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# **DEFAMATION UNDER CRIMINAL LAW**

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YEAR-2021-22. ROLL NO-08.**

## **Introduction**

While the Constitution provides a guarantee to freedom of speech and expression, which is exercised by the media, the criminal law imposes certain restrictions on that freedom for protecting the social or group interests and public tranquility. Article 19(2) provides certain grounds, based on which the state can impose reasonable restrictions on this freedom. Media-persons are basically under the same obligation as the people in general to abide by general principles of penal law. Media in its exercise of free criticism may slip either intentionally or through its routine activity into any kind of criminal liability under different circumstances. The Indian Penal Code envisaged certain crimes which a media person may get entangled into and face the prosecution. Media persons' right to free speech cannot extend to cause sedition, by bringing disrepute of the state, or affect the reputation of individual leading to defamation or represent obscene or base material disturbing the moral and serene atmosphere of society. In case they do so, the criminal provisions of Indian Penal Code are attracted. Thus Defamation, Sedition and Obscenity are the three major areas where the media persons could be vulnerable to face the prosecution.

It is a commonly acknowledged principle of every decent and morally well-established society that every member of such society has his/her own respect and dignity among people of the society and such reputation shall be encouraged and protected. The dignity of an individual shall not be withdrawn under any circumstances by any means. The law of defamation is a direct and intentional violation of the reputation of a person either by words or signs or any publication. A defamatory statement is a statement concerning any person which exposes him to hatred, ridicule, or contempt or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, profession.

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C.R. Criminal appeal No.173 of 1927 decided on Sept.22,1927 (Unrep.Bom

## Abstract

Defamation is **tarnishing the reputation of someone**; it has two varieties, slander and libel. Slander is spoken defamation and libel is printed or broadcast defamation.

It is the right of each individual in the society to possess a flawless reputation and prestigious name which shall be recognized by the society where the individual resides. Such reputation is based on the thoughts and opinions of what other person talks about such individual. Therefore to have a dignified reputation in the society, it is essential that other members of the society must have heard good things about the individual but in case of a statement made falsely to dissert the reputation of the individual by other members of the society, the dignity and reputation the individual possess is violated therefore it is important to preserve and safeguard the reputation of each individual in the society. The law of defamation is concerned with safeguarding the reputation and such remarks or comments of others which infringe the right to reputation of any individual of the society.

**Keywords:** Defamation, Society. under criminal ,Media Law.

## I. Media And Criminal Defamation

### II.

Journalist who defames is liable both in Civil law and criminal Law. **Section 499 of Indian Penal Code** defines defamation: Whoever by words either spoken or intended to be read, or by signs or by visible representation, makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such person, is said, except in cases herein after excepted, to defame that person.

The expression makes or publishes has been interpreted as supplementing each other. If a person merely writes out a defamatory matter but does not publish the same i.e., does not circulate to others; it will not be defamation. The word 'makes' refers to originator of imputation.

The word imputation indicates something bad about another and implies the attribution or evil, the making or an accusation, allegation, insinuation of a charge against a person, words either spoken or intended to be read, or by signs or by visible representation. Visible representation will be inclusive of every possible form of defamation which human ingenuity can devise.

The publisher of a newspaper is responsible for defamatory matter published in such paper whether he knows the contents of such paper or not. The editor of a journal is in no better position than any other ordinary subject with regard to his liability for libel. He is bound to take due care and caution before he makes a libelous statement.

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1884,7 Allo 205 (222) F.B. 3 1932 55 All 253 4 1944 46 Cr. L.J. 71 5 1886 9 Mad. 397 6 1894 1 Q.B. 67

1884,7 Allo 205 (222) F.B. 3 1932 55 All 253 4 1944 46 Cr. L.J. 71 5 1886 9 Mad. 397 6 1894 1 Q.B. 671.

## **1.Intention To Harm**

According to section 499, the person who defames another must have done it intending to harm or knowing or having reason to believe that such imputation will harm the reputation.

It is not necessary to prove that the complained actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended to know or had reason to believe, that the imputation made by him would harm the reputation of the complainant, irrespective of whether the harm is actually caused or not. It is not necessary that there should be an intention to harm the reputation. It is sufficient if there was reason to believe that the imputation made would harm the reputation. Section 499 of Indian Penal Code gives four explanations in this regard.

## **2.Defamation Of The Dead**

According to this the imputation must not only be defamatory of the deceased but it must also be hurtful to the feelings of his near relatives. The question depends upon the harm caused and not the harm intended, for in the case of deceased, the latter test is inapplicable.

## **3.Defamation Of A Company Or A Collection Of Persons**

A corporation or company could not be liable in respect of a charge of a murder, incest, or adultery because it could not commit those crimes. The words complained of must attack the corporation or company in the method of conducting its affairs; must accuse it of fraud or mismanagement or must attack its financial position.

The class defamed must not be too large to cease of be distinct from the memory of certain trade or profession. If a person calls the lawyers as thieves or medical men as a class of cut-throats in disguise or the police force as a hotbed of corruption, there would be not indictable libel-because the class is too large and the generalization too sweeping to affect any of its composing members.

## **4.Defamation By Innuendo**

When a particular passage is prima facie non-defamatory the complainant can show that it is really defamatory of him from the circumstances and nature of the publication. Such a passage is called ‘innuendo’. The language of irony or sarcasm very often will be better, forcible, and impressive than a bold statement. It is thus necessary for the prosecution to establish that the words though innocent are appearances were intended to be said in a libelous sense. So it may be libelous to say of an attorney that he is an honest lawyer meaning thereby he is the reverse of the honest.

## **5.Publication**

Publication in its primary sense of communication by the defendant to a person other than the defamed is the basis of liability in English civil law of defamation i.e. in torts. This principle which is not accepted as the basic principle of English Penal Law of defamation is accepted as the basic principle of Indian Penal Code. Section 499 Words which may have the effect to provoking other persons at whom they are uttered are made punishable under Sec. 504 of Indian Penal Code which deals with intentional insults with intent to provoke breach of peace.

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8 C.A. 397774 decided on 28th Feb.1974 (see the details of the case in next chapter, Media and Tort Law.

The gist of the offence in section 499 seems to lie in the tendency of the statements verbal or written to create that degree of pain which is felt by a person who is subjected to unfavorable criticism and comments.

There is another important difference between English law and Indian law in the matter relating to spoken defamation or slander. Slander cannot be subject matter of criminal prosecution in England except when it happens to be seditious or blasphemous and when they are against State or State religion. The Indian Penal Code recognizes no such distinction classing both as punishable.

## **I. Exceptions**

The ten exceptions to Se. 499 state cases in which an imputation prima facie defamatory may be excused.

They are occasions when a man is allowed to speak out or write matters which would ordinarily defamatory. **Those exceptions are;**

1. Imputation of truth for public good,
2. Public conduct of public servants,
3. Public conduct of public men other than public servants,
4. Comment on cases and conduct of witnesses and others concerned,
5. Merits of cases, decisions and judicial proceedings,
6. Merits of a public performance, literary criticisms,
7. Censure in good faith by one in authority,
8. Complaint to authority,
9. Imputation for protection of interest,
10. Caution in good faith.

### **Ii. Justification**

The truth of any defamatory words if pleaded is a complete defense in civil proceedings and for the reason even though the words were published spitefully and maliciously. The law takes the view that it should not allow a plaintiff to recover damages for an injury to his character or reputation which he either does not or ought not to possess.

In criminal law, truth is not an absolute justification. Truth is a justification only when it is given out for public good. The reason for the distinction lies in the fact that in civil action the benefit or detriment to the public is not in issue while it is paramount that the public should have a concern in criminal matters.

### **Ii. Landmark Cases**

**In the Supreme Court decision in Harbhajan Singh v. State of Punjab**<sup>17</sup> Accused was secretary of Punjab Praja Socialist Party. He wrote a defamatory article in Blitz about Surinder Singh, son of the Chief Minister of Punjab S. Pratap Singh Kairon. The two defamatory statements states that he is the leader of smugglers and is responsible for a large number of crimes being committed in Punjab State. 8 C.A. 397774 decided on 28th Feb.1974 (see the details of the case in next chapter, Media and Tort Law.

The statement added that because the culprit happens to be the Chief Minister's son, the cases are always shelved up. There was evidence that certain pending cases against some smugglers were withdrawn by the State at the instance of the Chief Minister. The truths of these allegations were not proved beyond the shadow of doubt in the trial of the defamation case.

The accused pleaded that imputation made in good faith and for public good falling under Exception 9 though he has stated in the original trial court that he relied on the truth of his statements falling under the First exception to S.499. Trial Court and High Court found against the accused even on the plea of 'good faith' under ninth exception namely on the ground that he had not conclusively established the truth of the allegation. High Court sentenced him to undergo three months simple imprisonment and to pay a fine of Rs.2,000/- . The Supreme Court allowed the appeal of the accused and set aside the order

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A.I.R.1966 s.C.97 18

A.I.R. 1981 S.C.1514.

of conviction by holding that in the circumstances of the case that the appellant was entitled to the protection of the Ninth Exception.

## **II. Media and Crime of Sedition**

Criticism of government is not sedition. The expression 'sedition' generally means defamation of state. But the legal meaning of 'sedition' is different.

**Definition:** Section 124A of Indian Penal Codes defines and punishes sedition as follows:

Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards,

the Government established by law in India, shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with

- fine The expression 'disaffection includes disloyalty and all feelings of enmity..
- Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.
- Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

### **1. Meaning:**

Sedition is a crime against the state. The word 'seditio' in a latin means 'going aside' The State intends to bring in all kinds of separatist tendencies into this word and curb the writings or campaign causing disaffection. According to Sir J Fitzjames Stephen<sup>20</sup> are not connected with open violence but they presuppose disaffection with the existing government in various ways. This offence in English law is a crime against the Crown and government,

### **2. Object:**

The object of sedition is to induce insurrection-(rising in the first stage or incipient rising) and rebellion. It has been described as a disloyalty in action and it leads to civil war, bringing into contempt the sovereign or the government or the Constitution. This offence, therefore, is the offence of defamation of Government.

### **3. English Law and Indian Law:**

The Indian Law of Sedition is almost same as the English Law. The substance of Indian Law of sedition is contained in Sections 124A, 153A, 295. While the Section 124-A deals with political offence of sedition, Section 153-A deals with sedition by class hatred and Section 295-a deals with sedition by promoting religious insult. Sedition can also be committed by questioning the territorial integrity of frontiers, according to Criminal Law Amendment Act, 1961, Section 2.

### **4. Citizen's Criticism and Sedition:**

Sedition is not an offence against public order, the gist of the offence is 'incitement to disorder or tendency or likelihood of public disorder or the reasonable apprehension thereof', as per the Supreme Court in Kedar Nath case.<sup>25</sup> Moreover a citizen has a right to say or write whatever he likes about the government. The explanations appended to the main body of section make it clear. It is only when the words used have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activity in the interest of public order. Section 124-A is a proof of his that the Government can be criticized by all legitimate means and the State cannot do anything.

### 5.A Reasonable Restriction.

No state can be expected to concede freedom to those who profess to put an end to it by availing of that freedom.

#### I.The Person:

The writer, printer, publisher, editor and the composer can be a person under this section. A person who has used the article or writing for such purpose is also included. A person is liable for everything that appears in his paper and the question of punishment is a different thing.

**Sedition trial of M. K. Gandhi: Section 124A** was invoked in March 1922 and this was a historical case in context of Sedition. The accused this time was M.K.Gandhi and Shankarlal Banker was co-accused.

#### II.A threat to Media's Freedom

The First Amendment to the Constitution in 1951 incorporated 'public order' in Article 19(2) as a ground on which the state could impose reasonable restrictions by law. Thus, the inclusion of 'sedition' was held constitutional by the Supreme Court in Kedarnath. But the Constitution-makers did not specifically state that 'sedition' should be a ground to restrict free speech. Though the additional ground of 'public order' is held to be valid for restricting freedom of expression, sedition cannot be read into the wide expression public order.'



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7 Mohanlal V. Ramchanran  
1928 26 A.L.J.R. 361

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9 Jhabbarmal (1927) 26  
A.L.J.R.196, 30.

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1893 17 Mad.87  
20 Q.B.D.275 at p 281  
16 1886-3 T.L.R.184

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C.R. Criminal appeal No.173 of 1927 decided on Sept.22,1927 (Unrep.Bom)

### **III. CONCLUSION**

The correlation of media and defamation cannot be concluded to the end as it is a wide topic having a broad perspective, media is a sector which is connected with each and every field thereof it is very necessary that every aspect of media, it has to be seen that the information revealed is truthful and defamation does not occur.

Defamation and Media are two paths of the same road the usefulness of both terms has to be done in such a way that they don't overlap each other as a result defamation

is not committed. it is very necessary that any information done at mass level should be beyond reasonable doubt and as media performance that stage each and every time, The role of media is very crucial in a democratic country like India.

A journalist holds the maximum influence toward the citizens of the country, therefore the slightest of doubt arises from the information telecasted then there would be an adverse impact. it has to be seen that the people forming their views based on the information telecast are not influenced adversely.

Though the media being a wider sector, it could be concluded that defamation and media are two sides of the same coin. but the measure that should be taken is that they don't overlap each other and should perform within their imposed limits.

The law of defamation seeks to protect individual reputation. Its central problem is how to reconcile this purpose with the competing demands of free speech.

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