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A Study of Exceptions of Offence of Defamation with Relevant Case Laws

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ABSTRACT

Defamation is defined as "whoever makes or publishes any imputation concerning any person with the intent to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, by words that are either spoken or intended to be read, by signs, or by visible representation, is said to defame that person," as stated in section 499 of the Indian Penal Code. This paper is an attempt to analyse the various exception of defamation with all the relevant case.

Keywords: Defamation, Indian Penal Code.

I. INTRODUCTION

Defamation is worse than death for a man of honour, according to the Bhagwad Gita. Reputation is seen as a key component of dignity and is protected under Article 21. A man is legally responsible if someone hurts his reputation since it is deemed to be his property. Defamation refers to the act of disseminating false information that might damage a person's reputation in the view of regular people. A defamatory comment may be made verbally or in writing. Defamation is defined as "any inaccurate and false remark, published in either oral or written form, which injures or diminishes the esteem, regard, and reputation of a man or inspires unfriendly, unpleasant, or contemptuous sentiments towards a person."

II. WHAT IS DEFAMATION?

According to section 499 of the Indian Penal Code, defamation is defined as "whoever makes or publishes any imputation concerning any person with the intent to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, by words that are either spoken or intended to be read, or by signs, or by visible representation, is said to defame that person."

Defamation comes in two forms: slander, which is verbal defamation, and "libel," which is defamation in writing. Defamation is a civil as well as a criminal offence in India. In terms of civil law, defamation is penalised in the form of compensatory damages paid to the claimant

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under the tort law. Under Indian Penal Code sections 499 and 500, defamation is a punishable offence that is subject to bail, non-cognizable, and compounding. As a result, a magistrate's warrant is required before a defamation probe may begin.

(A) Reputation

It must be proven that a person's reputation has actually suffered damages before a lawsuit may be filed. Until the person's reputation has been hurt, just saying or writing anything, imagining something, or gesturing something does not constitute defamation. The only negative outcome that can result from a defamatory conduct is harm to reputation.

Additionally, it could be detrimental to your professional success. For instance, if someone warns you not to purchase food from a shopkeeper because he charges a high price for low-quality goods. In this instance, if the claim is proven to be false, the shopkeeper's reputation would suffer since this will result in the shortage of customers coming to his shop.

(B) Publication

For a person to be sued for defamation, it is required that the publication of the words he spoke or wrote must have happened. What does it mean? It means that damage to the reputation of the person happens when the defamatory words have reached to any third person. Publication means that the third person has read, heard or seen the written, spoken, gestured or pictured defamatory words.

If it has not happened then there is no ground to sue for defamation. The distinction between English Law and Indian Law An act of defamation can occur in two forms, libel and slander.

Libel- it is a kind of defamation that is present in some permanent form such as in writing, printed or a picture.

Slander- it is a kind of defamation that is present in an unwritten form such as spoken words, gestures or representation made with hands.

In English law, there is a distinction made between both of the forms under the categories of criminal defamation and civil defamation.

Under criminal law, only libel is an offense and not slander. Whereas in civil law, libel is an offense just like in criminal law but the change here is that slander is also an offense when provided with proof.

In Indian law, both slander and libel are recognized as criminal offenses under Section 499 of IPC. Whereas, in the law of torts libel is actionable per se and slander is actionable. It means in the case of slander there has to be proof of the act of defamation.

(C) Forms of Publication

There are various forms of publication in which the act of defamation can take place, let's look at them.

i. Direct communication to the Defamed

If any defamation is made directly to the defamed and is not heard by anybody else, then it is not defamation. It is necessary that any third party hears it through which the reputation of the defamed goes down.

ii. Publication by Repetition

There is a limited period to sue for defamation. It is maintainable till one year since the act of defamation took place. For a single publication, an action for libel can arise but for repetitive or multiple publications, the action can arise every time the libel is published. The Limitation Act, 1968 makes the limitation period of the libel on the internet to 1 year. After every publication on the internet, this period will get renewed.

Analysis of provisions of Sections 499 and 500, IPC

The provisions regarding defamation are provided in Section 499 to 502. Section 501 and Section 502 has already been explained earlier in this article. Now, let's understand the provisions contained in Section 499 and Section 500.

Section 499 provides the definition of defamation and all the cases and exceptions of the act of defamation. This is a lengthy Section with explanations and in total 10 exceptions included in it.

Section 500 provides for punishment for the act of defamation.

Explanation 1: Defamation of the Dead

In case, a person defames another person who has passed away or is already dead, by any means that is written, spoken, by gestures or pictures, then, it will be an act of defamation, this act would have harmed the reputation of the person if he would have been still alive, or in case it harms the reputation of the family or close relatives of the deceased.

Explanation 2: Defamation of a Company or a Collection of Persons

If an act is intended to cause harm to a company or association or a group of people, then it will amount to defamation. This means under it companies or associations can slap a defamation

² (Publication by Repetition | blog.ipleaders.in/defamation)

suit against an individual.

Explanation 3: Defamation by Innuendo

Well, to be able to understand it we must first understand what innuendo in general terms means.

Innuendo is a clever way to speak negative sentences in a very sarcastic way, which may appear to be positive at the surface of it.

Under Section 499, defaming of any person by innuendo is a form of criminal defamation.

Illustration

A says to B, pointing out to C, 'C is a very even-handed person, I have not seen him making any discrimination against G.

This is discrimination as A intended to point at C has a discriminatory person and that he has discriminated in the case of G.

B asks A, 'do you think someone discriminated?'

A in return pointed at C and said, 'well you know, who can'.

This is discrimination as it was said in a sarcastic way while pointing at C.

³Explanation 4: What is Harming Reputation?

A defamatory act is one that damages someone's reputation, but what exactly does it entail?

A person's reputation is hurt, in accordance with Section 499's explanation 4, when an act impairs his moral or intellectual character or diminishes his credit. If the conduct diminishes the person's character in the regard for his or her role or calling, it also hurts their reputation.

The act of slander that led others to assume that a certain person's body is in abhorrent condition.

All of these actions are regarded as defamatory and fall under the category of criminal Defamation.

On The Scope Ipc's Sections 499 to 500

Libel of a court differs from contempt of a court

This is a reference to both contempt of court and personal attacks on the judge. When a judge is personally harmed by someone, he or she has the right to sue that person in his or her own capacity rather than in the role of a court judge.

The act that obstructs the administration of justice and shows disdain for the court, on the other

³ (Explanation 4: What is Harming Reputation? | blog.ipleaders.in/defamation)

hand, is known as contempt of court. Under Articles 129 and 215 of the Constitution, the Supreme Court and the High Court, respectively, have the authority to penalise for contempt of themselves.

III. ⁴WHETHER PUBLISHING AN HONEST AND TRUTHFUL ACCOUNT OF ASSEMBLY PROCEEDINGS IN NEWSPAPERS WOULD CONSTITUTE DEFAMATION

Let's look at a case in relation to the statement made in Exception 4 that defamation does not apply to true and correct legal proceedings.

It was determined in *Dr. Suresh Chandra Banerjee v. Punit Goala* that the reports of Parliamentary proceedings do not come within exception 4.

The law's discriminating behaviour was evident. Later, when the 44th Amendment Act, which was passed in 1978, contained Article 361A, it was modified.

The publishing of parliamentary proceedings in newspapers is legally protected under the Parliamentary Proceedings Act, which was passed in 1977. or broadcasts by wireless telegraphy of substantially true reports of any proceedings of either House of Parliament. Further, it is provided that it should be made in good faith.

The publication can take place with the authority given by both Houses of the Parliament under Article 105(2) and by the State Legislature under Article 194(2).

IV. WHO SHOULD IN A NEWSPAPER BE PROSECUTED FOR MAKING DEFAMATORY IMPUTATIONS?

In the case of the newspaper, generally, people will think that only the editor will be held responsible for publishing defamatory matter but the fact is that the owner, author, editor, or distributor, all can be held liable for the act of defamation. It should be noted that vicarious liability will arise which will make the proprietor of the newspaper liable to pay damages arising out of it.

In the case of *Narayan Singh v. Rajmal*, the editor of the newspaper was absent and the defamatory matter was published by the sub-editor. The court ruled out that the editor was not responsible as he was absent with no bad intentions.

In the case, *Mohammed Koya v. Muthukoya*, it was ruled out that the Press and Registration of Books Act, 1867, only recognizes the editor as the legal entity and no one else, in the matter

⁴ (Whether publishing an honest and truthful account of assembly proceedings in newspapers would constitute defamation | | blog.ipleaders.in/defamation)

concerning the publishing of matter in a newspaper.

It was further clarified in another case of *K.M. Mathew v. K.A. Abraham & Ors*, the publisher of a book was charged with the offense of defamation. He moved to the High Court contending that under Section 7 of the Press and Registration of Books Act, 1867, only the editor can be held liable and not the chief editor of the newspaper. The High Court rejected his plea, then he further, sought plea to the Supreme Court that also rejected it.

The rationale of the court was that there can arise a presumption against the editor that he is responsible because he checks and selects the material which is to be published. But this is a matter which can be rebutted and under Section 7 of the Press and Registration of Books Act, the same presumption can also arise for someone else which has to be proved.

(A) Defamation of Wife by Husband

Law considers husband and wife as one and the private communication between them is privileged, according to Section 122 of the Indian Evidence Act, 1872.

In the case of *T.J. Ponnen v. M.C Verghese*, the husband wrote a letter to his wife containing defamatory matter. The court held that this was under Section 122 of the Indian Evidence Act 1872.

(B) ⁵Essential components of defamation

1. The comment has to be offensive.

It is necessary to regard the remark as defamatory. It must be a comment that hurts, diminishes, or discredits a person's reputation and exposes him to animosity, disdain, or mockery. However, how a member of the general public interprets a remark will determine whether it is defamatory or not.

Example: A prints a magazine advertising alleging falsely that B has committed fraud. Given that the magazine will be widely read and harm B's reputation, this comment will constitute defamation.

2. The statement must refer to the plaintiff.

It is the claimant's responsibility to establish that the defamatory comment was intended to harm him when bringing a defamation lawsuit. A specific person or group must be the target of the comment in order for it to be considered defamatory. All or many are not personal pronouns,

⁵ (Essential Components Of Defamation | lawcorner.in/what-is-defamation-and-what-are-the-exceptions-of-the-offence-of-defamation)

therefore claims like "All politicians are corrupt" are not protected by the defamation laws.

3. The statement must be published.

A statement must be published, which means that a third person must have heard or seen it, in order for it to be deemed defamatory. The comment will not be regarded as defamatory unless someone other than the two parties has heard or seen it. If a third party inadvertently reads or observes a defamatory comment that was intended for the plaintiff and the defendant knew that the communication would be heard or seen by someone other than the plaintiff, it will constitute defamation.

V. EXCEPTIONS TO DEFAMATION

Section 499 of the Indian Penal Code provides certain exceptions from the offence of defamation.

1. Imputation of truth for the public good.

Any factual remark that is published for the benefit of the public will not be deemed to be defamatory. The onus of proof is with the defendant to establish the veracity and utility of the statement.

2. Fair comments on the public conduct of public servants.

If a comment or criticism about how a public servant is carrying out his official duties or about his character is published in good faith and simply refers to the behaviour, personality, or duties performed in that position, it would not constitute defamation. Such remarks ought to be offered exclusively in good faith, without any malice or ill will, and they ought to be reasonable and honest.

3. Fair comment on the conduct of any person touching any public question.

Any views or opinions published in good faith made regarding the conduct of a person touching any public questions while respecting his character shall not be defamation. **Illustration** – A made a statement regarding B petitioned the government regarding a public question. This would not amount to defamation.

4. Publications of reports of court proceedings.

Any statement published, which contains the results of a court case or a report of the proceedings of a Court shall not be considered defamatory until and unless they are true.

⁶ (Exceptions to the Defamation | lawcorner.in/what-is-defamation-and-what-are-the-exceptions-of-the-offence-of-defamation) |

5. Comments on the merits of cases in Court or conduct of witnesses.

Any information or opinion released on the merits of a case, the behaviour of parties, or the credibility of witnesses would not be considered defamation. The remarks have to be sincere and considerate of other people's personalities. As an example, A claims that he believes B lied when testifying. Under the exemption, this falls. However, if A asserts that B lied on the witness stand because B is a man who lies and I know it, this will not be considered an exception since it is disrespectful to B's character.

6. Literature criticism

The criterion that the author has expressly submitted his performance to the public means that it does not constitute defamation if a person shares his opinions regarding the performance or character of an author that the author has expressly committed to the judgement of the general public. An actor or performer can submit his work for the public's opinion or a writer might submit his book for the opinion of readers.

7. Censure passed by a lawful authority on another.

If someone publicly criticises someone else's behaviour or expresses strong dislike of it, it won't be considered defamation unless the critic has legal standing to do so or has authority derived from a binding contract with the target of the criticism. Illustration – A teacher censures the conduct of a student in front of another student, out of good faith.

8. Complaint to authority.

If any person accuses another person of something in good faith, it would not amount to defamation if they have lawful authority over the other person. Illustration – if a complaints about the conduct of B who is a servant to his master in good faith.

9. Imputation for protection of interests.

If any person makes any imputations or accusations on another person, in good faith, in order to protect his own interests or for the public good, then it shall not be considered as defamation.

Illustration – A, an assistant while making a report to his boss makes an imputation on the character of C. if it is made in good faith then it is within the exception.

10. Caution for the public good.

If any statement is made in good faith against a person as a caution for him or for the public good then it will not be observed as defamation.

VI. ⁷CASE STUDY UNDER THE TOPIC

1. In the case of **Ram Jethmalani v. Subramaniam Swamy** AIR 2006 Delhi 300, 126 (2006) DLT 535 , the defendant was held liable for defamation by saying that Mr. Jethmalani received money from banned organizations to protect the then CM of Tamil Nadu regarding the assassination of Rajiv Gandhi.
2. In the case of **Mahindra Ram v. Harnandan Prasad** , AIR 1958 Pat 445 the defendant had sent a letter to the plaintiff containing defamatory sentences written in Urdu knowing the plaintiff had no knowledge to read Urdu and will likely take the help of another person to read it. The defendant was held liable for defamation.
3. In **Radheshyam Tiwari v. Eknath**, AIR 1985 Bom 285 the defendant had published defamatory news articles against the plaintiff and was not able to prove in court that the facts he stated were true. Therefore, he was held liable for defamation.
4. In case of **D.P. Choudhary v. Kumari Manjulata** In AN instance, a newspaper reported that Manjulata, a 17-year-old girl from a prominent family, had eloped with a nearby lad. As a result, her reputation was damaged and she experienced great humiliation because this information was recklessly and totally falsely reported. Later, the court in this instance decided that the defendant should not get the Rs. 10,000 since it amounted to defamation.
5. **Priya Parameshwaran Pillai v. Union of India and Ors.** In this case, Priya, a Greenpeace activist, wrote in her blog that the environment is degraded by the power project which was set up by the Essar group. After which a suit of defamation was filed by the Essar group. Priya, in her argument, contended that the private companies should not be given the right to file a defamation suit against an individual. But her contention was set aside by the Court, not allowing any more questions and contentions to be added further. This particular case has its roots in the previous Subramaniam Swamy v. Union of India case. Let us discuss that now.
6. **Subramaniam Swamy v. Union of India** In the year 2014, Dr. Subramaniam Swamy alleged corruption charges on Ms. Jaylathitha. After which Ms. Jaylathitha framed

⁷ (**Ram Jethmalani v. Subramaniam Swamy** AIR 2006 Delhi 300, 126 (2006) DLT 535 | lawcorner.in/what-is-defamation-and-what-are-the-exceptions-of-the-offence-of-defamation)

(**Mahindra Ram v. Harnandan Prasad** , AIR 1958 Pat 445 lawcorner.in/what-is-defamation-and-what-are-the-exceptions-of-the-offence-of-defamation)

(**Radheshyam Tiwari v. Eknath**, AIR 1985 Bom 285 | | lawcorner.in/what-is-defamation-and-what-are-the-exceptions-of-the-offence-of-defamation)

defamation charges on Dr. Subramaniam Swamy. He in return challenged the constitutional validity of Section 499 and Section 500 of the India Penal Code. The court, in this case, upheld the constitutional validity of the offense of criminal defamation. And ruled out that Section 499 and Section 500 of the India Penal Code, impose reasonable restrictions on the right to freedom of speech and expression.

VII. CONCLUSION

- It's been claimed that where one person's rights begin to apply, another person's rights terminate.
- It indicates that the Indian Constitution grants its inhabitants certain rights, which they should exercise in moderation in order to respect the rights of others. There is a limit to the freedom of speech and expression, and this limit is governed by the defamation laws.
- *Ram Jethmalani v. Subramaniam Swamy*, where the court found Dr. Swamy responsible for defaming Mr. Jethmalani, is one of several cases where the court has demonstrated that the defamation laws serve as a check on Article 19 of the Constitution in order to safeguard the reputation of the people.
- Many controversies regarding press freedom and the offense of defamation arose, which are still a matter of debate. There is a need to improve this law and remove the arbitrariness leading to such controversies. several press-related disputes.
