

Law of Defamation in India

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Abstract: - The right of each man during his lifetime to the unimpaired possession of his reputation and good name is recognized by law. Reputation depends upon opinion and opinion in the main on the communication of thought and information from one individual to another. A person's own opinion about himself is not his reputation. It means rather the opinion of others about him. Good name one bears or the esteem in which one is held in society is one's reputation.

Keyword: - Law of Defamation, Indian Society

1. Introduction

The law of defamation is based upon the fundamental principle that the reputation of a member of society, the esteem in which he is held by it the credit and trust it reposes on his intelligence, honour and integrity, all these constitute a valuable asset for him and it deserves protection at the hands of law. The love of reputation is the great moving principle of human action and as such it should be protected and encouraged for the progress of society. The right of every person to the reputation which his conduct deserves stands on the same footing with the right to the enjoyment of his life, liberty, health, property and all the comforts and advantages which appertain to a state of civil society inasmuch as security to reputation is indispensably essential to the enjoyment of every right and privilege incident to such a state.ⁱ

Defamation is both a civil and criminal wrong. Mischief to a private individual is the basis of the law of civil defamation while mischief to the society is the basis of criminal defamation.

Definition of Defamation:- "Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally or which tends to make them shun or avoid that person, it is libel if the statement be in permanent form and slander if it consists in significant words or gestures.ⁱⁱ

Reputation is not what a person thinks of himself; it is what others think of him. And the interest protected by the law of defamation is his concern that the behaviour of others in society to him shall not be adversely affected by the defendant's lies. The effect of these lies may be that the plaintiff may lose his present job, may not get another one, may have to forego a delightful marriage, may lose friends, business, customers or his sense of satisfaction.ⁱⁱⁱ And the law of defamation protects this reputation.

What is defamation?:- Defamation is communication about a person that tends to hurt the person's reputation. The communication must be made to other people, not just to the person it's about. It can be spoken, which is called slander, Or it can be written, which is called libel. It can also be a gesture, which is a type of slander.

To defame is to attack one's reputation, to rob him of his fair name. Defamation is the publication of a false and defamatory statement concerning another without just cause or excuse, whereby he suffers injury to his reputation.¹ The Indian Penal Code² has defined this offence.

In general the wrong of defamation takes various forms and it can be committed by words, signs or visible representations which inflict injury on a person in his reputation by degrading him, disparaging him or exposing him to "contempt, ridicule or public hatred"³

1. Underhill: *Torts*, 1937, 13th Edn., p. 230.

2. See Parke, B's definition in *Parmiter v. Coupland*, (1840) 6

M&W 105, 108; Fleming: *Torts*, 1977, p. 52, Fn. 11.

3. Blackburn & George: *Torts*, 1949, 2nd Edn., p. 167; *Sim v. Stretch*,

and thus lowering his reputation in the eyes of right thinking members of a society generally.⁴

Defamation and Insult :- The wrong of defamation is distinct from insult caused by words, signs or representations in that in the former the defendant injures the plaintiff's estimation of reputation by others or what others think about him while in the latter the defendant hurts the dignity or self-esteem of the plaintiff or what the plaintiff thinks about himself. The former requires publication while in the latter it is not necessary. The former is an actionable wrong while the latter is not so actionable unless accompanied by defamatory words.⁵

2. Historical development of law of defamation:-

Under Roman Law : The development of law of defamation as follow :

There are two forms of defamation, libel and slander. Libel is the written or published form and slander is the oral form of defamation. Defamation law, in the Judeo-Christian tradition, can be traced back to the Ten Commandments. The 9th commandment: "Thou shalt not bear false witness against thy neighbour," can be seen as a very ancient law against defamation. This underpins the historical prominence of defamation law, since the Ten Commandments are said to be the word of God.

2. Under English Law : As regards English Law, it is evident that Roman Law was the basis of it. But the punishments were different and harsh and were called Lex Talionis which so remained there upto King Canute's time. From 10th to 12th century, the law of slander was recognized only. During 13th century which was the time of Henry III (1217-72), the law of libel also came in light. Then came the Statute of West minister in 14th century which dealt with protection of persons of high position.

During 16th Century, the civil law and criminal law of defamation was separated. The civil law made no difference between libel and slander.

In 18th century an Act called Fox's Libel Act 1792 was passed. The Act made jury responsible to find out whether there is libel or not and judge on their discretion could give opinion on the matter to the jury. Then in 19th century an Act concerning the seditious and blasphemous libel was passed. The Act was the Criminal Libel Act, 1819. The Act provided for punishment also.

In twentieth century, some important decisions which are considered to be good laws were laid down. The first one was of *Hulton and Co. v. Jone's* in which it was held that if the words are per se defamatory, then the intention of author is immaterial.

3. Under Indian Law :- The offence of defamation in India was also recognized from very early times. In Kautilya's Arthashastras, Chapter XVIII gives the definition of the offence of defamation and prescribe punishment for it. It is dealt with under the name of Vekparusyam means verbal injury.

A man's reputation is his property and is more valuable than any other tangible asset. Every man has the right to have his reputation preserved. It is acknowledged as an inherent personal right of every person. It is a jus in rem, a right good against all the people in the world. The degree of suffering caused by loss of reputation far exceeds that caused by loss of any material wealth.

3. Ingredients of defamation under indian penal code:

Defamation : Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.⁶

(1936) 2 All ER 1233; See also *H.K. Hales, M. v. H. Smiles*, AIR 1937 Rang 105, cited in *Brij Nath Sarin v. E. Byrne*, 9 ALJR 253.

4. Winfield: *Tort*, 1971, 9th Edn., p. 246.

5. *Cheena Basappa v. Sankara*, AIR 1929 Mad 493; *Strigineedi v. Srimal Tirumala*, 52 MLJ 87.

6. Section 499.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An Imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless' that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.⁷

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.⁸

Fourth Exception.—Publication of reports of proceedings of Courts.—It is not defamation to publish

a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A justice of the Peace or other officer holding an enquiry In open Court preliminary to a trial In a Court of Justice, Is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not, defamation to express In good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness- or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith opinion respecting the merits of any performance which its author has submitted to the judgment of the public or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

4. Conclusion:-

This right to keep one's reputation intact is one of the very important rights which a person enjoys. In India, if the reputation of a person is attacked in any way, the person aggrieved can bring an action against the person who attacked his reputation. The accused will be charged with the offences of defamation. The offence of defaming a person is not some thing new and personal in India, but it is recognized in all most all the countries. The offence under Sections 499-500 is in some way or the other borrowed from the English law, it is not exactly same, but on some points it is identical.

The current law is dealt with under S. 499-500 of the Indian Penal Code, 1860. In 1971, the Report of Law Commission was published, which suggested some

7. Sec. 499 Book, I.P.C. S.N. Misra, p. 750.

8. K.D. Gour, Indian Penal Code, p. 745.

minor changes in the language of Ss. 499, 500, 501 and 502 of the Code. There is no further change since change.

Now question arises as to what constitutes defamation i.e. what are the ingredients or conditions required to constitute the offence of defamation. According to the S. 499, there are three essential ingredients :

Making or publication;

Imputation is to be made by words spoken or intended to be read or by signs or by visible representation;

Intention is to harm the reputation of other or having knowledge or having reason to believe that it will harm the reputation of the person concerned.

Punishment for the offence defamation is provided under S. 500 of the Penal Code. The offence is noneganisable bailable and compundable with the permission of the court S. 199 of Criminal Procedure Code, 1973 provides the practice and procedure for the offence of defamation.

At present, if a person commits the offence of defamation, he may be awarded only simple imprisonment to the extent of two years. simple imprisonment may not be sufficient deterrent. Therefore, the imprisonment should not be simple for violation of law of defamation. It should be rigorous.

i. P.S.A. Pillali, Book Law of Tort, p. 40.
ii. Winfield, Torts.

iii. Weir: Case-book, 1974, 3rd Edn., p. 423.