

Law of Torts

----- Defamation

Dr. Satish Chandra

Associate Professor

Faculty of Law

University of Lucknow -226031

emailed- drsatish2009@gmail.com

Meaning– Defamation is injury to the reputation of a person. If a person injures the reputation of another he does so at his own risk, as in the case of an interference with the property. A man's reputation is his property, and if possible, more valuable, than other property.

Any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person, is called defamation.

Criminal and Civil Defamation– -----

Criminal Defamation: Criminal defamation is the act of offending or defaming a person by committing a crime or offence. For criminal defamations, you could always get the liable person or party prosecuted. It is studied in IPC as a criminal act.

Civil Defamation: Civil defamation involves no criminal offence, but on account of this kind of defamation, you could sue the person to get a legal compensation for your defamation. It is studied under law of torts i.e. as a civil wrong.

Libel and Slander– -----

English Law: Mainly because of historical reasons, English law divides actions for defamation into Libel and Slander.

Libel is a representation made in a permanent form like writing, movie, picture etc. For e.g., X printed some advertisement saying Y is bankrupt but Y was not thus it was representation in a specific form.

Slander, on the other hand is the publication of a defamatory statement in transient form like spoken words or gestures. For e.g., A questions the chastity of B in an interview, A is slanderous.

Youssouf v. MGM Pictures Ltd[i]

The plaintiff (herself a Princess) complained that she could be identified with the character Princess Natasha in the film 'Rasputin, the Mad Monk'. On the basis that the film suggested that, by reason of her identification with 'Princess Natasha', she had been seduced by Rasputin. The defendant contended that if the film indicated any relations between Rasputin and 'Natasha' it indicated a rape of Natasha and not a seduction.

Held- In a cinema film, not only the photographic part of it is considered to be libel but also the speech which synchronizes with it also. Defamation could include words which cause a person to be shunned or avoided: 'not only is the matter defamatory if it brings the plaintiff into hatred, ridicule, or contempt by reason of some moral discredit on [the plaintiff's] part, but also if it tends to make the plaintiff be shunned and avoided and that without any moral discredit on [the plaintiff's] part. Thus she was awarded with damages.

Distinction between Libel and Slander–

- Libel is addressed to the eye while slander to the ear.
- In English Criminal law, only libel has been recognized as an offence, slander is no offence. -In Indian law, both are criminal offences under Section 499 and 500 of IPC.
- Under law of torts, slander is actionable and libel is actionable per se.

In D.P. Choudhary v. Kumari Manjulata [ii]

The plaintiff – respondent Manjulata about 17 years of age belonged to a distinguished family and studied B.A. There was a publication of a news item in a local daily Dainik Navjyoti that last night she ran away with a boy named Kamlesh; but she had gone to attend night classes. The news item was untrue and negligently published with utter irresponsibility. She was shocked and ridiculed by others. It was held that the action was defamatory and she was entitled with the damages of Rs 10000/- by way of general damages.

Essentials of Defamation –

There are three main essentials of Defamation viz.,

1-The statement must be published

Defamation is the publication of a 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.

The standard to be applied is that of a right minded citizen. A man of fair average intelligence, and not that of a special class of persons whose values are not shared or approved by the fair minded members of the society generally.

In Ramdhara v. Phulwatibai [iii]

It has been held that the imputation by tge defendant that the plaintiff, a widow of 45 year age, is a keep of the maternal uncle of the plaintiff's daughter-in-law, is not a mere vulgar abuse but a definite imputation upon her chastity and thus constitutes defamation.

In South Indian Railway Co. v. Ramakrishna[iv]

A ticket checker of railway asking for the identity proof and other documents as a part of his duty is no defamation, as he has not published any defamatory statement.

THE INNUENDO –

Sometimes the statement may be prima facie innocent but because of some latent or secondary meaning may be considered to be defamatory. When the natural and ordinary meaning is not defamatory but the plaintiff wants to bring an action of defamation, he must prove the latent or secondary meaning i.e.,Innuendo which makes the statement defamatory. for e.g., the statement that a lady has given birth to a child is defamatory when the lady is unmarried.

Intention to defame is not necessary

In the Scottish case of Morrison v. Ritchie & Co.[v] where damages were recovered against the proprietors of a newspaper who in all innocence had announced in the paper that a lady, who had in fact been married only a month, had given birth to twins.

2-The statement must refer to the plaintiff

If the person to whom the statement was published could reasonably infer that the statement referred to the plaintiff, the defendant is nevertheless liable.

In Newstead v. London Express Newspapers Ltd.[vi]

The defendants published an article stating that 'Harold Newstead, a Camberwell man' had been convicted of bigamy. The story was true of Harold Newstead, a Camberwell barman. The action for defamation was brought by another Harold Newstead, the barber. As the words were considered to be understood as referring to the plaintiff, the

defendants were liable.

The Delhi HC in **Harsh Mendiratta v. Maharaj Singh**[vii] said that an action for defamation was maintainable only by the person who was defamed and not by his friends or relatives.

3- Defamation must be published

Publication means making the defamatory matter known to some person other than the person defamed and unless that is done, no civil action for defamation lies.

In the case of **Mahender Ram v. Harnandan Prasad**[viii] it was said when a defamatory letter is written in urdu to the plaintiff and he doesn't know urdu, he asks a third person to read it, it is not defamation unless it was proved that at the time of writing letter defendant knew that urdu was not known to the plaintiff.

DEFENCES AVAILABLE:

There are three defences of defamation namely –

1- Justification or truth –

Under criminal law, merely proving that the statement was true is no defence but in civil law merely showing truth is a good defence. In **Alexander v. N.E. Rly** [ix], the plaintiff had been convicted of riding a train from Leeds without having purchased a valid ticket. The penalty was a fine and a period of imprisonment of fourteen days if he defaulted on the fine. However, following the conviction, the defendant published a notice that the plaintiff was convicted and issued a fine or three weeks imprisonment if in default. The plaintiff alleged that the defendant had committed libel by describing the penalty issued to him inaccurately. The defendants argued that the conviction was described with substantial and sufficient accuracy and the words so far as they differed in their literal meaning from the words of the conviction were not libellous.

Judgment was given in favour of the defendants. The gist of the libel was that the plaintiff was sentenced to pay a sum of money and, in default of payment, to be imprisoned. Blackburn J noted that the substance of the libel was true but the question was whether what was stated inaccurately was the gist of the libel.

2- Fair Comment-

- The comment must be an expression of opinion rather than assertion of fact.
- The comment must be fair i.e. without malice.
- The matter commented upon must be of public interest.

3- Privilege-

There are certain occasions when the law recognizes the right to freedom of speech outweighs the plaintiff's right to reputation, the law treats those occasions as 'Privileged'. These are further of two types –

Absolute privilege- No action lies for the defamatory statement even though the statement is false or made maliciously. It applies to :
Parliamentary Privilege, Judicial proceeding and State communication.

Qualified privilege- It is necessary that the statement must have been without malice. The defendant has to prove that statement was made on a privileged occasion fairly.

References

- [i](1934) 50 TLR 581
- [ii]AIR 1997 Raj 170
- [iii]1970 CriLJ 286
- [iv](1890)ILR 13 MAD 34
- [v](1902) 4 Fraser 645,
- [vi](1940)1 KB 377
- [vii]95 (2002) DLT 78
- [viii]AIR 1958 Pat 445
- [ix](1865) 6 B&S 340