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CONCEPT OF DEFAMATION

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Abstract

In a democratic set up, free speech and expression is considered to be a fundamental right which is not absolute but subject to certain reasonable restrictions , defamation being one of them . A man cares most their reputation . so, defamation means the offence of injuring a person's character or reputation by false and malicious statements . The legal arena have brought to the fore- the defamation debate. This paper explores the term defamation , defenses available to defendant and legal provisions under criminal laws. Defamation has become a burning issue in the present time.

Key Words: Defamation , Defamation defenses , harm reputation , legal provisions.

Introduction

Defamation means attacking another's reputation by a false publication or communication to third party tending to bring the person into disrepute. Defamation is a creation of English law and existed several thousand years ago. In Roman law, abusive chants were punishable. In early English and German law insults were punished by cutting out the tongue. French defamation law, required conspicuous retraction of libelous material in newspaper and allowed with truth as a defense only when publications concerned public figures. Modern German Defamation is similar but generally allows truth as a defense. In Italy, truth seldom excuses defamation, which is criminally punishable there. Injury only to feeling is not defamation, there must be loss of reputation. The defamed person need not be named but must be ascertainable.¹

Importance Of Study

1. The main purpose of defamation law is to eliminate false statements .
2. Defamation is considered to be a civil wrong or tort.
3. If this false statements lead to damage to the reputation of one about whom it is made , there shall be legal consequences against the person making such false statements.²
4. The law of defamation protects individuals and certain corporation's reputation.

Defamation: Meaning & Definitions

Reputation is an inherent personal right enforceable against all other persons and every person has a right to maintain and preserve his reputation. Any injury to or violation of this right is called defamation. Defamation involves making false statements about an individual with the objective of creating a bad image in the society of that person.

According to Winfield, “defamation is publication of a statement which tends to lower a person in the estimate of right thinking members of the society generally or which makes them shown or avoid that person.”³

According to Black’s Law Dictionary, “defamation means the offence of injuring a person’s character, fame, or reputation by false and malicious statements.”⁴

Classification Of Defamation

Defamation is traditionally classified into:

1. LIBEL (Written)
2. SLANDER (Oral)

Libel : The word Libel comes from Latin word “*libellus*.” It is a representation made in some permanent form e.g. writing, printing, pictures or effigies etc.

Slander : The word Slander comes from French word “*esclandre*” means scandalous statement. Esclandre, in turn, is derived from Latin *scandalum* meaning cause of offense. It is the representation of defamatory statement in a transient form e.g. in spoken words, or gestures.⁵

Requisites Of Defamation

In an action for defamation, following constituents are essentials :

- The statement must be defamatory.
- The defamatory statement must, directly or indirectly, refer to the person defamed.
- The statement must be published through some medium i.e. communicated at least one person other than the claimant.
- Fault amounting to at least negligence.
- False statement purporting to be facts.
- Damages or some harm caused to the reputation of the person or entity who is the subject.

Distinction Between Libel And Slander :

<u>LIBEL</u>	<u>SLANDER</u>
<ol style="list-style-type: none"> 1. Defamatory statement is made in some permanent and visible form . 2. Defamation is addressed to the eye . 3. Libel is not merely a tort , it can be a criminal offence . 4. Libel is actionable in itself . it does not need any proof of actual damage . 	<p>Defamatory statement is usually made in some transient form .</p> <p>Defamation is addressed to the ears . Slander is a criminal offence only in exceptional circumstances .</p> <p>Slander is not actionable in absence of proof of actual damage .</p>

Defenses

In an action for tort of defamation , defendant has following defences available to him:

1. Justification of truth
2. Fair comment
3. Privilege --- Absolute or Qualified

Justification of truth - Law will not permit a man to recover damages in respect of an inquiry to a character which he either does not or ought not possess . Thus , even though the statement is malicious , yet if it was true or justified , there cannot be a better defence than that of the truth if the statement is substantially correct .⁶

Fair comment - No comment can be fair which is on untrue facts . If facts are substantially correct though untrue in some minor details , the comments made on basis of those facts will be fair . if facts are true and the defamer honestly held the opinion expressed by him , comment is fair but the distorted comment based on malice cannot be fair .

Privilege - In certain circumstances owing to their importances , freedom of speech is protected even if its exercise is defamatory . Such privilege override the individuals right to reputation . The privilege can be :

- I. Absolute or
- II. Qualified

Absolute privilege – A speech made during parliamentary proceeding or in State

Legislature and publication of the same, has the constitutional protection as the constitution grants privilege to such speech.

No action for defamation lies against judges, counsels, witnesses or parties for words spoken or written, in any judicial proceeding. Similarly, military and naval proceedings or State commutation are also privileged.

Qualified privilege - A statement is said to have a qualified privilege in spite of it being false and defamatory if there is no proof of malice. Three conditions must co-exist for the defence of qualified privilege ---

- a) A fit occasion to make the statement
- b) The statement must have reference to such occasions
- c) It must not be maliciously but with proper motive

Defamation Under Criminal Law

Provisions under Indian penal code : Section 499 - Defamation

Whoever,

- I. By words either spoken or intended to be read, or by signs or by visible representations,
- II. Makes or publishes any imputation concerning any person intending to harm, or
- III. Knowing or having reason to believe that such imputation will harm, the reputation of such person,

Is said, except in the cases hereinafter expected, to defame that person.⁷

Explanation 1 - It may amount to defamation to impute anything to a deceased person

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, lowers the moral or intellectual character of that person.

Exceptions Of The Rule

1. Imputation of truth which public good requires to be made or published.
2. Public conduct in good faith of the public servants in discharging of his public functions.
3. Conduct of any person touching any public question in good faith.
4. Publication of true reports of court of justice.
5. Merits of cases civil or criminal, decided by court or conduct of witnesses and other concerned.
6. Merits of public performance which its author has submitted to the judgment of the public.
7. Censure passed in good faith by person having lawful authority over another.
8. Accusation preferred in good faith to authorized person.

9. Imputation made in good faith by person for protection of his or other's interests .
10. Caution intended for good of person to whom conveyed or for public good .

In section 499, the words “ makes or imputation” should be interpreted as words supplementing to each other . A maker of imputation without publication is not liable to be punished under that section .⁸

Section 500 – Punishment for defamation :

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both .

In a case it was held that a person cannot be said to have committed an offence under section 500 of the code merely because some news item or article is published attributing certain utterance to that person .⁹

Provisions Under The Code Of Criminal Procedure

Section 199 - Prosecution for defamation :

This section provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein . However the offence alleged to have been committed must be in respect of acts / conduct in the discharge of public servant , as may be .

Court of Session shall take the cognizance of an offence if the complaint is made within six months from the date on which the offence is alleged to have been committed .

Case Laws :

*K.K. Mishra v. State of Madhya Pradesh & ors.*¹⁰

In this case the defamation was confined to the three statements made in a press conference by the defendant and the public prosecutor filed the case against defendant after the government granted permission to file complaint considering the three statements as defaming against chief minister of MP the appeal was allowed and the defendant were punished under section 500 of IPC,1860 .

But in an another case government use wrongly this section , In this case the petition was quashed because the appellant, who was a minister in State , thought that the news directly defaming him and so there was a misconception and the govt. used their excessive power and granted the permission to file complaint .¹¹

*Shamurailatpam Gopal Sharma v. Public prosecutor , Manipur & Ors*¹²

In this case a newspaper wrote something defaming about the minister of the State in regard to his personal function . The court held that the allegations relatable to personal life of a public functionary like that of a private citizen which does not revolve around his public function this section won't be operative and the cases are to be decided on the factual matrix of case .

*Subramaniam swamy v. union of India*¹³

In this case court held that criminal defamation under section 199 is not violation of Article 19(1) as the Article involved public interest and not that of individual so the provision invoked in this case .

*Thiru N Ram , Editor-In- Chief, "The Hindu" v. Union of India and connected cases*¹⁴

The complaints were lodged in 2012 which alleged criminal defamation against state over few reports against by AIADMK party headed by Jayalalitha at that time . Writ petitions were filed challenging the validity of govt. orders granting sanctions to public prosecutor to file complaints under section 199(2) of CrPC regarding the reports and articles .

In this landmark judgment court quashed the complaints against a group of journalists and editors . The court observed that the criminal defamation law is not meant for misuse by State . It should be used in real cases of necessity . A public servant and constitutional machinery must be able to face criticism . Court also observed that section 199(2) CrPC should only be invoked when there are foolproof materials , evidences and when launching of prosecution is inevitable .

Provision Under Information Technology Act,2000

Internet Defamation - Internet/cyber defamation has been a serious crime due to its emerging cases in the recent times due to the overall business through online mode . The immense growth of internet all across the globe has given one top medium to every technology friendly individual a platform to express their opinions and thoughts by writing away from their end which are easily accessible to everyone on the same platform as a publication . This has led to the increase in cyber defamation which causes injury to the reputation of a person in front of third party which is done by verbal or written communication or through verbal representations .¹⁵

It includes :

- i. Widespread coverage
- ii. Instantaneous communication
- iii. Anonymity
- iv. Impersonation

Section 2(1) (ha) of Information Technology Act , 2000- Defamation created through “ any cell phones , personal digital assistance or combination of both or any other device used to communicate , send or transit any text , video , audio or image.”

Admissibility Of Electronic Records

As per sections 65A and 65B of the Evidence Act :

- I. Any electronic record recorded , printed , copied on a paper or media in the form of a document shall be admissible by court .
- II. Mails and online chats , screenshots are also admissible in court .¹⁶

A case of *D. K. Malhotra , SMC Pneumatics (India) pvt.ltd. v. Jogesh kwatra*¹⁷ this was the first case on cyber defamation where an employee sent defamatory , vulgar and abusive mails to the company's fellow employers all over the world with the motive to defame company's name which also including managing Director . Delhi high court

passed an interim injunction and granted ex-parte thus restraining the defendant for defaming the plaintiff in both the physical and cyber space .

*Kalandi Charan Lenka v. State of Odisha (2017)*¹⁸ In this case the petitioner was the victim of online stalking from a fake account which led to spoofed identity .the case involved forwarding of obscene messages were set to the friends under the definition of cyber defamation .high court of Odisha held that the act of accused falls under the offence of cyber crime and is liable for the fake messages and obscene images and texts.

*Shreya Singhal v. Union of India*¹⁹ this case is a landmark judgment in the field of freedom of speech and expression . This case brings various dimensions which are important facts of Article 19(1) . Section 66A which was widely criticized for its over breadth , vagueness and its chilling effect on speech was struck down by the Apex Court as it was unconstitutional . But the case of defamation considered under section 499 of IPC.

Suggestions

1. There is a need to reform the law of defamation to include its applicability in cyberspace .
2. Laws related to internet service provider are too vague and should be amended to make it more comprehensive and exhaustive .
3. Change in technology over the world changed the way people communication .
4. There are no separate cyber defamation laws in India. So , judges interpret various other laws to rule on cases related to cyber defamation .
5. An approach is needed that balances the Right to freedom of speech and defamation in cyberspace .²⁰

Conclusion

The new era of technology changed the usage of the internet from just information providers to running the business online. The sheer volume of information available and the ease with which it can be transferred make the internet a vital source of defamation. People through the internet trying to communicate their views, ideas, opinions and even criticism which sometimes lead to character assassination.²¹ so, a proper balance is need of the hour between freedom of speech and expression and Right to Reputation.

End Notes

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