

## ANALYSIS OF LAW OF DEFAMATION UNDER INDIAN LEGAL SYSTEM

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### **ABSTRACT:**

*Defamation refers to the act of publication of defamatory content that lowers the reputation of an individual or an entity when observed through the perspective of an ordinary man. If defamation occurs in spoken words or gestures (or other such transitory form) then it is termed as slander and the same if in written or printed form is libel. Defamation in India is both a civil and a criminal offence. In Civil Law, defamation falls under the Law of Torts, which imposes punishment in the form of damages awarded to the claimant (person filing the claim). Under Criminal Law, Defamation is bailable, non-cognizable and compoundable offence. Therefore, the police cannot start investigation of defamation without a warrant from a magistrate (an FIR cannot be filed). Defamation law aims to strike a balance between allowing the distribution of information, ideas, and opinions, and protecting people from having lies told about them. It's a complicated area of law. If you have more questions, check your local law library or the Defamation Law Section Nolo's website for more about the First Amendment and freedom of speech, the rights and responsibilities of the press, invasion of privacy, hate speech, and Internet speech.*

**KEYWORDS:** - Defamation, Publication, Defamatory Content, Judiciary, Libel, Slander.

### **INTRODUCTION**

Defamation refers to the act of publication of defamatory content that lowers the reputation of an individual or an entity when observed through the perspective of an ordinary man. If defamation occurs in spoken words or gestures (or other such transitory form) then it is termed as slander and the same if in written or printed form is libel. Defamation in India is both a civil and a criminal offence. In Civil Law, defamation falls under the Law of Torts, which imposes punishment in the form of damages awarded to the claimant (person filing the claim). Under Criminal Law, Defamation is bailable, non-cognizable and compoundable offence. Therefore, the police

cannot start investigation of defamation without a warrant from a magistrate (an FIR cannot be filed)<sup>1</sup>. The accused also has a right to seek bail. Further, the charges can be dropped if the victim and the accused enter into a compromise to that effect (even without the permission of the court). Defamation as a criminal offence is listed under section 499 of the Indian Penal Code. The punishment, mentioned under section 500, can extend up to simple imprisonment for a term of two years, or with fine, or both<sup>2</sup>.

Defamation is oral or written statement that hurts someone's reputation. In Bhagwad Gita, "For a Man of honour Defamation is worse than death". It is considered as Great Evil. Reputation is an integral and important part of the dignity of the individual and Right to reputation is inherent right guaranteed by Article 21 and it is also called as natural rights. While Rights of freedom of speech and expression guaranteed by Article 19(1)(a) of Constitution of India is not absolute and has imposed reasonable restrictions for exercising rights in the interest of the security of state, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation. Only Defamation Laws protect individual's private interest and reputation<sup>3</sup>.

## CONCEPTUAL FRAMEWORK

Any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person. Defamation may be a criminal or civil charge. It encompasses both written statements, known as LIBEL, and spoken statements, called slander. The probability that a plaintiff will recover damages in a defamation suit depends largely on whether the plaintiff is a public or private figure in the eyes of the law. The public figure law of defamation was first delineated in **NEW YORK TIMES V. SULLIVAN**, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964). In *Sullivan*, the plaintiff, a police official, claimed that false allegations about him appeared in the *New York Times*, and sued the newspaper for libel. The Supreme Court balanced the plaintiff's interest in preserving his reputation against the public's interest in freedom of expression in the area of political debate. It held that a public official alleging libel must prove actual malice in order to recover damages. The Court declared that the First Amendment protects open and robust debate on public issues even when such debate includes "vehement, caustic, unpleasantly sharp attacks on government and public officials." A public official or other plaintiff who has voluntarily assumed a position in the public eye must prove that defamatory statements were made with knowledge that they were false or with reckless disregard of whether they were false.

<sup>1</sup> Roy Baker "Defamation Law and Social Attitudes: Ordinary Unreasonable People" 2011

<sup>2</sup> Ramanuj "A Simple Guide to Understanding Civil and Criminal Defamation" <https://blog.ipleaders.in/civil-and-criminal-defamation/> accessed on 2 Oct. 2017

<sup>3</sup> abhyu5u "What are the Defamation Laws in India" <https://blog.ipleaders.in/defamation-laws-india/> accessed on 4 Oct. 2017

Where the plaintiff in a defamation action is a private citizen who is not in the public eye, the law extends a lesser degree of constitutional protection to defamatory statements. Public figures voluntarily place themselves in a position that invites close scrutiny, whereas private citizens who have not entered public life do not relinquish their interest in protecting their reputation. In addition, public figures have greater access to the means to publicly counteract false statements about them. For these reasons, a private citizen's reputation and privacy interests tend to outweigh free speech considerations and deserve greater protection from the courts. (See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 [1974]<sup>4</sup>).

Distinguishing between public and private figures for the purposes of defamation law is sometimes difficult. For an individual to be considered a public figure in all situations, the person's name must be so familiar as to be a household word—for example, Michael Jordan. Because most people do not fit into that category of notoriety, the Court recognized the limited-purpose public figure, who is voluntarily injected into a public controversy and becomes a public figure for a limited range of issues. Limited-purpose public figures, like public figures, have at least temporary access to the means to counteract false statements about them. They also voluntarily place themselves in the public eye and consequently relinquish some of their privacy rights. For these reasons, false statements about limited-purpose public figures that relate to the public controversies in which those figures are involved are not considered defamatory unless they meet the actual-malice test set forth in *Sullivan*<sup>5</sup>.

### **Defamation under law of Tort**

There is always a delicate balance between one person's right to freedom of speech and another's right to protect their good name. It is often difficult to know which personal remarks are proper and which run afoul of defamation law. The term "defamation" is an all-encompassing term that covers any statement that hurts someone's reputation. If the statement is made in writing and published, the defamation is called "libel." If the hurtful statement is spoken, the statement is "slander." The government can't imprison someone for making a defamatory statement since it is not a crime. Instead, defamation is considered to be a civil wrong, or a tort. A person that has suffered a defamatory statement may sue the person that made the statement under defamation law<sup>6</sup>.

Defamation law, for as long as it has been in existence in the United States, has had to walk a fine line between the right to freedom of speech and the right of a person to avoid defamation. On one hand, people should be free

<sup>4</sup> Filimon Peonidis "Freedom of Expression, Autonomy, and Defamation" January 1998, Volume 17, Issue 1,

<sup>5</sup> "Defamation" <http://legal-dictionary.thefreedictionary.com/defamation> accessed on 4 Oct. 2017

<sup>6</sup> Hoffmann "The Indian Penal Code" William H. Allen & Co. 2009

to talk about their experiences in a truthful manner without fear of a lawsuit if they say something mean, but true, about someone else. On the other hand, people have a right to not have false statements made that will damage their reputation. Discourse is essential to a free society, and the more open and honest the discourse, the better for society<sup>7</sup>.

### Elements of a Defamation Lawsuit

Defamation law changes as you cross state borders, but there are normally some accepted standards that make laws similar no matter where you are. If you think that you have been the victim of some defamatory statement, whether slander or libel, then you will need to file a lawsuit in order to recover. Generally speaking, in order to win your lawsuit, you must show that:

- Someone made a statement;
- that statement was published;
- the statement caused you injury;
- the statement was false; and
- The statement did not fall into a privileged category.

To get a better grasp of what you will need to do to win your defamation lawsuit, let's look at each element more closely.

**The Statement** -- A "statement" needs to be spoken, written, or otherwise expressed in some manner. Because the spoken word often fades more quickly from memory, slander is often considered less harmful than libel.

**Publication** -- For a statement to be published, a third party must have seen, heard or read the defamatory statement. A third party is someone apart from the person making the statement and the subject of the statement. Unlike the traditional meaning of the word "published," a defamatory statement does not need to be printed in a book. Rather, if the statement is heard over the television or seen scrawled on someone's door, it is considered to be published.

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<sup>7</sup> "Defamation Law: The Basics" <http://injury.findlaw.com/torts-and-personal-injuries/defamation-law-the-basics.html> accessed on 5 Oct. 2017

**Injury** -- To succeed in a defamation lawsuit, the statement must be shown to have caused injury to the subject of the statement. This means that the statement must have hurt the reputation of the subject of the statement. As an example, a statement has caused injury if the subject of the statement lost work as a result of the statement.

**Falsity** -- Defamation law will only consider statements defamatory if they are, in fact, false. A true statement, no matter how harmful, is not considered defamation. In addition, because of their nature, statements of opinion are not considered false because they are subjective to the speaker.

**Unprivileged** -- Lastly, in order for a statement to be defamatory, it must be unprivileged. Lawmakers have decided that you cannot sue for defamation in certain instances when a statement is considered privileged. For example, when a witness testifies at trial and makes a statement that is both false and injurious, the witness will be immune to a lawsuit for defamation because the act of testifying at trial is privileged<sup>8</sup>.

Whether a statement is privileged or unprivileged is a policy decision that rests on the shoulders of lawmakers. The lawmakers must weigh the need to avoid defamation against the importance that the person making the statement have the free ability to say what they want.

Witnesses on the stand at trial are a prime example. When a witness is giving his testimony, we, as a society, want to ensure that the witness gives a full account of everything without holding back for fear of saying something defamatory. Likewise, lawmakers themselves are immune from defamation suits resulting from statements made in legislative chamber or in official materials<sup>9</sup>.

An interesting aspect of defamation as a tort is that it is only a wrong if the defamation is of a nature which harms the reputation of a person who is alive. In most cases, this translates to saying that it is not a tort to defame a deceased person since, as a general rule, the plaintiff needs to be able to prove that the defamatory words referred to him. However, this does not mean that there can be no cause of action if a dead person is defamed — if, for example, a defamatory statement negatively impacts the reputation of a deceased person's heir, an action for defamation would be maintainable<sup>10</sup>.

Further, if an action for defamation is instituted, and defamation is found to have been committed, damages will be payable to the plaintiff (usually, the person defamed). In addition to this, a person apprehensive of being

<sup>8</sup>Krishna Deo Gaur "Textbook on the Indian Penal Code" Universal Law publishing, 2001

<sup>9</sup> <http://injury.findlaw.com/torts-and-personal-injuries/defamation-law-the-basics.html> accessed on 5 Oct. 2017

<sup>10</sup> <https://www.judicere.co.in/defamation-offence-indian-penal-code/> accessed on 6 Oct. 2017

defamed in a publication may seek the grant of an injunction to restrain such publication<sup>11</sup>. However, pre-publication injunctions are rarely granted as Indian courts have tended to follow the principle laid down in the 1891 case of *Bonnard v. Perryman*, which has been articulated by Westlaw as follows:

The Court has jurisdiction to restrain by injunction, and even by an interlocutory injunction, the publication of a libel. But the exercise of the jurisdiction is discretionary, and an interlocutory injunction ought not to be granted except in the clearest cases—in cases in which, if a jury did not find the matter complained of to be libelous, the Court would set aside the verdict as unreasonable. An interlocutory injunction ought not to be granted when the Defendant swears that he will be able to justify the libel, and the Court is not satisfied that he may not be able to do so<sup>12</sup>.

This principle has been followed by a division bench of the Delhi High Court in the 2002 case of *Khushwant Singh v. Maneka Gandhi*<sup>13</sup>, , and the 2011 decision of the Delhi High Court in the case of *Tata Sons Ltd. v. Greenpeace International & Anr.*, I.A. No.9089/2010 in CS (OS) 1407/2010<sup>14</sup>.

### **Defences available under defamation**

The following are the defenses taken in an action for defamation:-

#### **1) Justification of truth-**

If the defendant proves that the defamatory statement is true, no action will lie for it, even if the statement is published maliciously. It is not necessary to prove that the statement is literally true, it is sufficient if it is true in substance<sup>15</sup>.

#### **2) Fair and bonafide comment-**

A fair and bonafide comment on a matter of public interest is a defence in an action for defamation. The essentials of a fair comment are:

- (i) That it is comment or criticism and not a statement of fact,
- (ii) That the comment is on a matter of public interest,

<sup>11</sup> Matthew Henry Starling “Indian Criminal Law: Containing the Indian Penal Code and Other Indian Acts”

<sup>12</sup> [1891] 2 Ch. 269

<sup>13</sup> AIR2002 Delhi58

<sup>14</sup> Admin Lawnn “Defamation: Under IPC & Law of Torts” <http://lawnn.com/defamation-ipc-law-torts/> accessed on 7 Oct. 2017

<sup>15</sup> “Indian Penal Code with Classification of Offences & State Amendment” Professional book publisher 2015

- (iii) That the comment is fair and honest.

### 3) Privileged statement-

Law makers have decided that one cannot sue for defamation in certain instances when a statement is considered privileged. Whether a statement is privileged or unprivileged is policy decision that rests on the shoulders of the lawmakers<sup>16</sup>.

### “DEFAMATION AS A CRIME

Section 499 of the IPC defines ‘defamation’ as being committed:

- Through: (i) words (spoken or intended to be read), (ii) signs, or (iii) visible representations;
- Which: are a published or spoken imputation concerning any person;
- If the imputation is spoken or published with: (i) the intention of causing harm to the reputation of the person to whom it pertains, or (ii) knowledge or reason to believe that the imputation will harm the reputation of the person to whom it pertains will be harmed.

This broad definition is subject to several explanations and exceptions as follows:

#### [Explanations]

**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.

<sup>16</sup> <http://www.legalservicesindia.com/article/article/defamation-1910-1.html> accessed on 7 Oct. 2017

**[Exceptions]**

**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 a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

**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.

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

**Seventh Exception.—Censure passed in good faith by person having lawful authority over another.**—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful

contract made with mat other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

**Eight Exception.—Accusation preferred in good faith to authorised person.**—it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation”<sup>17</sup>.

**“Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.**—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the Person making it, or of any other person, or for the public good.

**Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.**—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good”<sup>18</sup>.

### **What does Constitution say about freedom of speech?**

Article 19(1) (a) of the Indian Constitution guarantees the right to freedom of speech and expression to all Indian citizens. But the freedom of speech and expression is not absolute. Under Article 19(2), the state is allowed to make laws to impose reasonable restrictions on the right of free speech 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. Out of those only defamation protects a private individual interest and all others are public interests. But the reasonable restrictions must not be arbitrary and excessive. The restrictions must be narrow. If the restriction is too broad, then it will be unconstitutional<sup>19</sup>.

### **Key arguments against Section 499-500 IPC**

They key arguments against sections 499 and 500 IPC are that they are not reasonable restriction on speech. For example, if a person speaks truth, then truth will only be a defence if the statement was made for the public good. Otherwise, a person can be prosecuted for defamation even for speaking truth! This is the reason that people are

<sup>17</sup> Dhirajlal, Ratanlal “The Indian Penal Code as Amended by the Criminal Law (Amendment) Act, 2013 34th Edition” LexisNexis

<sup>18</sup> <http://copyright.lawmatters.in/2012/02/defamation.html> accessed on 8 Oct. 2017

<sup>19</sup> “Civil Defamation and Section 499, 500 of IPC” <https://academy.gktoday.in/current/civil-defamation-and-section-499-500-of-ipc/> accessed on 9 Oct. 2017

deterred from criticizing the government or its officials as it could lead to legal action. Under these sections, a person can be prosecuted on the ground that he/she has conspired with the person who made the defamation statements. It also allows for prosecution a person if he/she made a defamatory statement about a deceased person; and thus restricting the speech to protect the deceased is excessive<sup>20</sup>.

## CONCLUSION

Defamation Law falls under Tort Law. It refers to false statements about a person, communicated as fact to one or more other persons by an individual or entity (such as a person, newspaper, magazine, or political organization), which causes damage and does harm to the target's reputation and/or standing in the community. Defamation is addressed primarily by state legislation. However, Constitutional Law may also apply, as the right of freedom of speech also extends to certain defamation claims. Defamation is categorized as either **Slander** or **Libel**<sup>21</sup>. Defamation law aims to strike a balance between allowing the distribution of information, ideas, and opinions, and protecting people from having lies told about them. It's a complicated area of law. If you have more questions, check your local law library or the Defamation Law Section Nolo's website for more about the First Amendment and freedom of speech, the rights and responsibilities of the press, invasion of privacy, hate speech, and Internet speech<sup>22</sup>.

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<sup>21</sup>"Defamation Law - Guide to Libel and Slander Law" <https://www.hg.org/defamation.html> accessed on 8 Oct. 2017

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