.

126. The observations of the Hon'ble Supreme Court in paragraphs 133 to 144 of the verdict of the *Subramaniam Swamy (supra)* are to the effect:

“133. In Charu Khurana and others v. Union of India and others 124, it has been ruled that dignity is the quintessential quality of a personality, for it is a highly cherished value. Thus perceived, right to honour, dignity and reputation are the basic constituents of right under Article 21. Submission of the learned counsel for the petitioners is that reputation as an aspect of Article 21 is always available against the high handed action of the State. To state that such right can be impinged and remains unprotected inter se private disputes pertaining to reputation would not be correct. Neither this right be overridden and blotched notwithstanding malice, vile and venal attack to tarnish and destroy the reputation of another by stating that curbs and puts unreasonable restriction on the freedom of speech and expression. There is no gainsaying that individual rights form the fundamental fulcrum of collective harmony and interest of a society. There can be no denial of the fact that the right to freedom of speech and expression is absolutely sacrosanct. Simultaneously, right to life as is understood in the expansive horizon of Article 21 has its own significance. We cannot forget the rhetoric utterance of Patrick Henry:-

"Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!"

134. In this context, we also think it apt to quote a passage from Edmund Burke:-

"Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion

as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters¹²⁶."

*135. The thoughts of the aforesaid two thinkers, as we understand, are not contrary to each other. They relate to different situations and conceptually two different ideas; one speaks of an attitude of compromising liberty by accepting chains and slavery to save life and remain in peace than to death, and the other view relates to "qualified civil liberty" and needed control for existence of the Patrick Henry, Speech in House of Burgesses on 23.3.1775 (Virginia) 126 Alfred Howard, The Beauties of Burke (T. Davison, London) 109 140 society. Contexts are not different and reflect one idea. Rhetorics may have its own place when there is disproportionate restriction but acceptable restraint subserves the social interest. **In the case at hand, it is to be seen whether right to freedom and speech and expression can be allowed so much room that even reputation of an individual which is a constituent of Article 21 would have no entry into that area. To put differently, in the name of freedom of speech and expression, should one be allowed to mar the other's reputation***

as is understood within the ambit of defamation as defined in criminal law.

136. To appreciate what we have posed hereinabove, it is necessary to dwell upon balancing the fundamental rights. It has been argued by the learned counsel for the petitioners that the right conferred under Article 19(1)(a) has to be kept at a different pedestal than the individual reputation which has been recognized as an aspect of Article 21 of the Constitution. In fact the submission is that right to freedom of speech and expression which includes freedom of press should be given higher status and the individual's right to have his/her reputation should yield to the said right. In this regard a passage from Sakal Papers (P) Ltd. (supra) has been commended us. It says:-

".....Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. If a law directly affecting it is challenged, it is no answer that the restrictions enacted by it are justifiable under clauses (3) to (6). For, the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and clause (1) does not prefer one freedom to another. That is the plain meaning of this clause. It

follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom."

137. Having bestowed our anxious consideration on the said passage, we are disposed to think that the above passage is of no assistance to the petitioners, for the issue herein is sustenance and balancing of the separate rights, one under Article 19(1)(a) and the other, under Article 21. Hence, the concept of equipoise and counterweighing fundamental rights of one with other person. not a case of mere better enjoyment of another freedom. In Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and others v. The State of Gujarat and others¹²⁷, it has been observed that a particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests. In Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others¹²⁸ the Court has ruled that Articles relating to fundamental rights are all parts of an integrated scheme in the Constitution and their waters must mix to constitute that grand flow of unimpeded and impartial justice; social, economic and political, and of equality of status and opportunity which imply absence of unreasonable or unfair discrimination between

individuals or groups or classes. In St. Stephen's College v. University of Delhi¹²⁹ this Court while emphasizing the need for balancing the fundamental rights observed that:

96.... it is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change."

138. In Mr 'X' v. Hospital 'Z'¹³⁰ this Court stated that,

"44.....where there is a clash of two Fundamental Rights, the right to privacy as part of right to life and Ms 'Y's right to lead a healthy life which is her Fundamental Right under Article 21, the right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay in the hall known as the courtroom, but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day".

That apart, we would also add that there has to be emphasis on advancement of public or social interest.

139. In Post Graduate Institute of Medical Education & Research, Chandigarh v. Faculty Association and others¹³¹ while emphasizing the need to balance the fundamental rights, this Court held that:-

"... It is to be appreciated that Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the backward classes, the State cannot ignore the fundamental rights of the rest of the citizens. The special provision under Article 15(4) [sic 16(4)] must therefore strike a balance between several relevant considerations and proceed objectively".

140. In Ram Jethmalani and others v. Union of India and others¹³² it has been held that the rights of citizens, to effectively seek the protection of fundamental rights have to be balanced against the rights of citizens and persons under Article 21. The latter cannot be sacrificed on the anvil of fervid desire to find instantaneous solutions to systemic problems through defamation speech, for it would lead to dangerous circumstances and anarchy may become the order of the day.

141. In Sahara India Real Estate Corporation Ltd. (supra) while describing the role of this Court in balancing the fundamental rights, the Constitution Bench observed that the Supreme Court is not only the sentinel of the fundamental rights but also a balancing wheel between the rights, subject to social control. The larger Bench further observed that:-

"Freedom of expression is not an absolute value under our Constitution. It must not be forgotten that no single value, no matter exalted, can bear the full burden of upholding a democratic system of government.

Underlying our constitutional system are a number of important values, all of which help

to guarantee our liberties, but in ways which sometimes conflict. Under our Constitution, probably, no values are absolute. All important values, therefore, must be qualified and balanced against other important, and often competing, values. This process of definition, qualification and balancing is as much required with respect to the value of freedom of expression as it is for other values".

142. In *Maneka Gandhi (supra)*, it has been held:-

*"5. ... It is indeed difficult to see on what principle we can refuse to give its plain natural meaning to the expression 'personal liberty' as used in Article 21 and read it in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. We do not think that this would be a correct way of interpreting the provisions of the Constitution conferring fundamental rights. The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. The wavelength for comprehending the scope and ambit of the fundamental rights has been set by this Court in *R.C. Cooper case (supra)* and our approach in the interpretation of the fundamental rights must now be in tune with this wavelength. We may point out even at the cost of repetition that this Court has said in so many terms in *R.C. Cooper case (supra)* that each freedom has different dimensions and there may be overlapping between different fundamental rights and therefore it is not a*

valid argument to say that the expression 'personal liberty' in Article 21 must be so interpreted as to avoid overlapping between that article and Article 19(1)."

Krishna Iyer, J., in his concurring opinion, has observed thus:-

*"96. the law is now settled, as I apprehend it, that no article in Part III is an island but part of a continent, and the conspectus of the whole part gives the direction and correction needed for interpretation of these basic provisions. **Man is not dissectible into separate limbs and, likewise, cardinal rights in an organic constitution, which make man human have a synthesis. The proposition is indubitable that Article 21 does not, in a given situation, exclude Article 19 if both rights are breached.***

97. We may switch to Article 19 very briefly and travel along another street for a while. Is freedom of extra-territorial travel to assure which is the primary office of an Indian passport, a facet of the freedom of speech and expression, of profession or vocation under Article 19? My total consensus with Shri Justice Bhagwati jettisons from this judgment the profusion of precedents and the mosaic of many points and confines me to some fundamentals confusion on which, with all the clarity on details, may mar the conclusion. It is a salutary thought that the summit Court should not interpret constitutional rights enshrined in Part III to choke its life-breath or chill its ilan vital by processes of legalism, overruling the enduring values burning in the bosoms of those who won our independence and drew up our founding document. We must

also remember that when this Court lays down the law, not ad hoc tunes but essential notes, not temporary tumult but transcendental truth, must guide the judicial process in translating into authoritative notation and mood music of the Constitution."

Beg, J. has stated that:-

"Articles dealing with different fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial Justice (social, economic and political),"

143. In Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India and others¹³³, wherein the majority in the Constitution Bench has observed that the fundamental right to life among all fundamental rights is the most precious to all human beings.

144. The aforementioned authorities clearly state that balancing of fundamental rights is a constitutional necessity. It is the duty of the Court to strike a balance so that the values are sustained. The submission is that continuance of criminal defamation under Section 499 IPC is constitutionally inconceivable as it creates a serious dent in the right to freedom of speech and expression. It is urged that to have defamation as a component of criminal law is an anathema to the idea of free speech which is recognized under the Constitution and, therefore, criminalization of defamation in any form is an unreasonable restriction.

We have already held that reputation is an inextricable aspect of right to life under Article 21 of the Constitution and the State in order to sustain and protect the said reputation of an individual has kept the provision under Section 499 IPC alive as a part of law. The seminal point is permissibility of criminal defamation as a reasonable restriction as understood under Article 19(2) of the Constitution. To elucidate, the submission is that criminal defamation, a pre-Constitution law is totally alien to the concept of free speech. As stated earlier, the right to reputation is a constituent of Article 21 of the Constitution. It is an individual's fundamental right and, therefore, balancing of fundamental right is imperative. The Court has spoken about synthesis and overlapping of fundamental rights, and thus, sometimes conflicts between two rights and competing values. In the name of freedom of speech and expression, the right of another cannot be jeopardized. In this regard, 148 reproduction of a passage from Noise Pollution (V), In re 137 would be apposite. It reads as follows:-

"... Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge in aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so

as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. We need not further dwell on this aspect. Two decisions in this regard delivered by the High Courts have been brought to our notice wherein the right to live in an atmosphere free from noise pollution has been upheld as the one guaranteed by Article 21 of the Constitution. These decisions are Free Legal Aid Cell Shri Suman Chand Aggarwal v. Govt. of NCT of Delhi¹³⁵ and P.A. Jacob v. Supdt. of Police¹³⁶. We have carefully gone through the reasoning adopted in the two decisions and the principle of law laid down therein, in particular, the exposition of Article 21 of the Constitution. We find ourselves in entire agreement therewith."

We are in respectful agreement with the aforesaid enunciation of law. Reputation being an inherent component of Article 21, we do not think it should be allowed to be sullied solely because another individual can have its freedom. It is not a restriction that has an inevitable consequence which impairs circulation of thought and ideas. In fact, it is control regard being had to another person's right to go to Court and state that he has been wronged and abused. He can take recourse to a procedure recognized and accepted in law to retrieve and redeem his reputation. Therefore, the balance between the two rights needs to be struck. "Reputation" of one cannot be allowed to be crucified at the altar of the

other's right of free speech. The legislature in its wisdom has not thought it appropriate to abolish criminality of defamation in the obtaining social climate."

127. While speaking about reputation, William Hazlitt had to say:-

"A man's reputation is not in his own keeping, but lies at the mercy of the profligacy of others. Calumny requires no proof. The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it."

which has been also so produced in ***Subramaniam Swamy (Supra)***.

128. The International Covenants have already been adverted to elsewhere herein above and the International Covenants have stressed on the significance of reputation and honour in a person's life as observed also in this verdict of the Hon'ble Supreme Court in ***Subramaniam Swamy (Supra)*** to the effect:-

"31. Various International Covenants have stressed on the significance of reputation and honour in a person's life. The Universal Declaration on Human Rights, 1948 has explicit 60 provisions for both, the right to free speech and right to reputation. Article 12 of the said Declaration provides that:-

"12.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."

32. The International Covenant on Civil and Political Rights (CICCPR) contains similar provisions. Article 19 of the Covenant expressly subjects the right of expression to the rights and reputation of others. It reads thus:-

"19 (1) Everyone shall have the right to hold opinions without interference.

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

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals".

33. Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 61 provide:-

"Article 8. Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"

"Article 10. Freedom of expression.—(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, maybe subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

32. The reference to international covenants has a definitive purpose. They reflect the

purpose and concern and recognize reputation as an inseparable right of an individual. They juxtapose the right to freedom of speech and expression and the right of reputation thereby accepting restrictions, albeit as per law and necessity. That apart, they explicate 62 that the individual honour and reputation is of great value to human existence being attached to dignity and all constitute an inalienable part of a complete human being. To put it differently, sans these values, no person or individual can conceive the idea of a real person, for absence of these aspects in life makes a person a non-person and an individual to be an entity only in existence perceived without individuality.

129. As laid down in ***Vishakhas's case*** by the Hon'ble Supreme Court as reproduced in ***Charu Khurana (supra)***:

“ where the Court has framed guidelines to protect the rights of individuals at their work place. It ultimately resulted in passing of the Sexual Harassment of Women at Workplace (Prevention, prohibition and Redressal) Act, 2013 which empowered individuals to protect their fundamental right to dignity against other citizens. Similarly, legislations like the Child Labour (Prohibition & Regulation) Act, 1986, 71 (1997) 6 SCC 241 105 the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Protection of Civil Rights Act, 1955, Press Council Act, 1978, the Noise Pollution (Regulation and Control) Rules, 2000 under the Environment (Protection) Act, 1986 regulate the fundamental rights of citizens vis-a-vis other citizens.”

130. The observations of the Hon'ble Supreme Court in ***Subramaniam Swamy (Supra)***, in relation to the perception of

reputation as perceived in the Courts in the United Kingdom, the Courts in South Africa and as laid down by the Hon'ble Supreme Court of India, are reproduced as under:

“35. Now, we shall closely cover the judicial perception of the word "reputation" and for the said purpose, we shall first refer to the view expressed by other Courts and thereafter return home for the necessary survey.

36. Lord Denning explained the distinction between character and reputation in Plato Films Ltd. v. Spiedel¹⁵ in a succinct manner. We quote:-

"A man's "character," it is sometimes said, is what he in fact is, whereas his "reputation" is what other people think he is. If this be the sense in which you are using the words, then a libel action is concerned only with a man's reputation, that is, with what people think of him: and it is for damage to his reputation, that is, to his esteem in the eyes of others, that he can sue, and not for damage to his own personality or disposition. That is why Cave J. spoke of "reputation" rather than "character."

The truth is that the word "character" is often used, and quite properly used, in the same sense as the word "reputation." Thus, when I say of a man that "He has always borne a good character," I mean that he has always been thought well of by others: and when I want to know what his "character" is, I write, not to him, but to others who know something about him. In short, his "character" is the esteem in which he is held by others who know him and are in a position to judge his worth. A man can sue for damage to his character in this

sense, even though he is little known to the outside world. If it were said of Robinson Crusoe that he murdered Man Friday, he would have a cause of action, even though no one had ever heard of him before. But a man's "character," so understood, may become known to others beyond his immediate circle. ***In so far as the estimate spreads outwards from those who know him and circulates among people generally in an increasing range, it becomes his "reputation," which is entitled to the protection of the law just as much as his character. But here I speak only of a reputation which is built upon the estimate of those who know him. No other reputation is of any worth. The law can take no notice of a reputation which has no foundation except the gossip and rumour of busybodies who do not know the man. Test it this way. Suppose an honourable man becomes the victim of groundless rumour. He should be entitled to damages without having this wounding gossip dragged up against him. He can call people who know him to give evidence of his good character. On the other hand, suppose a "notorious rogue" manages to conceal his dishonesty from the world at large. He should not be entitled to damages on the basis that he is a man of unblemished reputation. There must, ones would think, be people who know him and can come and speak to his bad character."***

37. In regard to the importance of protecting an individual's reputation Lord Nicholls of Birkenhead observed in *Reynolds v. Times Newspapers Ltd*¹⁶:-

'Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad. Consistently with these considerations, human rights conventions recognise that freedom of expression is not an absolute right. Its exercise may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of the reputations of others.'

38. While deliberating on possible balance between the right to reputation and freedom of expression, in *Campbell v. MGN Ltd*, it has been stated:-

"Both reflect important civilized values, but, as often happens, neither can be given effect in full measure without restricting the other, How are they to be reconciled in a particular case? There is in my view no question of

automatic priority. Nor is there a presumption in favour of one rather than the other. The question is rather the extent to which it is necessary to qualify the one right in order to protect the underlying value which is protected by the other. And the extent of the qualification must be proportionate to the need. ..."

39. In *Wisconsin v. Constantineau*¹⁸ it has been observed that:-

"9. Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. "Posting" under the Wisconsin Act may to some be merely the mark of illness, to others it is a stigma, an official branding of a person. The label is a degrading one. Under the Wisconsin Act, a resident of Hartford is given no process at all. This appellee was not afforded a chance to defend herself. She may have been the victim of an official's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented."

40. In *Rosenblatt v. Baer*¹⁹ Mr. Justice Stewart observed that:-

"33. The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being -- a concept at the root of any decent system of ordered liberty."

41. *Hill v. Church of Scientology of Toronto*
1995 2 SCR 1130 Can SC

"(ii) The Reputation of the Individual

107. The other value to be balanced in a defamation action is the protection of the reputation of the individual.

Although much has very properly been said and written about the importance of freedom of expression, little has been written of the importance of reputation. Yet, to most people, their good reputation is to be cherished above all. A good reputation is closely related to the innate worthiness and dignity of the individual. It is an attribute that must, just as much as freedom of expression, be protected by society's laws. In order to undertake the balancing required by this case, something must be said about the value of reputation.

108. Democracy has always recognized and cherished the fundamental importance of an individual. That importance must, in turn, be based upon the good repute of a person. It is that good repute which enhances an individual's sense of worth and value. False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited."

42. In the approach of the South African Courts, "human dignity" is one of the founding values of the South African Constitution (Clause 1). The Constitution protects dignity (clause 7), privacy (clause 14) and freedom of expression (clause 16). In Khumalo v. Holomisa, 2002 ZACC 12 the Court said:-

"27. In the context of the *actio injuriarum*, our common law has separated the causes of action for claims for injuries to reputation (*fama*) and *dignitas*. *Dignitas* concerns the individual's own sense of self worth, but included in the concept are a variety of personal rights including, for example, privacy. In our new constitutional order, no sharp line can be drawn between these injuries to personality rights. The value of human dignity in our Constitution is not only concerned with an individual's sense of self-worth, but constitutes an affirmation of the worth of human beings in our society. It includes the intrinsic worth of human beings shared by all people as well as the individual reputation of each person built upon his or her own individual achievements. **The value of human dignity in our Constitution therefore values both the personal sense of self-worth as well as the public's estimation of the worth or value of an individual. It should also be noted that there is a close link between human dignity and privacy in our constitutional order.** [a footnote here in the judgment reads: "See National Coalition .. at para 30: "The present case illustrates how, in particular circumstances, the rights of equality and dignity are closely related, as are the rights of dignity and privacy."] The right to privacy, entrenched in section 14 of the Constitution, recognises that human beings have a right to a sphere of intimacy and autonomy that should be protected from invasion... This right serves to foster human dignity. No sharp lines then can be drawn between reputation, *dignitas* and privacy in giving effect to the value of human dignity in our Constitution. ...

28. *The law of defamation seeks to protect the legitimate interest individuals have in their reputation. To this end, therefore, it is one of the aspects of our law which supports the protection of the value of human dignity. When considering the constitutionality of the law of defamation, therefore, we need to ask whether an appropriate balance is struck between the protection of freedom of expression on the one hand, and the value of human dignity on the other.*"

43. *In Lindon v. France 2008 46 EHRR, Judge Loucaides, in his concurring opinion, held:-]*

"Accepting that respect for reputation is an autonomous human right, which derives its source from the Convention itself, leads inevitably to a more effective protection of the reputation of individuals vis-a-vis freedom of expression."

In the said case, the Court has expressly recognised that protection of reputation is a right which is covered by the scope of the right to respect for one's private life under Article 8 of the Convention. In course of deliberations reference has been made to Chauvy and Others v. France²³, Abeberry v. France (dec.), no. 58729/00, 21 September 2004; and White v. Sweden 2007 EMLR 1.

44. *In Karako v. Hungary 2011 52 EHRR 36 the Court has opined that:-*

"24. The Court reiterates that paragraph 2 of Article 10 recognises that freedom of speech may be restricted in order to protect reputation (see paragraph 16 above). In other words, the Convention itself

announces that restrictions on freedom of expression are to be determined within the framework of Article 10 enshrining freedom of speech.

25. The Court is therefore satisfied that the inherent logic of Article 10, that is to say, the special rule contained in its second paragraph, precludes the possibility of conflict with Article 8. In the Court's view, the expression "the rights of others" in the latter provision encompasses the right to personal integrity and serves as a ground for limitation of freedom of expression in so far as the interference designed to protect private life is proportionate."

45. In *Axel Springer AG v. Germany* 2012 55EHRR 6 ECHR it has been ruled:-

"... [T]he right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life ... In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life ... The Court has held, moreover, that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence ...

When examining the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to verify whether the domestic authorities struck a

fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8."

The perspective of this Court

46. In *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others* 1983 1 SCC 124, the Court has opined that expression "Life" does not merely connote animal existence or a continued drudgery through life. Further, it proceeded to state thus:-

"13... The expression "life" has a much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous words of Chapter II of Bhagwad-Gita:

"Sambhavitasya Cha Kirti Marnadati Richyate"

47. In *Kiran Bedi v. Committee of Inquiry and another* 1989 1 SCC 494, a three-Judge Bench, while dealing with the petition for quashing of the inquiry report against the petitioner therein, referred to Section 8-B of the Commissions of Inquiry Act, 1952 and opined that the importance has been attached with

regard to the matter of safeguarding the reputation of a person being prejudicially affected in clause (b) of Section 8-B of the Commissions of Inquiry Act. It is because reputation of an individual is a very ancient concept. The Court referred to the words of caution uttered by Lord Krishna to Arjun in Bhagwad Gita with regard to dishonour or loss of reputation; and proceeded to quote:-

"22....Akirtinchapi bhutani kathaishyanti te-a-vyayam, Sambha-vitasya Chakirtir maranadatirichyate. (2.34)

(Men will recount thy perpetual dishonour, and to one highly esteemed, dishonour exceedeth death.)"

Thereafter, the Court referred to Blackstone's Commentary of the Laws of England, Vol. I, 4th Edn., wherein it has been stated that the right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation. Thereafter, advertence was made to the statement made in Corpus Juris Secundum, Vol. 77 at p. 268 which is to the following effect:-

"24....It is stated in the definition Person, 70 C.J.S. p. 688 note 66 that legally the term "person" includes not only the physical body and members, but also every bodily sense and personal attribute, among which is the reputation a man has acquired. Blackstone in his Commentaries classifies and distinguishes those rights which are annexed to the person, jura personarum, and acquired rights in external objects, jura rerum; and in the former he includes personal security, which consists in

*a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. And he makes the corresponding classification of remedies. **The idea expressed is that a man's reputation is a part of himself, as his body and limbs are, and reputation is a sort of right to enjoy the good opinion of others, and it is capable of growth and real existence, as an arm or leg. Reputation is, therefore, a personal right, and the right to reputation is put among those absolute personal rights equal in dignity and importance to security from violence.** According to Chancellor Kent as a part of the rights of personal security, the preservation of every person's good name from the vile arts of detraction is justly included. **The laws of the ancients, no less than those of modern nations, made private reputation one of the objects of their protection.***

The right to the enjoyment of a good reputation is a valuable privilege, of ancient origin, and necessary to human society, as stated in Libel and Slander Section 4, and this right is within the constitutional guaranty of personal security as stated in Constitutional Law Section 205, and a person may not be deprived of this right through falsehood and violence without liability for the injury as stated in Libel and Slander Section 4.

Detraction from a man's reputation is an injury to his personality, and thus an injury to reputation is a personal injury, that is, an injury to an absolute personal right".

Be it noted a passage from D.F. Marion v. Davis 192755 ALR 171 Alabama, was reproduced with approval:-

"25....The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property."

48. In Gian Kaur v. State of Punjab³⁰, this Court observed that the right to reputation is a natural right. In Mehmood Nayyar Azam v. State of Chhatisgarh and others 2012 8 SCC 1, while discussing the glory of honourable life, the Court observed:-

"1. ...Albert Schweitzer, highlighting on the Glory of Life, pronounced with conviction and humility, "the reverence of life offers me my fundamental principle on morality". The aforesaid expression may appear to be an individualistic expression of a great personality, but, when it is understood in the complete sense, it really denotes, in its conceptual essentiality, and connotes, in its macrocosm, the fundamental perception of a thinker about the respect that life commands. The reverence of life is insegregably associated with the dignity of a human being who is basically divine, not servile."

Elucidating further, the Court observed:-

"1...A human personality is endowed with potential infinity and it blossoms when dignity is sustained. The sustenance of such dignity has to be the superlative concern of every sensitive soul. The essence of dignity can never be treated as a momentary spark of light or, for that matter, "a brief candle", or "a hollow bubble". The spark of life gets more

resplendent when man is treated with dignity sans humiliation, for every man is expected to lead an honourable life which is a splendid gift of "creative intelligence". When a dent is created in the reputation, humanism is paralysed...."

49. In *Vishwanath Agrawal v. Saral Vishwanath Agrawal* 2012 7 SCC 288 this Court observed that reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is a revenue generator for the present as well as for the posterity. In *Umesh Kumar v. State of Andhra Pradesh and another* 2013 10 SCC 591 the Court observed that

“ 18.....personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property and as such it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises right to have opinions and right to freedom of expression under Article 19 is subject to the right of reputation of others.

50. In *Kishore Samrite v. State of Uttar Pradesh and others* 2013 2 SCC 398, while dealing with the term "person" in the context of reputation, the Court after referring to the authorities in *Kiran Bedi (supra)* and *Nilgiris Bar Association v. T.K. Mahalingam and another* 1998 1 SCC 550 held that:-

"58. The term "person" includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. "Reputation" is an element of personal security and is protected by the Constitution equally with the right to enjoyment of life, liberty and property. Although "character" and "reputation" are often used synonymously, but these terms are distinguishable. "Character" is what a man is and "reputation" is what he is supposed to be in what people say he is. "Character" depends on attributes possessed and "reputation" on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present. ..."

51. In Om Prakash Chautala v. Kanwar Bhan and others 2014 5 SCC 417 it has been held that

*“ I.....reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. **When reputation is hurt, a man is half-dead.***

It is an honour which deserves to be equally preserved by the downtrodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time. It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution. No one would like to have his reputation dented, and it is perceived as an honour rather than popularity.

52. *In State of Gujarat and another v. Hon'ble High Court of Gujarat 1998 7 SCC 392, the court opined:-*

"99. ...An honour which is a lost or life which is snuffed out cannot be recompensed"

53. *We have dwelled upon the view of this Court as regards value of reputation and importance attached to it. We shall be obliged, as we are, to advert to some passages from the aforementioned authorities and also from other pronouncements to understand the Court's "accent" on reputation as an internal and central facet of right to life as projected under Article 21 of the Constitution at a later stage.*

54. *Having reconnoitered the assessment of the value of reputation and scrutinised the conceptual meaning of the term "reputation", we are required to weigh in the scale of freedom of speech and expression, especially under our Constitution and the nature of the democratic polity the country has."*

131. As observed in paragraph 195 of the said verdict the right to free speech cannot mean that a citizen can defame the other and

protection of reputation is a fundamental right and also a human right and cumulatively serves the social interest. Vide the paragraph 196 of the said verdict, it has also been observed to the effect that the submissions that imposition of silence will rule over eloquence of free speech is a stretched concept in as much as the said proposition is basically founded on the theory of absoluteness of the fundamental right of freedom of speech and expression which the Constitution does not countenance.

CIVIL ACTION FOR INFRINGEMENT OF RIGHT TO REPUTATION

132. Though undoubtedly, the verdict of the Hon'ble Supreme Court in *Subramaniam Swamy (supra)* relates to the aspect of upholding the constitutional validity of Section 499 and 500 of the Indian Penal Code, 1860 and Section 199 of the Code of Criminal Procedure, 1973 nevertheless, the ambit of the right to reputation under Article 21 of the Constitution of India and that it has necessary existence in conjunction with the right to freedom of speech and expression in a manner whereby both the fundamental rights of the right of reputation inherent under Article 21 of the Constitution of India and the right to freedom of speech and expression ordained under Article 19(1)(a) of the Constitution of India are both to co-exist in harmony and as a consequence thereof, as observed in paragraph 137 of the said verdict already adverted to herein above and also as observed in *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and others v. The State of Gujarat and others 1975 (1) SCC 127*, it has been observed that a particular fundamental right

cannot exist in isolation in a watertight compartment and one fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole and that it is essential to observe that as laid down vide paragraphs 68 and 69 of the said verdict which read to the effect:

*“68. The position has further become clear in **Ganga Bai v. Vijay Kumar** wherein this Court has ruled thus:-*

“There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one’s peril, bring a suit one’s choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit.”

69. We have referred to this aspect only to clarify the position that it is beyond any trace of doubt that civil action for which there is no codified law in India, a common law right can be taken recourse to under Section 9 of the Code of Civil Procedure, 1908, unless there is specific statutory bar in that regard.”,—

the right to civil action for infringement of the right to reputation and thus to sue against defamation is a cause of action for which though there being no codified law in India, civil action can be taken recourse to under Section 9 of the CPC 1908 and thus the observation of the Hon’ble Supreme Court in relation to the ambit and contours of the right to reputation as being inherent under Article 21 of the

Constitution of India with which the right to freedom of speech and expression under Article 19(1)(a) has to be balanced and that the right to reputation cannot be sacrificed or crucified at the altar of the right of freedom of speech and expression, has equal force in a civil action.

VERDICT IN WRIT PETITION (CIVIL) NO. 494 OF 2012 IN JUSTICE K.S. PUTTASWAMY (RETD.) VS. UNION OF INDIA AND OTHERS DATED 26.09.2018

133. The balancing of the fundamental right of the individual to his / her reputation under Article 21 of the Constitution of India in co-existence in harmony with the exercise of the right of freedom of speech and expression of another under Article 19(1)(a) of the Constitution of India has been upheld once again as brought forth through the observations in paras 312, 313 and 314 of the majority judgment in the famous Aadhar case, vide verdict dated 26.09.2018, which read to the effect : -

“312) This very exercise of balancing of two fundamental rights was also carried out in Subramanian Swamy v. Union of India, Ministry of Law & Ors.¹⁰⁶ where the Court dealt with the matter in the following manner:

“122. In State of Madras v. V.G. Row [State of Madras v. V.G. Row, AIR 1952 SC 196 : 1952 Cri LJ 966], the Court has ruled that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the

prevailing conditions at the time, should all enter into the judicial verdict.

xx xx xx

105515 US 646 (1995)

106(2016) 7 SCC 221

130. The principles as regards reasonable restriction as has been stated by this Court from time to time are that the restriction should not be excessive and in public interest. The legislation should not invade the rights and should not smack of arbitrariness. The test of reasonableness cannot be determined by laying down any abstract standard or general pattern. It would depend upon the nature of the right which has been infringed or sought to be infringed. The ultimate “impact”, that is, effect on the right has to be determined. The “impact doctrine” or the principle of “inevitable effect” or “inevitable consequence” stands in contradistinction to abuse or misuse of a legislation or a statutory provision depending upon the circumstances of the case. The prevailing conditions of the time and the principles of proportionality of restraint are to be kept in mind by the court while adjudging the constitutionality of a provision regard being had to the nature of the right. The nature of social control which includes public interest has a role. The conception of social interest has to be borne in mind while considering reasonableness of the restriction imposed on a right. The social interest principle would include the felt needs of the society.

xx xx xx Balancing of fundamental rights

136. To appreciate what we have posed hereinabove, it is necessary to dwell upon balancing the fundamental rights. It has been argued by the learned counsel for the petitioners that the right conferred under Article 19(1)(a) has to be kept at a different pedestal than the individual reputation which has been recognised as an

aspect of Article 21 of the Constitution. In fact the submission is that right to freedom of speech and expression which includes freedom of press should be given higher status and the individual's right to have his/her reputation should yield to the said right. In this regard a passage from Sakal Papers (P) Ltd. [Sakal Papers (P) Ltd. v. Union of India, (1962) 3 SCR 842 : AIR 1962 SC 305] has been commended to us.

It says: (AIR pp. 313-14, para 36) "36. ... Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. If a law directly affecting it is challenged, it is no answer that the restrictions enacted by it are justifiable under clauses (3) to (6). For, the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and clause (1) does not prefer one freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom."

(emphasis supplied)

137. Having bestowed our anxious consideration on the said passage, we are disposed to think that the above passage is of no assistance to the petitioners, for the issue herein is sustenance and balancing of the separate rights, one under Article 19(1)(a) and the other, under Article 21. Hence, the concept of equipoise and counterweighing fundamental rights of one with other person. It is not a case of mere better enjoyment of another freedom. In Acharya Maharajshri Narendra

Prasadji Anandprasadji Maharaj v. State of Gujarat [Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat, (1975) 1 SCC 11], it has been observed that a particular fundamental right cannot exist in isolation in a watertight compartment.

One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the directive principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests... xx xx xx

194. Needless to emphasise that when a law limits a constitutional right which many laws do, such limitation is constitutional if it is proportional. The law imposing restriction is proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. Such limitations should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. Reasonableness is judged with reference to the objective which the legislation seeks to achieve, and must not be in excess of that objective (see P.P. Enterprises v. Union of India [P.P. Enterprises v. Union of India, (1982) 2 SCC 33 : 1982 SCC (Cri) 341]). Further, the reasonableness is examined in an objective manner from the standpoint of the interest of the general public and not from the point of view of the person upon whom the restrictions are imposed or abstract considerations (see Mohd. Hanif Quareshi v. State of Bihar [Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731]).”

313) Thus, even when two aspects of the fundamental rights of the same individual, which appear to be in conflict with each other, is done, we find that the Aadhaar Act has struck a fair balance between the right

of privacy of the individual with right to life of the same individual as a beneficiary.

In the face of the all pervading prescript for accomplished socio-economic rights, that need to be given to the deprived and marginalised section of the society, as the constitutional imperative embodied in these provisions of the Act, it is entitled to receive judicial imprimatur.

Re : Argument on Exclusion:

314) Some incidental aspects, however, remain to be discussed. It was argued by the petitioners that the entire authentication process is probabilistic in nature inasmuch as case of a genuine person for authentication can result in rejection as biometric technology does not guarantee 100% accuracy. It may happen for various reasons, namely, advance age, damage to fingerprints due to accident, etc. Even in case of children the fingerprints may change when they grow up. The emphasis was that there was a possibility of failure in authentication for various reasons and when it happens it would result in the exclusion rather than inclusion. In such eventuality an individual would not only be denied the benefits of welfare schemes, it may threaten his very identity and existence as well and it would be violative of Articles 14 and 21 of the Constitution. The Authority has claimed that biometric accuracy is 99.76%. It was, however, submitted that where more than 110 crores of persons have enrolled themselves, even 0.232% failure would be a phenomenal figure, which comes to 27.60 lakh people. Therefore, the rate of exclusion is alarming and this would result in depriving needy persons to enjoy their fundamental rights, which is the so-called laudable objective trumpeted by the respondents. TO DICTATE FURTHER Re. : Studies on exclusion Re. : Finger prints of disabled, old persons etc. See other mode of identity.”

and observations in para 194 of the dissenting judgment of *Hon'ble Mr. Justice D.Y. Chandrachud J.* which too lays down that the balancing of fundamental rights is **a constitutional necessity**, though it relates to the attempt of the Court in *Subramanian Swamy v. Union of India (2016) 7 SCC 221* to harmonize reputation as an intrinsic element of the right to life under Article 21 with criminal defamation as a restriction under Article 19(2).

APPLICABILITY OF RULE IN BONNARD V. PERRYMAN

134. The other contentions raised on behalf of the respondents is that in view of the principle in *Bonnard v. Perryman [1891 2 (Ch) 269]*, *Khushwant Singh v. Maneka Gandhi (2001) SCC Online Del 1030*, *Tata Sons v. Greenpeace International 2011 SCC Online Del 466*, *His Holiness Shamar Rimpoche v. Lea Terhune*, and *Indu Jain v. Forbes Inc. 2007 SCC Online Del 1424* of this Court that where defendant in the civil suit of defamation pleads justification, there is no interim injunction can be granted and in the event that the said defendant were to file in its defence, damages would be an adequate remedy.

135. The verdict of this Court in *Bhaichung Bhutia Vs. Saumik Dutta & Ors. (2014) 215 DLT 415* spells out eloquently as under : -

13. It is correct that freedom of expression in press and media is the part of Article 19(1) of the Constitution of India where by all the citizens have a right to express their view. However, the said right of the expression is also not absolute but is subjected to the reasonable restrictions imposed by the Parliament or State in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign

States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The said position is clear from the plain reading of the Article 19(1) and (2) of the Constitution of India.

14. The right to press and its freedom to express the ideas in public has always been the integral part of healthy democracy and the prior restraint on the publication was considered to be acceptable under the earlier line of authorities. The Courts have always indicated that the fine balance is required to be made so that the said liberty of press should not be uncontrolled or regulated by laws including the laws relating to public order, contempt etc and the same is subject to reasonable restrictions as per the Article 19(2) of the Constitution of India.

15. The Supreme Court in Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India, (2012) 10 SCC 603 observed that the prior restraint against publication is vested in the form of inherent powers of the superior Courts including High Court under the provisions of Section 151 of the Code of Civil Procedure wherein the Court can proceed to pass such restraint orders if the administration of justice so warrants approving the judgment of Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1. It has also been held by the Supreme Court that the right to open justice which is free and unprejudiced is a basic right that has to be balanced vis-a-vis the right to press and expression of ideas which is the facet of the right to speech and expression”

(emphasis supplied)

and vide para 18 thereof grants the interim restraint against the publication and re-publication of defamatory imputation against the plaintiff in that suit similar to an article previously submitted in as

much as otherwise irreparable loss and injury would be caused to the plaintiff and similar articles issued were liable to be postponed.

136. It is essential to observe that the plea of **fair comment** implies making of a genuine effort to reach truth and a mere belief of there being truth without there being reasonable grounds for such plea is not synonymous with fair comment.

137. The verdict of this Court in *Ajay Aggarwal Vs. Vinod Mehta & Ors. 102 (2003) DLT 774* lays down categorically that mere belief of the printer / publisher that the report is incorrect would not be a defence unless that they had acted with due care and question.

138. Reliance has been placed on behalf of the respondents on the verdict of this court in *Indo Jain Vs. Forbes Incorporated I.A. 12993/2006 in CS(OS) 2172/2006 decided on 21.10.2007* to contend that the plea of justification is available to them and that thus if there is inaccuracy and incorrectness of publication established, the adequate remedy would only be in damages and not by an ad-interim injunction, which cannot be accepted in as much as there was a pre-publication to the information given by the defendants in that case to the plaintiff of that case of the methodology that the defendant would adopt for computation of wealth of the plaintiff therein to place her wealth on to a website of the Times of India. The facts of the case in *Indu Jain Vs. Forbes Incorporated (supra)* are thus not in *pari materia* with the facts of the present case.

139. Reliance placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in *R. Rajagopal and Ors. Vs. State of*

Tamil Nadu and Ors. (1994) 6SCC 632 the facts of which likewise are not in *pari materia* with the facts of the instant case in as much as the publishers therein have been held entitled to publish the life story/autobiography of Auto Shanker in so far as it appeared from the public records, even without his consent or authorization. In the instant case the avowed contentions of the petitioner have been that as regards the publication in **“Chapter 16 Mystery 2 : The Guru’s Disappearance”** in the **BOOK** to implicitly state that the petitioner was somehow involved or complicit in the disappearance of his Guru Shanker Dev Ji and that further he, the petitioner having used his influence with the Government was able to scuttle the investigation which was not handled in a fair and transparent manner, coupled with the factum that the said publication came to the knowledge of the petitioner on 29.07.2017 after the Special Judicial Magistrate (CBI)/ACJM(I) Dehradun vide order dated 13.02.2015 accepted the closure report filed by the CBI in this matter, which aspect was not adverted to by the author and thus in view of the order dated 13.02.2015 of the Special Judicial Magistrate (CBI)/ACJM(I) Dehradun in case No. 1428/14 vide which the closure report submitted by the CBI in relation to the missing report for Guru Shanker Devi Ji at PS Khankhan, Haridwar, which was registered on 16.07.2007 was closed, the publication in relation to this aspect in 2017 *prima facie* cannot be held to be justified. The plaintiff of the case Acharya Bal Krishan is also indicated vide order dated 13.02.2015 of Special Judicial Magistrate (CBI)/ACJM(I) Dehradun

having given his no objection to the final report given by CBI being accepted.

140. As regards “Chapter 9 Mystery 1: The Ally’s Murder” which relates to the death of the Swami Yoganand, the key associate of the petitioner, it is contended by the petitioner that through the said chapter which reads to the effect : -

“Mystery I: The Ally's Murder

Kankhal, 27 December 2004

A day after the Asian tsunami swept up the shorelines of fourteen countries', killing nearly a quarter of a million people, an intriguing event occurred in Kankhal. In the darkening winter evening of 27 December 2004, a scuffle broke out in the single-storey Yogananda Ashram, home to Swami Yogananda, the man whose licence had enabled Divya Pharmacy to function and grow for eight years since its inception in 1995 till 2003.

Yogananda's neighbours are cagey about discussing it even today but they say they heard raised voices coming from his house that eventful evening. No one imagined, though,, that Yogananda — the lonely man who lived without a telephone or even electricity — was being knifed to death. One Vasant Kumar Singh discovered” his lifeless body shortly after and called the police. Along with other neighbours, the young Tarun Kumar went in with the police. 'I remember it still. He was there in that dark room when I went in lying m a pool of his own blood.'

As mentioned earlier, in 2003 Divya Pharmacy had abruptly changed the vaidy on its registration from Swami Yogananda is said to have had a falling out with Ramdevs increasingly powerful enterprise but the reasons for this are still unknown.

With Yoganandas death, a key associate who had provided critical help to Ramdev in his early days was gone. The murder remains unsolved till date. Ten months later, on 25 October 2005, investigating officer B.B. Juyal filed his final report in the case - Case unsolved.

Perpetrators unknown.”

it has been insinuated against the petitioner that he had something to do with the murder of Swami Yogananda on account of a falling out between the petitioner and Swami Yogananda and the petitioner contends that it has been further represented as if the Investigating Officer had filed an extraordinary report by stating that the perpetrators were unknown and that the respondents had not clarified that such reports are called "Untrace Reports" and are common place and that the same had been done with the sole intention of creating an aura of suspicion so as to defame the petitioner and that in the light of the "Untraced Report" which has also been admitted by the author, it is contended on behalf of the petitioner that it is clear that there was no way for the respondents to prove that the allegations were true and accordingly no defence would succeed in relation to the same. *Prima facie* the factum that there was an "Untrace Report" in existence, there exists no justification for creation of an aura of suspicion against the petitioner in relation to the murder of the Swami Yogananda rightly contended on behalf of the petitioner.

141. As regards the **“Chapter Mystery 3: Mentor’s Sudden Death”** as published in the **BOOK** qua which it is submitted through

the written submissions of the petitioner that it was sought to be brought forth by the author that there was some foul play in relation to the death of Rajiv Dixit and that the petitioner was unwilling to permit the conducting of the postmortem in a bid to cover up the foul play, the allegation was totally unfounded in view of the death certificate of Rajiv Dixit disclosing that he had died a natural death caused by an acute myocardial infraction (heart attack) which death certificate has never been challenged nor was there any pending investigation in relation thereto and in view of the death certificate, there is no way for the respondents to prove that the allegations were true and in trial, no defence would succeed in relation thereto, taking into account the factum that the author also mentions at page 140 in this chapter to the effect : -

“As the convoy drew up to the cremation ghats, where thousands of people had already gathered, Ramdev turned to Pradeep Dixit and suddenly said, 'Look, if you want, we can do the postmortem.'"

Taken aback, Dixit said, 'Swamiji, all these people are already here. You have taken a decision for all of us not to do the postmortem. There is no point talking about it now, is there?'

When asked why he said this, Pradeep Dixit explains, 'What was I supposed to say? Everyone had reached the cremation ghat. I didn't know what to say... People were whispering all kinds of things to me. If they were true then what was the guarantee that the postmortem report would not be doctored? ... I was not in a condition to defy him.'"

which brings forth that the author does mention that the petitioner told Pradeep Dixit the brother of the Rajeev Dixit that if he wanted the postmortem could be done, Read in toto, thus the observations put forth in relation to Rajeev Dixit's death, *prima facie*, do not culminate into any insinuation or allegation against the petitioner apart from his continuous refrain that he did not want the body of Rajeev Dixit to be cut into pieces for a postmortem which he thought was against the Hindu Dharma as his indicated twice in this Chapter at pages 137, 138 and 139 of the **BOOK**, which read to the effect : -

“Finally, Ramdev relented to a meeting at 7.30 a.m. and called in Dubey and his associates but only after taking away out cellphones, to make sure nothing was recorded, Dubey recalls, a fear that even Kirit Mehta referred to during his fateful encounter with Ramdev.

Dubey sat closest to Ramdev – he had been appointed the speaker for his party. I gave him the petition, signed by fifty people, asking for a postmortem, says Dubey. According to Dubey, this is how that meeting unfolded.

Ramdev asked, So what do you want?

Dubey replied, All of us are trustees of the Azadi Bachao Andolan and we want a postmortem.

What is the need for it? This is a natural death.;

We have out doubts. So, lets get a postmortem done.

It's very simple.

But I spoke to the doctors myself. I have reports from the doctors that he had a heart attack and all that;

We don't trust it. We want a postmortem.

No. no..... I know it was a natural death.

How can you know: You were not there. You were only talking to them on the phone. How can you be sure there was no conspiracy.

But why will anyone conspire like that?

There can be many who might. You are well aware of it.

Ramdev was growing angrier by the minutes at what he must have seen as Dubey's insolence. He tried to rule out a postmortem saying it was against 'Hindu dharma'. But Dubey dismissed this objection saying, He [RajeevDixit] had no dharma. His dharma was the service of his country. He never called himself a man of any religion. So don't worry about Hindu dharma and get the postmortem done. It is good for you and it is good for us that all this becomes clear. Otherwise, fingers will be pointed ...'

But Ramdev was equally insistent. According to Dubey, he said, Such cutting and chopping is not done in Hindu dharma. A man is sent back the way he came.'

It seems to me that you don't want the postmortem to be done.'

'Why would you say that?'

It was at this point that Dubey claims he became incredibly blunt: Rajeev Dixit did have fights with some of your people, didn't he? Your people had differences with him, didn't they? I know they were upset that some outsider like Rajeev Dixit came out of nowhere and became the national secretary of the Bharat Swabhiman Andolan. They were jealous that thousands of people used to come to meet him.'

This back and forth went on for over an hour, says Dubey. Finally, Ramdev suggested that they all go to the hall where Dixit's body lay, and ask the people there, and the Dixit family, for their opinion. This sounded like a reasonable thing to do.

But while Ramdev sat in his car with his people and sped off, Dubey and the others in his party followed on foot to the hall that was a twenty-minute walk away.

Before Dubey and Company could get there, a visibly angry Ramdev stormed into the hall, took the microphone and said, 'Some people have come from Mumbai. They want me to do a postmortem . . . such cutting [of a dead body] is not permitted in Hindu dharma.'

One of the mourners present in the hall, a Dr Suman from Haryana who was closely involved with the work of the Bharat Swabhiman Andolan and Rajeev Dixit, stood up and said, 'So why aren't you getting it [a postmortem] done?' Ramdev was livid at being openly questioned, and was in no mood to answer.

Turning to his men, he commanded, 'Get the body ready for its final journey. The cremation was originally scheduled for 11 a.m. It was still only nine.

Ramdev's men got the body ready for cremation, quickly carried it into an ambulance, and set off for the cremation ghats. 'We were just arriving at the hall after our walk from his house when we saw the ambulance driving away with Rajeevbhai's body in it,' remembers Dubey 'We panicked and tried to stop the ambulance from leaving because we knew that once the body was cremated, our questions could never be answered,' says Dubey, his voice still filled with regret."

In this context thus the contention of the petitioner seeking to contend that there were deliberate insinuations against him made by the author that he was not willing to get the postmortem conducted on the body of Rajeev Dixit to cover up a foul play, *prima facie*, cannot be accepted.

PLEADING IN PLAINT OF FALSITY, DEFAMATORY ALLEGATIONS MADE IN THE BOOK

142. The other contention raised on behalf of the respondent is to the effect that the petitioner does not contend specifically that the contents of the **BOOK** are false and in the absence of such assertions the prayer made by the petitioner ought not to be granted, in relation to this aspect, it is essential to observe that the plaintiff i.e. the petitioner through his plaint has categorically averred that the contents of the **BOOK** are *malicious and completely out of context with ulterior motive* with *twisted, misleading, incorrect, defamatory and false averments*. This contention thus raised on behalf of the respondents is thus not accepted.

PETITIONER, A PUBLIC PERSON – PUBLIC INTEREST TO KNOW ALL ABOUT HIM

143. Contentions that have been raised by the respondents that the petitioner being a public person cannot be thin skinned and being a public figure necessarily has to volunteer his life for public examination in public interest that people know about his doings even in his personal life and because the petitioner exercises disproportionate control over the media and can issue correctives widely and the petitioner herein has even controverted allegations when confronted in as much as all these issues in the **BOOK** which the petitioner alleges to be defamatory have been more expressly dealt with by reports, newspapers and TV journalists and other media and the petitioner has over and again been satisfied with responding to them by controverting them when confronted and thus all that the author had sought to do was to put forth a fair comment which the

publisher has published contending that it has been done in public interest.

144. In relation to this submission, it is essential to observe that as laid down in *Justice K.S. Puttuswamy (Retd.) v. Union of India* (2017) 10 SCC 1 as observed vide paragraphs 623, 624 & 625 to the effect : -

“623. An individual has a right to protect his reputation from being unfairly harmed and such protection of reputation needs to exist not only against falsehood but also certain truths. It cannot be said that a more accurate judgment about people can be facilitated by knowing private details about their lives – people judge us badly, they judge us in haste, they judge out of context, they judge without hearing the whole story and they judge with hypocrisy. Privacy lets people protect themselves from these troublesome judgments.

624. There is no justification for making all truthful information available to the public. The public does not have an interest in knowing all information that is true. Which celebrity has had sexual relationships with whom might be of interest to the public but has no element of public interest and may therefore be a breach of privacy.¹⁹ Thus, truthful information that breaches privacy may also require protection.

625. Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent.”

145. Thus as laid down thereby, whatever may be of the interest to the public but has no element of public interest may amount to breach of privacy and an individual thus has a right to protection to protect his reputation from being unfairly harmed in relation thereto not only against false truth but also certain truths. It is thus in this context that the verdicts in *Sardar Charanjeet Singh v. Arun Purie & Ors. 1983 (4) DRJ 86*, *Khushwant Singh v. Maneka Gandhi (2001) SCC Online Del 1030*, *Indu Jain v. Forbes Inc. 2007 SCC Online Del 1424* coupled with the factum that the submissions of the respondents themselves in relation to the aspect of there being no meaningful difference now between public officials and public figures in view of the verdict of the *Phoolan Devi Vs. Shekhar Kapoor & Ors 1995 32(DRJ) 142* have to be read wherein the right to reputation and privacy has been extended to an individual against making a film against the appellant herein shaming her being raped and paraded nude.

146. It is essential to observe that the petitioner herein admittedly being a public figure, cannot *ipso facto* termed to having given a license to the respondents for his defamation.

REPETITION OF LIBEL AND ACQUIESCENCE

147. As regards the contentions raised on behalf of the respondents in relation to the prior publication having been concealed by the petitioners and the contentions that the prior publication had far more invasive comments against the petitioner and that thus the petitioner having acquiesced to their existence cannot now seek to contend that any rights of his have been assaulted, it has rightly been contended on

behalf of the petitioner that for the purposes of an action for libel, without any observations on the aspect presently as to what is detailed in the **BOOK** is a libel or a hearsay statement for the purposes of the law of libel a hearsay statement is the same as a direct statement and that repeated libellous statements are thus libellous as observed in *Lewis vs. Daily Telegraph (1964) AC 234*. Thus, the contentions raised on behalf of the respondents that 25,000 copies of the **BOOK** have already entered in the market and no useful purpose would be now served by grant of ad-interim injunction before conclusion of the trial in as much as the copies which have already entered into the market will continue to sell, re-sell and be read and re-read cannot be accepted as also brought forward through the verdict of this Court in *Dr. Shashi Tharoor v. Arnab Goswami 2017 SCC Onling 12049* and *Bhaichung Bhutia Vs. Saumik Dutta & Ors. (2014) 215 DLT 415* which restrained publishing and re-publishing of alleged defamatory imputations.

148. The petitioner has submitted in relation to this aspect that it would have to be established and proved by the respondent that the subject matter of the rumour is true and not merely that such rumour existed. The factum that the petitioner has put forth that the statements made in some of the publications were made prior to the closure report being accepted on 13.02.2015 and prior to the Untrace report having been accepted by the Trial Court, it is *prima facie* apparent that the petitioner cannot be held to have consented in clear and unequivocal terms for the publications that had been made previously qua which there has been a repudiation.

GRANT OF INTERLOCUTORY INJUNCTION

149. As regards the contentions on behalf of the respondents placing reliance on *Bonnard v. Perryman* [1891 2 (Ch) 269] to contend that an interlocutory injunction ought not to be granted when the defendants justified the libel and that in the event of their not succeeding in justifying the libel, damages would suffice and consequently reliance thus placed on the verdicts of this Court in *Tata Sons v. Greenpeace International* 2011 SCC Online Del 466, *Sardar Charanjeet Singh v. Arun Purie & Ors.* 1983 (4) DRJ 86 and *Indu Jain v. Forbes Inc.* 2007 SCC Online Del 1424, it is essential as already observed hereinabove that *Bonnard v. Perryman* [1891 2 (Ch) 269] itself holds that such an interlocutory injunction ought to be granted when the defendant contends that he will be able to justify the libel and the Court is, *prima facie*, not satisfied that he may be able to do so. Significantly, the impugned order also reflects that the defence proposed by the respondents is weak and furthermore the author through the written statement submitted before the Trial Court that ‘*the truth is a multi layered phenomenon*’ and the publisher through its written statement claims that the allegations are ‘*legitimate surmises*’.

150. In the instant case as already observed hereinabove *prima facie* that there is a closure report accepted by the Special Judicial Magistrate (CBI)/ACJM(I) Dehradun in relation to the missing of Guru Shanker Devi Ji, the spiritual mentor of the petitioner, and there an “Untrace Report” in relation to the murder of Swami Yogananda, which were in existence prior to the publication of

the BOOK published in 2017. *Prima facie*, thus this Court is not satisfied that the respondents would be able to justify these two allegations.

151. As regards the contentions raised by the respondents that there have been certain words in the plaint which do not correspond to the contents of the **BOOK**, i.e. the words such as “When Ramdev’s Guru Mysteriously Mischievously Disappeared” and “The Cryptic Note” left behind in Shanker Dev’s Room and “A Case Still Open” as mentioned in the plaint, it has been submitted on behalf of the petitioner that the excerpts in the plaint are identical to the excerpts in the **BOOK** and headings are also brought forward through the sources delineated in the **BOOK** and that each of the excerpts are relatable to portions within the **BOOK** which aspect on a perusal of the **BOOK** and “Sources” in the **BOOK** is found to be correct, as per submissions made and comparison table submitted by the petitioner on 17.09.2018.

FAIR COMMENT IN BOOK?

152. The contention was raised on behalf of the respondents that the **BOOK** was in fact laudatory of the petitioner in tone and wherever it discusses criticism of the petitioner it also presents his defence and there have only been fair comments made. It is essential to observe that the contention of the petitioner has been that his reputation has been affected by the words used in the **BOOK** and that an attempt has been made to affect his reputation in the assumption of the right thinking members of the society generally.

153. It is essential to observe that the defamatory statements need only to have the tendency to affect the personal reputation and need

not actually lower it. However, the standard to be applied is as to whether the reputation is affected in the estimation of right thinking members of the society generally as laid down by the House of Laws in ***Sim Vs. Stretch, (1936) 2 All ER 1237***, in applying this test, the statement complained of has to be read as a whole and the words used in it are to be given their natural or ordinary meaning which may be ascribed to them by ordinary men as laid down by the Hon'ble High Court of Madhya Pradesh in ***Ramakant Vs. Devilal, 1969 MPLJ 805*** as the ordinary man after reading the writing does not contemplate of reading it again and again for deriving its meaning and so the meaning of words in a libel action *"is a matter of impression as an ordinary man gets on the first reading, not on a later analysis"* as laid down in ***Lewis Vs. Daily Telegraph Ltd., (1963) 2 All EF 151 (HL) (154)***, the question is not of construction in the legal sense for the ordinary man *"is not inhibited by a knowledge of the rules of construction and he can and does read between the lines in the light of his general knowledge and experience of worldly affairs"* and further *"the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory."* If the defamatory statement consists of an article with a headline and photograph the whole of the article including the headline and photograph has to be taken together and considered whether in its natural and ordinary meaning which may be ascribed to it by ordinary men it is defamatory

of the plaintiff and as laid down in *Charleston Vs. News Group Newspaper Ltd. (1995) 2 All ER 313*.

154. A contention was raised on behalf of the respondents that no *innuendos* were explained through the plaint and thus the contentions of the petitioner that there were any statements made in the **BOOK** violative of his right of reputation cannot be accepted. In relation to this aspect it is essential to observe that in cases where no legal *innuendo* is alleged, the Court after reading the published statement as a whole “is required to determine the single meaning which the publication conveyed to the notional reasonable reader as laid down in *Charleston Vs. News Group Newspaper Ltd. (1995) 2 All ER 313*.

155. In England, the rule to be applied by a Judge in deciding whether or not words were capable of a defamatory meaning is whether a reasonable jury would be justified in finding that the words complained of were defamatory, and, notwithstanding the various inoffensive meanings which the words complained of might be said to be capable of bearing, it should be impossible to hold that they were not capable of a defamatory meaning as laid down in *Morris Vs. Sandess Universal Products, (1954) 1 All ER 47*. In India however where a defamation suit is not tried by jury, it is for the Judge to decide finally the meaning of the words alleged to be defamatory bearing in mind the test of an ordinary man. In a case of libel, it is not necessary to prove the actual loss of reputation; it is sufficient to establish that the defamatory statements made could damage one’s reputation as laid down in *Sadashiba Vs. Bansidhar, AIR 1962 Ori 115* and *Habib Bhai Vs. Pyarelal, AIR 1964 MP 62*.

156. It is essential to observe that the intention with which the words are used is immaterial and thus the mere contentions of the respondents that the **BOOK** is laudatory and was not intended to defame the petitioner, is *prima facie*, not acceptable, for the Court has to see as to how an ordinary reasonable reader on reading contents of the portions of the **BOOK** adverted to hereinabove would interpret the same and reflect upon the same. As laid down in *Cassidy Vs. Daily Mirror Newspaper, (1929) 2 KB 331* the liability for libel does not depend on the intention of the defamer; but on the fact of defamation.

157. It is essential to observe that as laid down in *Tushar Kanti Ghose Vs. Bina Bhowmick, (1952) 57 CWN 378* where the plaintiff has succeeded in proving that certain statements published in a newspaper were clearly defamatory of the plaintiff, it is immaterial whether the plaintiff succeeds or fails in establishing the *inneundos* alleged by him and if he fails, he can treat the unproved *inneundos* as surplusage and still contend that the words of the publication are defamatory in their natural and ordinary meaning.

158. That the petitioner is a public figure is indicated in the plaint itself and by the factum of several publications informing the public about him and has worked repeatedly. The factum that the petitioner has access to Mass Media communication and newspapers both to influence policy and to counter criticism of use of activity makes it apparent that the citizens have a legitimate and substantial interest in the conduct of the petitioner. The petitioner having taken Sanyas and

apparently being acclaimed a spiritual and Yoga Guru, is also revered and respected in society as has already been referred to hereinabove.

159. The articles published on the internet during the interregnum when there was no restraint on the publication and purchase of the **BOOK** and even thereafter which **BOOK** appears to have been read by some of other authors other than the author of the **BOOK** even when the ban was in existence, itself indicates the statements of readers to the effect that the contents of the **BOOK** as per a review on the internet goes to the extent of stating that as a reader, **it makes you question circumstantial evidence and murky happenings, that the petitioner's life story is dotted by a mysterious murder, an odd disappearance and a death under curious circumstances and of his having associated with people for his benefit and serving his ambitions and once they have fulfilled the need, they are no longer required and that he has been quick enough to dissociate and that the BOOK makes him a power hungry political ambitious person lurking behind a legitimate or otherwise Ayurveda business and that the same is good enough a description for a villain. This BOOK review has already been adverted to elsewhere hereinabove and *inter alia* states that Baba Ramdev himself had come across as a highly ambitious villain who never gets his hands dirty and that his plans are tactical and they seem to be working and luck is on his side.**

160. Another **BOOK** review published on the internet on 13.08.2017 states in context with the **BOOK**

*“behind that charming and simplistic persona lies a mind of great cunning that knows how to grab an opportunity, manipulate, exploit and even threaten people to get his work done..... The **BOOK** reveals a number of unsavory facets of his business that fill one with revulsion and disgust. To put it in short, I am never buying a Patanjali product ever again. Thankfully, have ever used only his toothpaste and honey so far so no great harm done.”*

161. There are further **BOOK** reviews also stating that there is hardly a place where the author pushes her point of view or tries to bias the reader. In the same breath in the next sentence, the said **BOOK** review dated 07.12.2017 states that nevertheless, there seems to be a ‘**skew**’ in this reporting and that is what makes Baba wanting to prevent you from reading it.

162. Another review dated 07.08.2017 states “**She is also fair – both to Ramdev, and to her multiple interviewees.**”

163. Another post review on the **BOOK** dated 13.08.2017 states “**mysterious deaths and disappearances of his close associates ----- that is serious! It most certainly should be investigated.**”

164. Another review dated 08.01.2018 states “**not everything is as good as it seems and the BOOKs has a lot to reveal.**”

165. Another review dated 01.10.2017 states “*a very interesting investigative journalistic work, I should say. The author has to be appreciated for the such pain-staking hard work she has put in in gathering information from various sources. She has tried to remain unbiased throughout the narration. Nowhere has she shadowed the facts with her opinions. There are may questions unanswered due to*

lack of evidence. One may read this BOOK to understand how a big giant like Patanjali was formed.”

166. Another review states that “**the BOOK is not defamatory as the people opposing it seem to make it to be. It’s extensively researched with almost 30 pages of sources cited at the end of the BOOK. The author also has interviewed a number of people who have been and continue to be associated with Ramdev, a person who seems to attract controversy like an open bottle of patanjali honey attracts flies. She manages to be relatively neutral in most of the BOOK, even seems to be in awe of his strategies and achievements but does not deviate from the aim of the BOOK; to create a sort – of biography estimating the start and rise of the controversial “baba”.**”

167. Though there are comments on the internet stating that the **BOOK** is unbiased equally there are comments stating that the petitioner is a villain. The Court thus has to consider the record on the basis of what an ordinary reasonable reader would think of the contents of the **BOOK**. Undoubtedly there are chapters on the creation of the Patanjali Empire, which may be laudatory. Yet it cannot be overlooked that in the impugned order of the learned ACJ dated 28.04.2018 in MCA No. 8/2017 and MCA No. 10/2017 too, it is observed that it is clarified that the net import of the judgment is not that the petitioner herein has not suffered any damage to his reputation on account of publication or sale of the **BOOK** of the respondents herein.

168. The attention of this Court has been drawn to the verdict of the Hon'ble Division Bench of this Court dated 28.09.2018 in ***Pushp Sharma Vs. D.B. Corp. Ltd. and ors and Forum for Media and Literature and Anr. Vs. D.B. Corp. Ltd. and Ors. in FAO (OS) 92/2018 and FAO (OS) 93/2018*** to contend that the valuable right of free speech is the life blood of democracy and ought not to be diluted and that the salutary and established principle in issues that concern free speech are that public figures and public institutions have to fulfill a very high threshold to seek injunctive relief in respect of alleged libel or defamation and that it is not unknown that in a suit for permanent injunction, the plaintiff is unable to secure temporary injunction.

169. At the outset, it is essential to be observe that the verdict in ***Pushp Sharma Vs. D.B. Corp. Ltd. and ors and Forum for Media and Literature and Anr. Vs. D.B. Corp. Ltd. and Ors. (supra)*** relates to the grant of an ex-parte interim relief observing *inter alia* to the effect that the ex-parte injunction granted in the said case qua the entire duration of the suit without taking into account the principles in **Morgans Stanley Mutual Fund v. Kartick Das 1994 (4) SCC 225** as laid down by the Hon'ble Supreme Court to the effect : -

“As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are: (a) whether irreparable or serious mischief will ensue to the plaintiff; (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve; (c) the court will also consider the time at which the plaintiff first had

notice of the act complained so that the making of improper order against a party in his absence is prevented; (d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction; (e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application. (f) even if granted, the ex parte injunction would be for a limited period of time. (g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.”

could not be sustained. In the instant case before this Court, the petitioner is present against the impugned order of the Appellate Court of the learned ASCJ (East), Karkardooma Courts, Delhi which appeals were filed against the ad-interim injunction ex-parte order and a subsequent ad-interim order of the ACJ-CCJ-ARC(E), Karkardooma Courts, Delhi **after completion of pleadings between the parties.**

170. The facts of the case in **Pushp Sharma Vs. D.B. Corp. Ltd. and ors and Forum for Media and Literature and Anr. Vs. D.B. Corp. Ltd. and Ors. (supra)** thus are not in *pari materia* with the facts and circumstances put forth before this Court.

171. It is essential to observe that vide the order of Hon’ble Division bench in **Pushp Sharma Vs. D.B. Corp. Ltd. and ors and Forum for Media and Literature and Anr. Vs. D.B. Corp. Ltd. and Ors. (supra)**, the observations in para 21 thereof spell out categorically as already dealt with in the present judgment of this Court highlight the necessity of the Court to balance the rights of freedom of speech and expression and of the right to reputation rather than to dilute them.

The verdict of the Hon'ble Division bench referred to hereinabove, vide paragraph 23 thereof *inter alia* observes to the effect “*Unless it is demonstrated at the threshold that the offending content is malicious or palpably false, an injunction and that too an ex-parte one, without recording any reasons should not be given.*”

172. It is essential to observe that in the instant case, the aspect of the CBI closure report dated 13.02.2015 and the untraced report in relation to the sensationalization of the disappearance of Shankar Dev Ji and the murder of the Swami Yogananda were in existence prior to the publication of the **BOOK** in 2017 in the instant case.

173. This Court has taken into account also the **BOOK** reviews that have been uploaded on the electronic media prior to the grant of the ex-parte interim injunction dated 04.08.2017 by the learned ACJ-CCJ-ARC(E), Karkardooma Courts, Delhi and those that came on to the electronic media even during the pendency of the restraint.

174. The pleadings of the parties and contentions raised on behalf of either side are before this Court unlike the facts in which the impugned order in **Pushp Sharma Vs. D.B. Corp. Ltd. and ors and Forum for Media and Literature and Anr. Vs. D.B. Corp. Ltd. and Ors. (supra)** were assailed.

175. Furthermore in the facts and circumstances of the instant case, the balance of convenience is in favour of the petitioner in as much as irreparable loss would be caused to him and is continuously being caused if some portions of the **BOOK** continue to be in operation as is also brought forth in the impugned order of the ASCJ (East).

176. Furthermore it is essential to observe as laid down by the Hon'ble Supreme Court in *K.S. Puttaswamy Vs. Union of India* (2017) 10 SCC which reads to the effect : -

*“61. It is submitted that the court should adopt a cautious approach in recognizing a particular privacy claim as implicit in Article 21. The right to privacy is a jurisprudential realm where globally the courts are still groping amidst confusion to ascertain the extent of privacy concerns which should be recognized as a constitutional right. Many a times, the court has proceeded on an assumption that a claimed right is a fundamental right under the Constitution. It is noted in Gobind Vs. State of MP (Mr. Shaym Divan’s Compilation pg 123) that the US SC recognizes that “a right of personal privacy, or a guarantee of certain areas of zones of privacy does exist under the Constitution. (Pr. 19). In para 20 they observed that the framers of our Constitution “must have deemed to have conferred upon an individual as against the Government a sphere he should be let alone. Yet, in para 23 they observe against a broad definition of privacy as such a right was not explicit in the Constitution. Thus, the court was against a general recognition of a right to privacy. Further, the court in paras 22 and 23 has stressed, as the only suggestion that the “unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty”. **They recommend in para 28 that the right to privacy will have to undergo case-by-case development.** Yet again, in para 23, the court has emphasised that “privacy interest in autonomy must also be placed in the context of other rights and values” (also in the context of right to life and personal liberty of others as ‘X’ v. Hospital ‘Z’.”*

177. Thus the right to privacy which includes within it, the right to reputation has to undergo a case by case development and privacy

interest in autonomy (which would include the right to reputation) must also be placed in the context of other rights and values.

178. Thus in the circumstances, it is essential to observe that the impugned order too reflects the injury caused to the petitioner by publication and sale of the **BOOK** by the respondents. It is also apparent as has been observed hereinabove that the petitioner is revered and respected as a spiritual Yoga Guru and that the veracity or otherwise of the contents of statements made in the **BOOK** is yet to be established and as already held elsewhere hereinabove in relation to the disappearance of Shankar Dev Ji and the murder of the Swami Yogananda, no material evidence is indicated to have been collected or is stated to be an existence against the petitioner by acceptance of the closure report in relation to Swami Shanker Dev Ji and the “Untrace Report” in relation to Swami’s Yogananda murder as has already been held elsewhere hereinabove and thus there appears no belief of justification put forth by the respondents in relation to these aspects to suffice to negate the grant of the prayer of the petitioner seeking restraint of the portions of the **BOOK** with insinuating statements against the petitioner in relation thereto.

179. This is so in as much as though it is sought to be contended on behalf of the respondents that what is sought to be put forth through these paragraphs and chapters adverted to hereinabove is justifiable as ‘**fair comment**’, it is essential to observe that in order to be justifiable as fair comment, it must appear as a comment and must not be so mixed up with the facts that the reader cannot distinguish between

what is reported and what is comment and a comment must not convey imputations of disreputable motive unless adequately supported with evidence.

CONCLUSION

180. Thus as the petitioner about whom the **BOOK** is written about is living human being and thus entitled to be treated with dignity and has a right of social reputation as an ordinary citizen even if he be a public figure, and as reputation is a cherished value and an element of personal security, portions of the **BOOK** which make readers think that he is an ambitious villain, until so proved in the Court of Law are necessarily to be restrained from being published and distributed for sale till disposal of the suit bearing no. 619/2017 pending before the learned ACJ-CCJ-ARC(E), Karkardooma Courts, Delhi. This is so as the right to reputation of a living individual under Article 21 of the Constitution of India cannot be sacrificed and crucified at the altar of the right to freedom of speech and expression of another and both have to be harmonized and balanced in as much as no amount of damages can redeem the damage to reputation of any person and merely because there have been previous publications on the same issue, the same does not permit any repetitions of *prima facie* defamatory insinuations against him.

181. In view thereof, all the respondents in C.M.(M) 556/18 & C.M.(M) 557/18 are restrained from publishing, distributing and selling the **BOOK** i.e. **“Godman to Tycoon” The Untold Story of Baba Ramdev, ISBN No. 9789386228383** in any manner,- until they delete the following : -

(a) **At Pages 69 to 70, Chapter 9 Mystery 1 : The Ally's Murder (Entire Chapter 9).**

"A day after the Asian tsunami swept up the shorelines of fourteen countries', killing nearly a quarter of a million people, an intriguing event occurred in Kankhal. In the darkening winter evening of 27 December 2004, a scuffle broke out in the single-storey Yogananda Ashram, home to Swami Yogananda, the man whose licence had enabled Divya Pharmacy to function and grow for eight years since its inception in 1995 till 2003.

Yogananda's neighbours are cagey about discussing it even today but they say they heard raised voices coming from his house that eventful evening. No one imagined, though,, that Yogananda — the lonely man who lived without a telephone or even electricity — was being knifed to death. One Vasant Kumar Singh discovered his lifeless body shortly after and called the police. Along his lifeless body shortly after and called the police. Along with other neighbours, the young Tarun Kumar went in with the police. 'I remember it still. He was there in that dark room when I went in ... • lying in a pool of his own blood.

As mentioned earlier, in 2003 Divya Pharmacy had abruptly changed the vaidya on its registration from Swami Yogananda to Sri Saty Pal Singh, Yogananda is said to have had a falling out with Ramdev's increasingly powerful enterprise but the reasons for this are still unknown.

With Yogananda's death, a key associate who had provided critical help to Ramdev in his early days was gone. The murder remains unsolved till date. Ten months later, on 25 October 2005, investigating officer B.B. Juyal filed his final report in the case - Case unsolved. Perpetrators unknown."

(b) **At Page 105 to 114, Chapter 16 Mystery 2 : The Guru's Disappearance (Entire Chapter 16).**

"A year after Ramdev had a successful run in the United Kingdom and delivered a speech at the United Nations in New York came plans for a yoga tour of the United States. India's foremost yoga guru was scheduled to start his tour in New York on 30 June 2007 and wind it up in Coventry in the UK on 8 August, rumbling through New Jersey, Chicago, Glasgow and London in between.

Animesh Goenka, then president of Heritage India, a small charitable organization that was involved with the planning of Ramdev's tour, had told the media that the US leg of the tour, estimated to cost \$350,000, was to be funded exclusively through charitable donations from private individuals and corporations. The sale of tickets to the yoga camps, priced between \$100 and \$500, was expected to raise half a million dollars. This money, Goenka had asserted, would be funnelled into research on amla and developing a product for which a patent could be sought.

While Ramdev prepared for his international tour, Balkrishna was making certain critical and far-reaching changes. On 18 May 2007, fifteen months after its formation, Patanjali Ayurveda Pvt. Ltd dropped the word 'private' from its name. This was a critical move if the company wanted to list itself on the stock market. Patanjali's shareholding also changed around this time, as would happen frequently over the years, with several of Ramdev's key associates coming on board as shareholders, albeit minor ones, at this point. As before, and as with Vedic Broadcasting Pvt. Ltd, Ramdev's pliant and trustworthy Balkrishna remained the largest shareholder by far.

Notable among these new shareholders were Krishan Kumar Pittie and Sarvan Poddar Pittie would eventually

play a major role in Ramdev's quest for media domination and Poddar would buy a Scottish island, Little Cumbrae, for GBP 2.1 million in September 2009 and donate it to Patanjali Yogpeeth's UK trust.

Balkrishna also converted Vedic Broadcasting Pvt. Ltd into a public limited company.

Kirit Mehta and his partners at Aastha were too busy struggling to survive to notice the dramatic changes that were taking place in Vedic Broadcasting's story. Had they been a little more alert they would have sensed that something wasn't quite sitting right. Ramdev was preparing to take over Aastha.

But Ramdev himself missed something brewing in his own backyard. Amid his heady successes, and hectic travel, he failed to see that his guru Shankar Dev was ailing, increasingly unhappy and isolated in his own home, Kripalu Bagh Ashram. For instance, Shankar Dev, who was the convener of the Divya Yog Mandir Trust, was not on the boards of any of the new companies that were set up by Ramdev.

But what Ramdev could not see, though it was in plain sight, many in Haridwar saw. Several remember the swiftly ageing Shankar Dev, ravaged by spinal tuberculosis, becoming increasingly frail and forlorn. Spinal tuberculosis causes the patient to cough blood, lose weight, get night sweats and chills, and experience a loss of appetite, fatigue and fever, and it can sometimes impair mobility as a result of pain in the spine and damage to the joints.

Like in many small towns, friendships and kinship survive long years in Kankhal Sushant Mahendru's family, friends of Shankar Dev, continued looking out for him even after he stopped coming to their house when his old

friend died. 'I have seen him several times during those months when he had TB, He was alone and ignored in a little room in Kripalu Bagh Ashram.... cooking for himself, washing his own clothes and utensils. The only difference was that he took rickshaws to commute because he could no longer cycle because of the TB. But even that was difficult for him

*These people [Ramdev and Balkrishna] had a Nissan Terrano at the time, but not one person in Kankhal has any memory of Shankar Dev sitting in any of their cars. He was always on a cycle or in a rickshaw,' says Mahendru. *

The anguish of watching Shankar Dev deteriorate is etched on Mahendru's face. From being the master of his ashram, Shankar Dev was reduced to a sidestepped has-been in Kripalu Bagh.

ShankarDev is still the subject of hushed conversations in Kankhal today. Those who remember tell of his trials and speak of his tribulations in lowered voices — no one wants to cross the now all-powerful Ramdev. In a small place like Kankhal, word can get around. They are right to be worried. For instance, when I asked about Shankar Dev's deteriorating standard of living Balkrishna became positively belligerent and furious at me.

Ramdev's tour began successfully in New York when a thousand people, mostly Indian Americans already familiar with his yoga through Aastha USA, attended his inaugural camp at Nassau Community College — some from as far as California.

At the Garden State Exhibit Center in Somerset, New Jersey, there was a groundswell of fan support — 3000 people attended. The state Senate and the General Assembly passed a resolution that this Legislature honors Swami Ramdev for his firm belief that good health is the

birthright .of all human beings, and extends best wishes for a successful yoga camp in the US'.

It was when Ramdev was in Chicago that news came from Kankhal. On 14 July 2007, Shankar Dev disappeared. Vanished without a trace. He left that morning for his usual walk and simply did not return.

It may have been devastating news for Ramdev. Or maybe it was just inconvenient timing. With the Chicago schedule drawing to a close, Ramdev had to choose: Should he go on'to London, where the House of Commons planned to receive and honour him, or should he send his regrets and rush back to Kankhal to lead the search for his missing guru?

Usually once a disciple takes deeksha, or initiation into the sacred, from his guru, he establishes a bond with him. Ramdev had not just taken deeksha from Shankar Dev but also accepted saffron robes from him — that is, he renounced the world. From the moment he took the saffron robes from Shankar Dev, that gurushishya relationship was meant to become the central fulcrum of his life. From that moment onward, Ramdev was supposed to consider his guru as his spiritual and temporal father and mother.

There is no way of knowing what Ramdev truly felt when he heard of the disappearance or if he struggled with the decision or for how long, but in the end he decided to carry on with his tour. The day after his aides filed a missing person's report at Kankhal pohce station, on 18 July 2007, Ramdev attended a ceremony at the British House of Commons in his honour.

An investigation began in India, but clues were scarce. A cryptic note was found in Shankar Dev's room: 'I have taken some loan from you for this trust but I cannot repay

it. Please forgive me. I am leaving.' He was seventy-seven years old.

The note raised more questions than it answered: Exactly how much did this old man who continued to live as simply as before Ramdev's meteoric rise borrow that he could not repay the sum? Why did he borrow it? When had he taken the loan? And from whom? More importantly - why did Ramdev, sitting atop an empire worth at least Rs 100 crore, not repay the loan on his behalf? Why did Shankar Dev not ask him for help? Or had he?

Even though Karamveer had left the organization, Shankar Dev, who missed him dearly, often called him - sometimes for financial help. 'I used to send whatever little I could so he could get by,' says Karamveer. Vipin Pradhan, a former aide and Karamveer's nephew, says, 'By then, the trust was being run by ... relatives of Ramdev who had come in from outside and had no intention, of serving any interest other than their own. They treated Shankar Dev badly and he was very unhappy.'

Karamveer says that once when he was visiting Haridwar and staying with an old friend in Tripura Ashram, 'Shankar Dev came to meet me. They had sent two people after him to do his CID [that is, to spy on him]. They waited at the gates while we met. I'm not sure why... they [Ramdev and Balkrishna] had doubts [about Shankar Dev] in their minds at the time... who knows what doubt... what they were thinking at the time. It must have been a very difficult situation for Shankar Dev.'

But it is Radhika Nagrath's appraisal of the situation that is most damning. Remember, Nagrath is the one who designed Divya Pharmacy's website in its early days. She is still associated with Patanjali and has an obvious soft spot for Ramdev, whom she speaks of with affection, though

she is unhesitatingly honest. She says, 'Shankar Dev was a real saint - a very gentle guy. He felt ousted in his own home. He did not get any compassion because these people were in a race for something else. It was once his home, his shelter. He used to sign all the expense cheques for the trust at first [but] now the authority was taken away from him and he was not happy with the way things had shaped out. He had given these people shelter and now they had no time for him ... they had no use for an old man any more.'

An uneasy silence always follows questions about Shankar Dev among Kankhal residents. People always ask, 'Can I trust you? Are you writing for him or against him? You see, Ramdev has become too powerful. And look what-happened to his guru ...'

After his pit stop at the House of Commons, Ramdev continued his tour, travelling to Glasgow then back to London, and finally ending his tour in Coventry on 8 August 2007. When he returned to India, more than three weeks had passed since Shankar Dev's disappearance. To outside observers it seemed as though Ramdev was too busy chasing fame and fortune, making them wonder: did he even care?

After his return, Ramdev summoned a press conference in Haridwar, remembers the Jansatta reporter and Haridwar resident Sunil Pandey. At the press conference he was saying how Shankar Dev was like a father to him and how sad it was ... I asked him that if he really was like a father to him, why –didn't he come back?

"I was in the US, conducting camps, answered Ramdev.

'Well, if a family member disappeared, one would come back, isn't it?' Pandey pressed Ramdev.

'If I knew he was alive, I would have,' replied Ramdev.

'So you are admitting that you know that he is dead?'
demanding Pandey.

That was the suspicion in everyone's minds.

Stunned, realizing he had misspoken, Ramdev fell silent.

'Then his people just took over and changed the subject. Though a lot of people were present at the press conference,' recalls Pandey.

Little of this murky business was reported in the national media at that time. Across the country, Ramdev's star was ascendant.

It was only in October 2012, five years after Shankar Dev's disappearance, that the Central Bureau of Investigation (CBI), India's apex investigative agency, initiated a probe to find him. In his inimitable style, Ramdev welcomed the investigation on the one hand, but also attacked the CBI and the government, accusing them of a politically motivated conspiracy to frame him in the case. Given the sour relationship between Ramdev and the Union government at that time, his allegation did have some credence.

Whatever the CBI's initial motivations, it was widely reported- that it initiated a move to close the case in December 2014 - by this time the Narendra Modi-led government had taken charge at the-Centre – because the agency had failed to make any headway. The special BJ magistrate in Dehradun set the date for the next hearing as 12 January 2015 but this is where the public case file goes cold.

It's hard to ascertain what happened thereafter. While a right to information (RTI) request I filed with the CBI in Delhi met with the response that the CBI was not covered by the RTI, another filed in Dehradun met with the

response that the CBI does not answer questions on open cases. Ergo, the case is still open."

(c) At Page 201 Chapter 25 : Conclusion

"A trail of people whose goodwill or frailties he used to further his own enrichment and pursue his own agenda, people who were left by the wayside after they had served their purpose. A trail of people who either vanished into thin air, or died mysterious deaths, or live on in utter fear of him. A trail of decisions and political machinations driven not by the principles he espouses but by expediency."

(d) At Page 202 Chapter 25 : Conclusion

"Finally, a trail of shirked responsibility. For every negative event surrounding him, he has consistently yelled foul, always choosing to lay the blame at someone else's door."

...

...

...

"All Ramdev's former allies, aides, supporters and mentors who had watched him rise but has fallen by the wayside at some point seemed to have been waiting for a call like mine, from anyone at all, asking them about their time with Ramdev."

182. As regards the submissions made in relation to other portions of the **BOOK** as detailed in the petition, the same *prima facie* fall within the domain of thought provocation and debate and criticism and the prayers in relation thereto cannot presently be accepted.

183. The petitioners C.M.(M) 556/18 & C.M.(M) 557/18 are disposed of accordingly and all interim orders made in the suit bearing

no. 619/2017 pending before the learned ACJ-CCJ-ARC(E), Karkardooma Courts, Delhi and in MCA No.8/2017 and in MCA No.10/2017 disposed of by the ASCJ (East) and by this Court in CM(M) 556/18 and CM(M) 557/18 are modified accordingly.

184. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the Civil Suit No. 619/2017 pending before the learned ACJ-CCJ-ARC(E), Karkardooma Courts, Delhi.

185. Vide paragraph 18 of the suit bearing no. 619/2017 as valued, the suit for the purposes of jurisdiction is valued at Rs.39/- with reliefs as rightly held vide the impugned orders dated 28.4.2018 of the learned Additional Senior Civil Judge, East District in MCA No.10/2017 and in MCA No.8/2017 having necessarily to be valued qua each relief sought with appropriate court fees being paid on the same and the same be done by the petitioner herein i.e. the plaintiff before the Trial Court within a period of 15 days of the date of this order.

186. The Trial Court Records be returned.

ANU MALHOTRA, J

SEPTEMBER 29th, 2018
SV/MK/VM/NC