

1. DEFAMATION

Introduction

Defamation is a tort as well as a crime in Indian Laws. In general, defamation is an act by a person to bring down one's reputation in the eyes of general public. A person is to be called 'defamed', if the other makes false accusation or baseless comment on him.

What is Defamation?

According to **Dictionary**," Defamation is an injury to the reputation of another by making a false statement to a third person."

According to **Salmond**," The wrong of defamation consists in the publication of a false and defamatory statement respecting another person without lawful justification or excuse."

According to **Winfield**," Defamation is the publication of statement which tends to lower a person in the estimation of right thinking members of society generally or which tends to make them shun or avoid that person."

English Law

According to English Law, **Libel** and **Slander** are types of defamatory statements.

Libel is a written defamatory statement. Or an representation in some permanent form .Like writing, printing, caricature, wax-work effigy, and statue. In cinema film not only the photographic part is considered to be libel but also the speech which synchronises with it is also a libel.

Slander is an oral defamatory statement. Or publication of a defamatory matter in temporary form. Like rumour and gossips addressed to the ears of the listeners.

In English Law, the distinction between libel and slander is important because-

- In criminal case, only libel is recognised as an offence and not slander.
- In case of law of torts, libel is always actionable without any proof of any damage, but slander is actionable in exceptional case. Where damage is proved / special damage.

Slander is actionable per se –

1. Accusation of criminal offence
2. Accusation of virulent disease
3. Imputation against office, profession or trade
4. Unchastity in woman or girl
5. Aspersion on caste

Indian Law

The above distinction between libel and slander is important in England and not in India. In India both libel and slander are criminal offences under **section 499** of the Indian Penal Code.

Cases:

- Paravathi v.Manner (1885)
- Ranidhara v. Phulwatibai (1969)

Essentials of Defamation –

1. The Statement must be False and defamatory

A defamatory statement is one which tends to injure the reputation of the plaintiff. It depends upon the how the right thinking members take it. If the statement is directly referred to the plaintiff.

Cases:

- D.P Choudhary v. Manjulata (1997)
- South Indian Railway Co. v. Ramakrishna (1890)

The Innuendo

Innuendo is used in lawsuits for defamation; usually to express the party suing was the person about whom the nasty statements were made or why the comments were defamatory.

Cases:

- Capital and counties bank v. Henty & sons (1882)
- Tolley v. J.S. Fry & Sons, Ltd (1931)

Intention to defame is not necessary

When the words are considered defamatory by the person to whom it has been referred, the intention being innocent doesn't matter.

Cases:

- Morrison v. Richie & co. (1902)
- Cassidy v. Daily Mirror Newspapers Ltd (1929)

2. The Statement must refer to the claimant

Plaintiff has to prove that the statement of which he complained referred to him it is immaterial. If the defendant didn't intend to defame the plaintiff. If the plaintiff is able to prove that the statement published referred to him, then defendant is held liable.

Cases:

- Hulton & co. v. Jones (1910)
- Newstead v. London Express Newspaper Ltd. (1939)

Defamation of a class of persons –When the words refer to a group of individuals or a class of persons, no member of that group or class can sue

unless he can prove that the words could reasonably be considered to be referring to him.

Cases:

- Knupffer v. London Express Newspaper Ltd. (1994)
- Fanu v. Malcolmson (1848)

Defamation of the deceased Person – Defaming a deceased person is no tort. Under Criminal Law, however, it may amount to defamation to consider 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

3. The statement must be published

“Publication” means making the defamatory known to persons other than the person defamed is not enough because defamation is injury to reputation and reputation consists of estimation in which others hold him and not a man’s own opinion for himself.

Cases:

- Mahendra Ram v. Harnandan Prasad (1958)
- Arumuga Mudaliar v. Annamalai Mudaliar (1966)

Communication between the husband and wife- A statement made to one ‘sown spouse will not be’ published’ for the purposes of defamation. Communication between husband and wife is protected as any other rule “might lead to disastrous results to social life”.

Cases:

- Theaker v. Richardson (1962)

Repetition of the defamatory matter- The liability of the person who repeats a defamatory matter arises in the same way as that of originator, because every repetition is a fresh publication giving rise to a fresh cause of action.

Indemnity from the supplier of wrong information

Defences of Defamation –

A person who has been sued for defamation can defend their decision to publish on the grounds of Truth (justification), fair comment, absolute privilege and qualified privilege.

1. **Justification or Truth** – Truth is an absolute defence to defamation. In civil cases truth comes in the category of complete defence. But in criminal cases it is necessary to prove that the statement has made for public good/ Interest / benefit.

Cases:

- Radheshyam Tiwari v. Eknath (1985)
- Alexander v. North Eastern Ry. (1885)

2. **Bonafide Comment on the matters of public interest** – For this defence to

available, the following essentials are required:

1. It must be *comment*.
2. The comment must be *fair*; and
3. The matter commented upon must be of *Public interest*.

Comment – Comment means an expression of opinion on certain facts. It's should be distinguished from making a statement of fact. A fair comment is a defence by itself where as if it is a statement of fact. So that it can be excused only if justification or privilege is proved regarding that.

For e.g. X says that, "A has been held guilty of breach of trust and, therefore, he is dishonest man.

The comment must be fair – The comment cannot be fair when it is based upon untrue facts. A comment based upon invented and untrue facts is not fair.

Cases:

- Gregory v. Duke of Brunswick (1843)
- Silkin v. Beaverbook Newspapers Ltd. (1956)

The matter commented upon must be of public interest – Administration of government, departments, courts, Conduct of public men like ministers or officers of state, public meeting, novels etc. are considered to be matter of public interest.

3. **Privilege**-There are certain occasions when the law recognises that the right to free speech outweighs the plaintiff's right to reputation: the law treats such occasion to be privileged and defamatory statement on such occasion to be privileged and defamatory statement on such occasion is not actionable.

Privilege is of two kinds:

1. **Absolute Privilege**: The person making the defamatory statement is not liable from a defamation lawsuit. Absolute Privilege is present in the following cases:

- Parliamentary proceedings –
Article 105 (2) of our constitution provides that:
(a) Statements made by a member of either house of parliament in parliament.

(b) The publication by or under the authority of either house of parliament of any report, paper, votes or proceedings, cannot be questioned in a court of law.

- Judicial Proceedings- No action for libel and slander lies, whether against judges counsels witnesses or parties for words, written or spoken in the course of any proceeding before any court recognized by law, even though the words written or spoken were written or spoken maliciously.
- State Communication- The statement made by one officer of the state to another in the course of official duty is absolutely privileged for reason of public policy.

2. Qualified Privilege- The defence of qualified privilege permits persons in positions of authority or trust to make statements or report statements that would be considered slander and libel if made by anyone else. Thus, to avail this defence, the defendant has to prove the following two points:

- Statements should be made in discharge of a duty or protection of an interest
- The statement should be without malice

4. **Apology**-It should be done at the earliest possible opportunity, then it is a good defence. There was no intention of committing offence.

MADE BY- RASHI

