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ARE DEFAMATION LAWS A BOON OR BANE: A PANORAMIC ANALYSIS

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Abstract

In the contemporary era of India, people are becoming aware of their rights and want to voice their opinions and ideas regarding them. However, the laws concerning freedom of speech are not absolute and one can be held liable for defamation. With evolving times, defamation has become an increasingly misused offence, which has fueled the debate about it being a restriction on free speech. What one needs in this scenario is stability between the defamation laws and the rights and aspirations of Indian society. The foremost objective of defamation jurisprudence is to fortify one's dignity and respect. This has been secured through numerous laws and articles. These incorporate sections 499-502 of the Indian Penal Code, defamation as a tort, and Article 21 of the Indian constitution. Defamation comes under the purview of civil wrongs as well as criminal wrongs i.e. defamation can be contemplated as a tort as well as a crime. Hence, the judiciary should be heedful while analysing the cases concerning defamation and should pronounce a judgement that creates an ideal blend betwixt laws in respect of defamation and fundamental rights or aspirations of the people. This enables individuals to enjoy their fundamental right without compromising their reputation.

This paper aims to analyse the laws concerning defamation, their evolution, and how the laws regarding defamation have been squandered through the hands of some people. Further, some case laws have been mentioned to give an eloquent understanding of the topic.

Introduction

With the tides of advancement in the contemporary era, people are voicing their opinions but sometimes, it gets strenuous for an individual to exercise their rights without facing any ructions. We cannot deny the fact that laws punishing defamation have aided abundant people to safeguard their dignity and reputation. But there are always two sides of a coin. These laws have been

exploited through the hands of numerous people. This has resulted in these laws becoming a restriction to the freedom of speech and right to life. Having a clean and righteous reputation is an essential segment of everyone's life. A person's reputation and integrity can be damaged through the offence of defamation. Acts of malicious defamation of others have been occurring since ancient times. The Kautilya Arthshastra, in which the writer outlined the penalties for members of various social classes, is where the background of defamation can be found.

Defamation is causing damage to an individual's reputation by publishing an untrue statement. A statement about a person that makes him the target of animosity, mockery, or contempt, makes him avoidable or shunned, or that tends to harm him in his job, profession, or trade is considered defamatory. It can be classified under kinds i.e. libel and slander. Libel defamation is when damage is caused to a person's reputation in the minds of right-thinking people through some written form. Examples of it include an article, blog, or a painting. Whereas, slander is a defamatory statement spoken by someone that tends to harm the reputation of an individual in the minds of right-thinking people.

Research questions

- 1) What are the essentials of defamation?
- 2) How is defamation defined under Section 499 of the IPC?
- 3) What is the punishment for defamation?
- 4) Do defamation laws violate the fundamental right of freedom of speech and expression?

Essentials of defamation

- The statement must be untrue and defamatory in nature.

A statement is said to be defamatory if it causes damage to a person's reputation in the mind of a prudent person. The statement can either be prima facie or have a hidden meaning (innuendo) in it. Prima facie means that the statement is injurious to someone's reputation on the face of it whereas in innuendo, things are not explicitly said.

- The statement has to be published.

This implies that another prudent person must have seen or heard the statement. In *Mahendra*

Ram v. Harnandan Prasad,¹ a letter was sent by the defendant to the plaintiff which was in Urdu. Plaintiff was not well-versed in the language. Hence, another person read the letter in the presence of some people. However, the defendant was not held liable because he wasn't familiar with the fact that the plaintiff doesn't know the language.

The fact that spoken words are recognised as a form of defamation under Indian law while they are not under English law is a key distinction between the two systems of law.²

- Defamatory words or statement must be in reference to the plaintiff.

It must be evinced that the imputation made by the defendant refers to the plaintiff. The said statement must be made with an intent to damage the image of another individual or with mens rea that such an accusation will damage a person's reputation.

In *Gundi Vishnu Prasad and another Versus The State of A.P.*³, a petition was filed under section 482 of CrPc. However, the petition was dismissed, essentials of the defamation were mentioned and it was held that the imputations must either be spoken or intended to be read in order for them to constitute defamation.

In the matter of defamation, the position of a newspaper is in no way different from that of a member of the public in general. The responsibility in either case is the same⁴. The publisher of a newspaper is responsible for defamatory matter published in the paper, whether he knew the contents of such paper or not.

Section 499

Section 499- 502 of the Indian Penal Code accommodates provisions associated with defamation.

Four elucidations have been observed for section 499 of the IPC. They are as follows-

As per section 499 of IPC, an individual defaming any deceased person who affects his/her relatives or would have affected the reputation or integrity of the person if they were still alive will be held liable for defamation under this section.

A business has its own goodwill. Making statements about the company's or association's

¹ *Mahendra Ram v. Harnandan Prasad*, AIR 1958 Pat 445

² KD Gaur, Textbook on Indian Penal Code 1093 (Universal Law Publishing 2016)

³ *Gundi Vishnu Prasad and another Versus The State of A.P.*, 2006 SCC OnLine AP 1328

⁴ *Dongar singh v. Krishna Kant*, AIR 1958 MP 216

operations, imposing them with fraud or managerial mistakes, or condemning their economic state would constitute defamation. It is also essential for the group of people to be a recognised body in order to be able to say with certainty that they stood defamed.

Sometimes, a statement is not prima facie defamatory. However, it has a hidden meaning to it. This is called innuendo and one is held liable for it.

In the fourth explanation, it has been stated that any person who has been defamed in the eyes of society in respect of his morals or character can file against it. This also includes if any imputations are made on one's caste or if it lowers the credit of that individual.

Defenses for defamation

- 1) The accusation was done in good faith for the public interest- To adduce this exception, two ingredients must be evinced. They are as follows-
 - a) The purported imputation was accurate
 - b) It was done in good faith for the public welfare

No truthfulness can justify the imputation unless it was done in good faith. Example- When an assertion is made by an editor of a newspaper about a public servant or a private citizen, it is believed that it was made in good faith. However, if one tries to defame any citizen under the garb of this exception, he'll be liable for the same. The publication must be made in the public interest and be free of bias in order to pass the fair comment test.

In *Chaman Lal vs. State of Punjab*⁵, the Supreme Court established the criteria for proving good faith and bona fide in this case, as stated in the exceptions to Section 499 of the Indian Penal Code.

- 2) Conduct of public servants- statements that are made regarding the conduct of public servants don't amount to defamation. However, the remarks should be fair in the sense that they are motivated by the writer's sincere desire to serve the public interest rather than by any desire to air personal grudges.

⁵ Chaman Lal vs. State of Punjab, 1970 AIR 1372

- 3) Any person touching any public question- This exception covers a much wider area as compared to exception 2. It states that expressing a view about a person's behaviour in relation to a public issue or about his character is not considered defamation.
- 4) Publication of statements concerning proceedings of courts- It is no defamation to publish any statement regarding the proceedings of the court if they are true in nature. In *Annanda prasad vs. Manotosan Roy*⁶, it was held by the court that the publication need not be true by word, but should give a true account of the proceedings.
- 5) Merits of a case decided in court or conduct of witnesses- It deals with comments regarding the merits of a case that have been determined by the court.
- 6) Merits of public performance- This exception covers the literary criticism of public performances submitted to its judgment. It deals with the criticism of books published on literature, art, painting, speeches made in public etc.
- 7) Absolute privilege: A lawsuit for libel is barred by the assertion of privilege. In the public interest and for the benefit of society, defamatory matters are protected by legal doctrine.

A statement has absolute privilege when its nature precludes any legal action being taken against it, regardless of how untrue or defamatory it may be or whether it was made maliciously.

This privilege extends to conducting parliamentary business, administering the law, and advising the state in matters of state. This defence is also available in the case of any defamatory remarks made by a judge, jury members, party, witness, or advocate during a legal proceeding.

Sections 500-502

Section 500 asserts the punishment for defamation, which is simple imprisonment for a term that may extend upto two years, fine, or both. The offence is non- cognizable and bailable under this section. The sale of printed or engraved products containing defamatory material is covered in

⁶ Annanda prasad vs. Manotosan Roy, AIR 1953 Cal 503

Section 502 of the Indian Penal Code, which deals with the publishing or engraving of known defamatory material in Section 501 of the Code.

It must be established that the printed and made available for sale material violates Section 499 of the IPC's definition of defamation. Once this is proven, the next step is to assess whether the accused carried out the acts that constitute the alleged offence with the required knowledge, intention, etc. to render those acts guilty.

Defamation Laws and Free Speech

It has been described that defamation laws have a collision with the fundamental right of right to freedom of speech and expression. The freedom of speech and expression is, naturally, subject to appropriate limitations, as are the rest of the fundamental rights. The Indian Constitution's Article 19(2) makes this declaration.⁷ Nothing prevents a state from enacting laws as long as they impose reasonable restrictions on the use of the rights guaranteed by the aforementioned subclauses in the interest of India's sovereignty and integrity, the State's security, good relations with other nations, the maintenance of public order, morality, or values, or in order to prevent judicial slander, defamation, or incitement to commit an offence. By their very definition, both laws are in conflict with one another because 1) one safeguards a person's right to freely voice his or her beliefs and points of view, and 2) the other is inclined to hold those same views or opinions accountable when they damage someone's reputation. It should be remembered that the Court must keep in mind the lofty ideals, fundamental principles, and guiding principles of the constitution when interpreting Article 19(2). The definition of "defamation" in Article 19(2) should not be interpreted strictly.

In *Subramaniam Swamy Vs. UOI*⁸, the petitioners argued that the criminal defamation crime was invalid because it infringed upon their right to freedom of expression. In its decision, the Court considered various definitions and applications of the terms "defamation" and "reputation."

The Court went on to emphasise the importance of the constitutional principles of fraternity and fundamental duty, which state that it is everyone's responsibility to uphold the dignity of others. The Court held that it could not draw the conclusion that the presence of criminal defamation is detrimental to freedom of speech and expression because this is a constitutional obligation.

⁷ INDIA CONST. art. 19

⁸ Subramaniam Swamy Vs. UOI, AIR 2016 SC 2728

The Court also considered if the criminal defamation provisions are substantively or procedurally unreasonable, looking at whether they are ambiguous, unjust, or disproportionate. The Court comes to the conclusion that the four elucidations provided in the Penal Code section on defamation were neither ambiguous nor unspecific. The Court further ruled that Section 499, which claims that violating Art. 19(1)(a) of the Constitution by defaming a private individual, has no relation to that clause because Art. 19(2) protects the interests of the public rather than an individual and cannot therefore serve as the foundation for criminal defamation.

In *Shreya Singhal vs UOI*⁹, the ruling was based on the idea that limitations needed to be narrowly tailored, but that criminal defamation is not a concept that fits this description.

Conclusion

An ongoing conflict has often been noted in the complex interplay between laws regarding defamation and free speech. Defamation laws have a crucial role to play in protecting both reputations and expression in democratic societies, as this paper has explored through their historical roots, legal doctrines, and current challenges.

By giving people and organisations a way to seek redress when false statements endanger their reputations, defamation laws serve a vital purpose.¹⁰ This judicial system recognises the significant influence that a statement may possess on an individual's life, profession, or the reputation of an organisation. It is crucial to keep in mind that freedom of speech is not absolute. Although it is a right, it also comes with obligations. The obligation to respect the rights and dignity of others must coexist with it. In this situation, defamation laws serve as a necessary check to limit harm while safeguarding the importance of the freedom of speech.

⁹ *Shreya Singhal vs UOI*, (2015) 5 SCC 1

¹⁰ Rajshree Chandra, *Defamation: The Weapon of Choice to Stifle Pursuit of Justice and Free Speech*, *The Wire* (08/09/2023) <https://thewire.in/law/defamation-priya-ramani-metoo-slapp-free-speech-media>