

DEFAMATION AND INVASION OF PRIVACY

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ABSTRACT

People have comprehended defamatory statements since the start of time, without even realizing that such statements might lead to criticism and damage to an individual's reputation in the eyes of other members of society. In India, defamation is both a criminal and a tort, whether it occurs vocally (slander) or in publications, printed words, or photos (libel). The publishing must be false and without the consent of the claimed defamed person to be considered defamatory. It can do permanent harm to an individual's reputation. Section 499of of the Indian Penal Code defines it. Defamation can't be based on hurting someone's feelings; it has to be based on a loss of reputation.

Keywords: Defamation, Privacy, Right.

TYPES OF DEFAMATION

A defamatory sentence is aimed to promote hate, contempt, or ridicule against a person, to harm him in his trade, business, profession, or office, or to cause him to be shunned or avoided in society. To be defamatory, the sentence only simply has the power to harm the person's reputation; it does not have to harm it. The rule to be applied, however, is whether his reputation is harmed in the eyes of right-thinking members of society in general.

LIBEL

The defamatory comments may be in writing or printed, or they may be presented in the form of drawings or other similar representations, such as scandalous photographs. The penalty for libel is more severe than that for slander. To prove a libel suit, it must be proven that the statement was (i) false; (ii) in writing; (iii) defamatory; and (iv) published.

For example, Princess Irina of Russia, the wife of Prince Youssouff, sued for libel in a sound film titled "Rasputin the Mad Monk," alleging that Metro-Goldwyn-Mayer Pictures

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Limited published words and images in the film that were understood to mean that she, then known as "Princess Natasha," had been raped or seduced by Rasputin. The jury returned the verdict in favor of Princess and awarded \$25000 damages and the trial court entered the judgment for her for that amount which was confirmed by the court of Appeal.

SLANDER

In the case of slander, the harm done to the defamed individual is only short because it is done verbally to destroy the reputation of others. Slander occurs when defamatory statements are conveyed to a third party without the agreement of the complainant. The harm must arise as a natural result of the words stated.¹

DEFENCES FOR DEFAMATION

JUSTIFICATIONS BY TRUTH

The truthfulness of defamatory speech is a complete defense in a libel and slander suit, but not in criminal proceedings. The defendant must prove that the charge made or repeated by him/her was true in its complete and every relevant component.

For example, if A claims that B informed him that C was guilty of adultery, A cannot succeed in an action brought by C against A only by establishing that B did indeed tell him so, but must also prove that C was found guilty of adultery.

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PRIVILEGE

ABSOLUTE PRIVILEGE

It allows the individual the ultimate right to comment, even if it is defamatory, and protects the person from punishment in the case of a defamation action. For example, suppose X is a member of Parliament and delivers a speech during parliamentary proceedings that disrespects Y. In this case, X is protected by absolute privilege.

QUALIFIED PRIVILEGE

¹*Lynch v Knight, (1861)9 HLC 577, 600*

The defendant can use this defense even if he made the false and defamatory claim on purpose and intentionally. This defense is available to the defendant if he made the false and defamatory remark with purpose but without malice. Where the defendant has an opportunity to inform a third person who has a matching interest in receiving it; or when the defendant has the interest to protect and the third person has to protect that interest.²

FAIR AND BONAFIDE COMMENT

Nothing is defamatory, which is a valid comment on a public interest subject. When the defendant has just made a reasonable statement in a matter of public interest, he might use this defense. This defense is founded on public policy, which states that everyone has the freedom to speak about and criticize the work or actions without malice.

APOLOGY

The Libel Act of 1843 and the Defamation Act of 1952 both provide for this defense. When there is an apology and acceptance of the apology, the defendant might reject the plaintiff's complaint about defamation damages.

INVASION OF PRIVACY

Invasion of privacy is an undesired intrusion into an individual's private matters. Many behaviors can be regarded as invasions of privacy, including actions in the workplace, on social media, in private spaces, and so on. The Supreme Court of India ruled that the right to privacy is a basic right that is deeply intertwined with the right to life and liberty. Any party that violates this rule shall be held accountable. Some basic examples of invasion of privacy are:

- (i) Taking photos or videos of someone without their consent.
- (ii) Walking into the private property without their permission.
- (iii) Snooping through their private records.
- (iv) Peeping.

² Prem Narain v Jogdamba Sahai, (1925) ILR 47 All 859.

(v) Intercepting phone calls etc.

Another example is supposed John bought new binoculars and it was found out that he was peeping inside his neighbour's house. Hence his neighbours can file a civil lawsuit against him for invasion of privacy and request damages for the distress caused.

CONCLUSION

The common link is that in both situations an act is done without the consent/permission of the other party. In both of these cases, the elements relating are public disclosure, concerning private facts, and something which would offend the average person.

