



SOCIETAL IMPLICATION OF DEFAMATION ON INDIVISUAL

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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. Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged for ever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser.

The purpose of writing this research work is to analyse the consequences faced by individual in regards of defamatory matters and how their social life is affected in particular. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. – Lord Nicholls.

Defamation is civil as well as criminal wrong. Likewise, the codified criminal law on the subject, the civil law of defamation is not codified. However, defamation as a Civil Wrong is covered under Law of Torts. It is purely based on precedential developments, i.e., through decisions pronounced by Courts. Rules and principles of liability that are applied by our courts are mostly those borrowed from common law. It is conventional to say that defamation includes a statement concerning any person, which exposes him to hatred, ridicule or contempt. However, defamation can be best defined, if it considered from the point of view of the right, which the defamatory statement is alleged to infringe. In one English case, *Scot versus Sampson*, 2 Justice Cave has defined defamation in simplest way. He has defined it as 'a false statement about a man to his discredit'. This definition is smaller yet it encompasses everything about the concept.

KEYWORDS: Defamation, libel, slander, besmirched.

- The tort of defamation harms a person's reputation and integrity by harming their reputation by dissemination of false statements. The need for protecting individual reputation was highlighted in Reynolds vs Times Newspapers (2001) 2 AC 127,201:

Reputation is an integral part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely — Lord Nicholls.

- Under article 10 of the Human Rights Act 1998 (and the ECHR 1950) everyone has the right to freedom of expression, including the right to hold opinions and to receive and impart information. However, the exercise of this right is subject to the conditions prescribed by law for, among other things, the protection of the reputation or rights of others. Thus, the tort of defamation seeks to balance the right to freedom of expression and the need to protect individual reputation, integrity and privacy. Freedom of expression is therefore accompanied by a duty not to use that freedom to the detriment of others without justification.
- However, the tort of defamation does not protect someone's feelings or opinions about himself or herself from being wounded or damaged, it only seeks to protect a person in relation to what other people think of, or how to relate with, him or her.
- Defamation is a publication of a false statement about somebody that is injurious to his or her reputation; or which exposes him or her to ridicule, odium, contempt or opprobrium by others or which causes other people shun him or her. A publication without justification or lawful excuse, which is calculated to injure the reputation of another, by exposing him to hatred, contempt, or ridicule- Lord Wensleydale (then Parke B) in Parmiter V. Coupland (1840) 6 M & W 105, 108.
- Defamation is a distinctively a sociological tort. It is observed that the “Reputation not Character” that the law aims to protect. The protection defamation law affords is to the individual's projection of self in the society. Individuals, however constitute themselves in various milieus- business communities, communities and families in different ways. Part of the law may be attributed to judicial efforts to remedy different harms in various social setting. Remedies the seem reasonable and proper at one time in one community may be regarded as legally and morally flawed in another.

- Whether the statement is or may be defamatory is an objective and factual one: *Sim v Stretch* [1936] 2 All ER 1237

The question, then, is whether the words in their ordinary signification are capable of being defamatory [...] Judges and textbook, writers alike have found difficulty in defining with precision the word 'defamatory'. The conventional phrase exposing the plaintiff to hatred, ridicule, or contempt is probably too narrow. The question is complicated by having to consider the person or class of persons, whose reaction to the publication is the test of the wrongful character of the words used. I do not intend to ask your Lordships to lay down a formal definition, but after collating the opinions of many authorities I propose in the present case the test: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally -- Lord Atkin (emphasis added).

- **Vulgar Abuse:** - Vulgar abuse would generally not amount to a defamatory statement. These abuses are statements of abuse made in the heat of passion or in the course of a quarrel.

Field vs Davis [1955] Times 25 May 1955

Claimant was called 'a tramp' by defendant. Claimant claimed that the word was defamatory because it suggested she was a woman of loose and immoral character. It was held that the word amounted to a vulgar abuse and was not defamatory.

- There is no legal aid for defamation cases. The high cost with complex procedures and reputation being damaged with society mocking at social media led a cataclysmic effect on individual. Various complexities are faced by individual in relation to friends and community which affects the individual in a traumatic manner. This results in drastic measures taken by individuals whose damaged reputation is becoming a hell in their daily life.
- The common law of defamation is designed to effectuate society's "pervasive and strong interest in preventing and redressing attacks upon reputation". Only "Famed people can be Defamed" and it forms the basic notion of the tort of defamation. There are various cases against famous cricketers and actors like Ravindra Jadeja, Hrithik Roshan, Sourav Ganguly and many more who face huge economic losses due to defamation trial.
- There are many examples where a newspaper publishes some report speculating or alleging something negative against a famous person, due to which they suffer huge economic losses due to a chain reaction of perception change in the eyes of people and companies and brands backing out of contracts entered with such famous persons.
- In the light of the above I would like to conclude that, defamation against famous personalities and celebrities is a very sensitive issue which can cause huge economic losses and sometimes even ruin their career. Courts in India have a tough job balancing the fundamental rights and defamation in such types of cases as these types of cases are highlighted in various social media platforms in a very short amount of time.

Introduction

The tort of defamation protects a person's reputation and integrity from being harmed by the dissemination of false statements. The tort of defamation seeks to balance the right to freedom of expression and the need to protect individual reputation, integrity and privacy. The need to protect individual reputation was highlighted in *Reynold vs Times Newspapers*¹ :-

Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged for ever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. – Lord Nicholls.

Meaning Of Defamation

Defamation is the publication of a false statement about somebody that is injurious to his/her reputation or which exposes him/her to ridicule, odium, contempt or opprobrium by others or which causes other people to shun him/her.

“A publication, without justification or lawful excuse, which is calculated to injure the reputation, by exposing him to hatred, contempt, or ridicule” – Lord Wensleydale²

“A statement means ‘words, pictures, visual images, gestures or any other method of signifying meaning’.”- Defamation Act³

In other words, defamation can be understood by following points: -

- i. Rights given under Article 19(1)(a) of Indian Constitution.
- ii. Limitation of Article 19(2) of Indian Constitution.
- iii. If there is no fame, there is no defamation.

¹Reynold vs Times Newspapers [2001] 2AC 127, 2001

² Lord Wensleydale (then Parke B) in *Parmiter vs Coupland* (1840) 6 M&W 105, 108.

³ S.17 Defamation Act 1996; S.15 Defamation Act 2013.

- iv. Bilateral abusing not defamation.
- v. Being bona-fide and mistake is not a valid defence in such cases.
- vi. Statement prima facie must be defamatory.
- vii. Opinion of the right-thinking person does matter.

Kinds of Defamation

There are two kinds of defamation: -

- i. Libel
 - ii. Slander
- i. **Libel** - Libel refers to written or visual defamatory statement in a permanent form. This includes written statements, pictures, movies, postcards, and statues. Theatre performance and TV and Radio broadcasts also come into this category.⁴

It is actionable per se; there was a presumption that statement was injurious. Libel may also be punishable as a crime if it is sufficiently serious. Also, words recorded on a disc/CD/Tape are likely to be considered libel rather than slander because of their permanent character.

CASE I: - Youssouppoff vs M.G.M. Pictures Pvt. Ltd. [1934]

A film (Rasputin and the empress) that suggested that the claimant, a princess of the Russian Royal Family, was seduced or raped by Rasputin (a Russian Mystic, also referred to as the “Mad Monk”) was held to be libellous.

CASE II: - Monson vs Tussaud’s [1894]

A waxwork figure of the claimant with a gun close to the “Chamber of Horrors” in the defendant’s premises was held to be libellous; it suggested that the claimant (who had been discharged on criminal trial) was a criminal.

- ii. **Slander** - Slander refers to a non-permanent or transitory defamatory statement. The statement may be by words, gestures, or sign language. The nature of slander means that it has a much more limited scope of publication as compared to libel.

⁴ SS. 4 and 166 Broadcasting Act, 1990.

Slander is not actionable per se; proof of actual damage is required. There is however, no need to prove damage where the slander clearly and unambiguously imputes. Under law of torts slander is actionable pe-se (Under certain circumstances).

It is necessary to prove Slander in court. A slanderous statement which imputes that the claimant had contracted a contagious or venereal disease would now only be actionable per se if the claimant has suffered special damage by the reason of the allegation.

“That the claimant had committed an offence punishable by imprisonment;

That the claimant was unfit, dishonest or incompetent to his trade profession of calling

”^{5 6 7}

Essentials of Defamation

There are various essentials of defamation, some of them are as follows: -

- i. The statement must be defamatory
- ii. The statement must be referring to be plaintiff.
- iii. The statement must be published.
- iv. The defendant must be foreseeing the published statement may transit to third person.
- v. After publication of the statements the right-thinking people must be changed negatively.

CASE III: -Sim vs Stretch [1936] ,2 All ER 1237.

The question, then is whether the words in their ordinary signification are capable of being defamatory [...]. Judges and textbook writers alike have found difficulty in defining with precision the word ‘defamatory’. The conventional phrase exposing the plaintiff to hatred, ridicule, or contempt is probably too narrow. The question is complicated by having to consider the person or class of persons, whose reaction to the publication is the test of wrongful character of the words used. I do not intend to ask your lordships to lay down a formal definition, but after collating the opinions of many authorities I propose in the present case the test: - *would the words*

⁵ S.2 Defamation Act 1952

⁶ The reason of this exception is that the above allegations are of such a nature as to cause serious harm to the reputation of claimant.

⁷ That the scope of these exceptions was reduced by the Defamation Act 2013, S.14. The section also abolished the Slander of Women Act 1891 under which the imputation of chastity against a woman was actionable per se.

*tend to lower the plaintiff in the estimation of right – thinking members of society generally—*Lord Atkin.

Innuendoes

These are statements which, prima facie, do not appear defamatory but may indeed be so when read between the lines or when considered in the context of the particular circumstances of a given case.

In other words, innuendo is a hint, insinuation or intimation about a person or thing, especially of a denigrating or a derogatory nature, it can also be remark or question, typically disparaging (also called insinuation), that works obliquely by allusion.⁸

It can also be understood as a remark that suggests something but does not refer to it directly, or this type of remark in general.⁹

Kinds of Innuendoes

There are 2 kinds of Innuendoes. Their names and details are listed below: -

- i. Proper (False) Innuendo
- ii. True Innuendo
 - i. ***Proper (False) Innuendo*** – By false innuendo, when there is a secondary meaning which comes from reading between the lines¹⁰. In other words, false innuendo refers to a disguised defamatory statement. In a false innuendo, the words may only become defamatory if construed beyond their ordinary or apparent meaning, that is to say, when read between the lines. The words are therefore given an extended meaning. In *Sim vs Stretch*¹¹ [Supra], the employer of a domestic servant sent this telegram to her previous employer: “Edith has resumed her service with us today. Please send her possessions and the money you borrowed also her wages to Old Barton”. The previous employer claimed that the telegram contained an innuendo that he was impecunious and unworthy of credit. The words were held not to be defamatory.

CASE IV: - Lewis vs Daily Telegraph [1954] AC 234

⁸ Innuendo meaning as general on different websites.

⁹ Meaning of innuendo in Cambridge University.

¹⁰ By Australian Property Lawyer’s Club

¹¹ *Sim vs Stretch* [1936] ,2 All ER 1237

A story that the claimant's business was being investigated by the City of London Fraud Squad was held not to be defamatory; it did not carry an innuendo that the claimant was guilty of fraud.

A derogatory statement may be so near the surface that it is hardly hidden at all or it may be more difficult to detect. If it is said of a man that he is a fornicator, the statement cannot be enlarged by innuendo. If it said of a man that he was seen going into a brothel, the same meaning would probably be conveyed to nine men out of ten. But the lawyer might say that in the latter case derogatory meaning was not a necessary one because a man might go to a brothel for an innocent purpose. An innuendo pleading that the words were understood to mean that he went there for an immoral purpose would not, therefore, be ridiculous. To be on the safe side, a pleader used a frequent, since scandalmongers are induced by the penalties for defamation to veil their meaning to some extent – LORD DEVLIN.¹²

- ii. **True innuendo** – In the instance, the words in their ordinary meaning are not defamatory but become defamatory only when they are read by people who possess additional information which are not mentioned in the statement.

In other words, true innuendo arises when words that appear to be innocent to some people appear as defamatory to other because they possess special knowledge or extra information.¹³

CASE V: - Tolley vs Fry [1930] AC333 (HL)

An amateur golfer was featured, without his consent, in the defendant's advertisement of their chocolate creams. It was held to be defamatory in that it contained an innuendo that the defendant had behaved inappropriately as an amateur golfer by making money from an advertisement:

The innuendo alleged that the 'defendants meant and were understood to mean, that the plaintiff had agreed or permitted his portrait to be exhibited for the purpose of the advertisement of the defendants' chocolate; that he had done so for advertising purposes, that he was seeking notoriety and gain by means aforesaid; and that he had been guilty of conduct unworthy of his status as an amateur golfer- Viscount Hailsham.

¹² Lord Devlin pointed out in Lewis vs Daily Telegraph[1954] AC234, "scandal mongers are induced by the penalties for defamation to veil their meaning to some extent."

¹³ Humphreys & Co.

Vulgar Abuse: - Vulgar abuse would generally not amount to a defamatory statement. These abuses are statements of abuse made in the heat of passion or in the course of a quarrel.

CASE VI: - Field vs Davis [1955] Times 25 May 1955

Claimant was called 'a tramp' by defendant. Claimant claimed that the word was defamatory because it suggested she was a woman of loose and immoral character. It was held that the word amounted to a vulgar abuse and was not defamatory.

Other facts about Innuendo ¹⁴

There are some other facts about innuendo, of which some are listed below: -

- i. No direct harm to reputation can be realised.
- ii. Secondary sense of the statement causes opprobrium (harm of reputation).
- iii. Defamation vis a vis Innuendo.
- iv. Intention to defame is not necessary.
- v. An action for defamation was maintained only by that person himself and not by his family and friends or relatives.

Republication

Every repetition of a defamatory statement by another person is a new publication and creates a new cause of action; the repeater of the statement will be liable for the defamation. However, the originator of the statement may remain liable for the repetition if:

- a. The repetition is a natural and probable consequence of the original publication.
- b. There was a significant risk of repetition
- c. The statement intended to be repeated
- d. The first receiver of the statement has a moral duty to repeat it.

Defences of Defamation ¹⁵

The defences or ways one can avoid the claim of defamation on him/her as listed below:-

- i. Justification of truth
- ii. Absolute Privilege
- iii. Publication of Public Documents

¹⁴ Through notes of Asst. Prof. Rohit Shukla Sir.

¹⁵ <https://legalvision.com.au/defences-to-defamation/>

- iv. Fair report of proceedings of public concern
- v. Qualified Privilege for provision of certain information
- vi. Honest opinion
- vii. Innocent Dissemination
- viii. Triviality
 - i. ***Justification of truth:*** - It is a defence to publishing defamatory material if the publisher can prove that the defamatory imputations of the material are substantially true.
 - ii. ***Absolute Privilege:*** - Another defence to defamation arises if the publisher can demonstrate that they published the content in the course of proceedings that attract absolute privilege, including: -
 - a. parliamentary bodies;
 - b. Australian courts or tribunals;
 - c. the Ombudsman;
 - d. the Privacy or Information Commissioner;
 - e. the Law Reform Commission; or
 - f. certain legislation such as the Workers Compensation Act(s) and Motor Vehicle Act(s).
 - iii. ***Publication of Public Documents:*** - Proof that defamatory material was part of a public document (or copy thereof) or a fair summary/extract from a public document is also one of the defences to defamation.

A public document is one of the following:

- a. report, paper or record of a parliamentary body;
- b. judgment, order or determination of a court or tribunal;
- c. report or document under the law of any country which has been authorised to be published or is required by a parliamentary body;
- d. document issued by the government of a country;
- e. record open to inspection by the public;
- f. document that is issued, kept or published in another Australian jurisdiction and treated as a public document; or
- g. document relating to Special Commissions of Inquiry or Civil and Administrative Tribunal.

The person defamed can negate this defence if he or she can show that the material was published dishonestly.

- iv. ***Fair report of proceedings of public concern:-*** Publishers can also make out a defence if they can prove the material was or was a part of, any report on proceedings publicly held in a parliament, court, tribunal, government body or before the Ombudsman.
- v. ***Qualified Privilege for provision of certain information:-*** - Another defence to defamation exists if the publisher can prove that the: -
- a. person who saw the material has an interest in having information on the subject.
 - b. material was published to give the person such information; and
 - c. publisher's conduct was reasonable.

The person defamed can negate this defence if they show that the material was published maliciously.

- vi. ***Honest opinion:-*** - It is a defence to publishing defamatory material if the publisher can prove that the:
- a. material was an expression of their own, their employee or agent, or of another person other than their own, rather than a statement of fact;
 - b. opinion related to a matter of public interest; and
 - c. opinion was based on material that is substantially true or privileged.

The person defamed can overcome this defence by proving that the:

- a. opinion was dishonest.
 - b. publisher did not believe the employee or agent honestly held the opinion; or
 - c. publisher had reasonable grounds to believe another person did not hold the opinion at the time of publication.
- vii. ***Innocent Dissemination:-*** - It is a defence to publishing defamatory material if the publisher can prove that they:
- a. published the material in the capacity of a "subordinate distributor" meaning that they were not the primary distributor;
 - b. neither knew or could not have reasonably known that the matter was defamatory; and
 - c. did not have the knowledge because of any negligence.

- viii. ***Triviality:-*** - It is a defence to publishing defamatory material if the publisher can prove that the material was unlikely to cause harm.

➤ The case related to defamation defence is *Alexander vs North Eastern Railway* [1885]

CRITICAL ANALYSIS OF DEFAMATION ON INDIVIDUAL

There is no legal aid for defamation cases. The high cost with complex procedures and reputation being damaged with society mocking at social media led a cataclysmic effect on individual. Various complexities are faced by individual in relation to friends and community with affects the individual in a traumatic manner. This results in drastic measures taken by individuals whose damaged reputation is becoming a hell in their daily life.

The common law of defamation is designed to effectuate society's "pervasive and strong interest in preventing and redressing attacks upon reputation". Only "Famed people can be Defamed" and it forms the basic notion of the tort of defamation. There are various cases against famous cricketers and actors like Ravindra Jadeja, Hrithik Roshan, Sourav Ganguly and many more who faces huge economic losses due to defamation trial.

There are many examples where a newspaper publishes some report speculating or alleging something negative against a famous person, due to which they suffer huge economic losses due to a chain reaction of perception change in the eyes of people and companies and brands backing out of contracts entered with such famous persons.

Newspapers and media channels for their own profits gaslight and manipulate the false facts without knowing the true facts and give their own assumptions before the trial is finished, exaggerating the news in a false way which results in psychological and emotional under the personality who are facing them. Their reputation damages and they sometimes enter into a suicidal state because of these false allegations.

As a matter of fact, these gaslighting and manipulation of facts is done from ages and is a successful scheme of elevating the TRP of their own channel. We often hear celebrities filing defamation suits against newspapers or media houses. It became quite a news when Indian cricketer, Ravindra Jadeja filed a defamation suit against a Rajkot based newspaper called Aaj Tak. The newspaper had published reports of the cricketer having contacts with a person accused of charges of land grabbing and extortion.

In the light of the above I would like to conclude that, defamation against famous personalities and celebrities is a very sensitive issue which can cause huge economic losses and sometimes even ruin their career. Courts in India have a tough job balancing the fundamental rights and defamation in such types of cases as these types of cases are highlighted in various social media platforms in a very short amount of time.

Conclusion:

Defamation is tort resulting from an injury to one's reputation. It is the act of harming the reputation of another by making a false statement to third person. Defamation is an invasion of the interest in reputation. The law of defamation is supposed to protect people's reputation from unfair attack. In practice its main effect is to hinder free speech and protect powerful people from scrutiny. Defamation law allows people to sue those who say or publish false and malicious comments