

DEFAMATION

- 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.
- English Law : Mainly because of historical reasons, English law divides actions for defamation into—Libel .and Slander.
- Slander is the publication of a defamatory statement in a transient form. Examples of it may be spoken by words or gestures.
- Libel is representation made in some permanent form, e.g., writing, printing, picture
- In a cinema film, not only the photographic part of it is considered to be libel but also the speech which synchronizes with it is also a libel.

- **In Youssouf v. M.G.M. Pictures Ltd.**

- course of a film produced by an English Company called Metro Goldwyn Mayer Pictures Ltd., a lady, Princess Natasha, was shown as having relations of seduction or rape with the man Rasputin, a man of the worst possible character. Slessor L.J. observed¹ : "There can be no doubt that, so far as the photographic part of the exhibition is concerned, that is a permanent matter to be seen by the eye, and is the proper subject of an action for libel.

Another test which has been suggested for distinguishing libel and slander is that libel is addressed to the eye, slander to the ear.

- **Indian Law** : It has been noted above that under English criminal law, a distinction is made between libel and slander. There, libel is a crime but slander is not. Slander is only a civil wrong in England. Criminal law in India does not make any such distinction between libel and slander. Both libel and slander are criminal offences under Section 499, I.P.C.
- **In Hirabai Jehangir v. Dinshaw Edulji and A.C. Narayana Sah v. Kannamma Bai,**
- the Bombay and Madras High Courts respectively held that when there was imputation of unchastity to a woman by spoken words, the wrong was actionable without proof of special damage.
- It has also been noted above that though libel and slander both are considered as civil wrongs, but there is a distinction between the two under English Law. Libel is actionable per se, but in case of slander, except in certain cases, proof of special damage is required.

- The Madhya Pradesh High Court has also expressed the view that both libel and slander are actionable in civil courts without proof of special damage.
- **In D.P. Choudhary v. Manjulata,**
- Manjulata, about 17 years of age, belonged to a distinguished educated family of Jodhpur. She was a student of B.A. There was publication of a news item in a local daily, Dainik Navjyoti, dated 18.12.77 that last night at 11 p.m. Manjulata had run away with a boy named Kamlesh, after she went out of her house on the pretext of attending night classes in her college. The news item was untrue and was published negligently with utter irresponsibility. She was shocked and ridiculed by persons who knew her and her marriage prospects were adversely affected thereby. It was held that all defamatory words are actionable per se and in such a case, general damages will be presumed. She was held entitled to an award of Rs. 10,000/- by way of general damages

- **Essentials of Defamation:-**

- (1) The statement must be defamatory;
- (2) The said statement must refer to the plaintiff;
- (3) The statement must be published.

- 1. The statement must be defamatory.

- Defamatory statement is one which tends to injure the reputation of the plaintiff. Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally. An imputation which exposes one to disgrace and humiliation, ridicule or contempt, is defamatory. The defamatory statement could be made in different ways. For instance, it may be oral, in writing, printed or by the exhibition of a picture, statue or effigy or by some conduct. Thus, if a Municipal Council out of ill will and malice and without justification served a notice of distraint warrant and seized furniture and books of a practising advocate, the conduct of the Municipal Council amounted to defamation

- Whether a statement is defamatory or not depends upon how the right thinking members of the society are likely to take it. 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.
- When the statement causes anyone to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem, it is defamatory. The essence of defamation is injury to a person's character or reputation.
- **In "Salmond on the Law of Torts" the following proposition on the nature of defamatory statement has been made** :— A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of right thinking members of society generally and in particular to cause him to be regarded with feelings of hatred contempt ridicule, fear, dislike or disesteem

- In **Ram Jethmalani v. Subramaniam Swamy**, while a Commission of Inquiry was examining the facts and circumstances relating to the assassination of late Shri Rajiv Gandhi, the defendant, at a press conference, alleged that the then Chief Minister of Tamil Nadu had prior information that LTTE cadre would make an assassination bid on the life of late Shri Rajiv Gandhi. The plaintiff was engaged as a senior counsel to represent the then Chief Minister of Tamil Nadu. In discharge of his professional duties, the plaintiff cross-examined the defendant. During the proceeding, the defendant in the written conclusive submission, alleged that the plaintiff had been receiving money from LTTE, a banned organization. statement made by the defendant was held to be defamatory. It was held to be a case of exceeding the privilege and that by itself was held to be evidence of malice. The statement made by the defendant against the plaintiff was held to be quite unconnected with and irrelevant to the situation, actual malice on the part of the defendant was well established. Counting the professional standing of the plaintiff and his stature in social life, the Delhi High Court awarded damages of Rs. 5 lacs.

- In **S.N.M. Abdi v. Prafulla Kumar Mohanta**, it was held that it is not necessary that the statement need not show a tendency of imputation to prejudice the plaintiff in the eye of everyone in the community or all of his associates. It is suffice to establish that the publication tends to lower him in the eyes of substantial, respectable group, even though they are minority of the total community or of the plaintiff's associates.
- In the present case an article published in the Illustrated Weekly of India dated 8-9-1990 made certain allegations of misuse of man and muscle power by deposed Chief Minister of Assam, Prafulla Kumar Mohanta. The article was held to be defamatory in nature and the plaintiff was awarded damages amounting to Rupees 5,00,000/-
- Mere hasty expression spoken in anger, or vulgar abuse to which no hearer would attribute any set purpose to injure character would not be actionable

- Ramdhara v. Phulwatibai, it has been held that the imputation by the defendant that the plaintiff, a widow of 45 years, 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.

- **The Innuendo**

- A statement may be prima facie defamatory and that is so when its natural and obvious meaning leads to that conclusion. Sometimes, the statement may prima facie be innocent but because of some latent or secondary meaning, it may be considered to be defamatory.

- 2. The statement must refer to the plaintiff:
- In an action for defamation, the plaintiff has to prove that the statement of which he complains referred to him. It is immaterial that the defendant did not intend to defame 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.
- Hulton Co. v. Jones
- Acting in good faith and without any intention to defame the plaintiff is no defence

- In **T.V. Ramasubha Iyer v. A.M.A. Mohindeen**, the question which came before the Madras High Court was that whether there was a liability in India for a defamatory statement published without an intention to defame the plaintiff. In that case the defendants had published a news item in their daily "The Dinamalar", dated 18th February, 1961, stating that a person from Tirunelveli, who was exporting scented Agarbathis to Ceylon, has smuggled opium into Ceylon in the form of Agarbathis. The report further stated that the said person had been arrested in Ceylon and brought to Madras after the opium was found in some of the parcels. The plaintiff (respondent) who carried on the business of manufacturing scented agarbathis and exporting them to Ceylon brought an action against the defendants (appellants) alleging that the publication of the statement had resulted in his defamation. The defendants pleaded that they were not aware of the existence of the plaintiff and they did not intend to defame him. Moreover, they further stated that on coming to know that the alleged defamation has resulted as a consequence of their publication of the news item, they had published a correction in their issue of 14th May, 1961 stating that the news item in question did not refer to the plaintiff. The Madras High Court after referring to the English authorities and also the Defamation Act, 1952, came to the conclusion that the English case of Hulton and Co. v. Jones, wherein the majority of the Court of Appeal and the House of Lords, had stated that innocent publishers of a defamatory statement was liable, was against justice, equity and good conscience, and the same was not applicable in India. Moreover, in the opinion of the Court, English law had been altered by Section 4 of the Defamation Act, by which the publishers of an innocent but defamatory statement can avoid his liability

- 3. The statement 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. Communication to the plaintiff himself is not enough because defamation is injury to the reputation and reputation consists in the estimation in which others hold him and not a man's own opinion of himself.

- DEFENCES:-

The defences to an action for defamation are :

1. Justification or Truth,
2. Fair comment,
3. Privilege, which may be either absolute or qualified.

1. Justification or Truth:

In a civil action for defamation, truth of the defamatory matter is complete defence. Under Criminal Law, merely proving that the statement was true is no defence. First exception to sec. 499, I.P.C. requires that besides being true, the imputation must be shown to have been made for public good. Under Criminal Law, merely proving that the statement was true is no defence. First exception to sec. 499, I.P.C. requires that besides being true, the imputation must be shown to have been made for public good.

- If the statement is substantially true but incorrect in respect of certain minor particulars, the defence will still be available. *Alexander v. North Eastern Ry.*,⁵ explains the point. There the plaintiff had been sentenced to a fine of £ 1 or 14 days' imprisonment, in the alternative, for travelling on a train without appropriate ticket. The defendants published a notice stating that the plaintiff had been sentenced to a fine of £ 1 or three weeks' imprisonment in the alternative. Held, the defendants were not liable, the statement being substantially accurate.
- In *Salenadandasi v. Gajjala Malla Reddy*, the plaintiff, an advocate, was involved in offence of raping a Harijan woman. Relying upon the FIR registered by the police, the news item was published in a Telugu daily. The publication, however, gave an exaggerated versions with several deviations and improvements, with comments as though the plaintiff was in a way misfit to be continued as legal professional. Holding the plaintiff entitled to damages, the Andhra Pradesh High Court said that such publication virtually reduced true episode to its lowest bottom, should always be deprecated.

- 2. Fair Comment:
- Making fair comment on matters of public interest is a defence to an action for defamation. For this defence to be available, the following essentials are required :
- (i) It must be a Comment, i.e., an expression of opinion rather than assertion of fact;
- (ii) The comment must be fair; and
- (iii) The matter commented upon must be of public interest

- (i) Comment : Comment means an expression of opinion on certain facts. It should be distinguished from making a statement of fact. A fair comment is a defence by itself whereas if it is a statement of fact that can be excused only if justification or privilege is proved regarding that. Whether a statement is a fact or a comment on certain facts depends on the language used or the context in which that is stated. For example, A says of a book published by Z—"Z's book is foolish : Z must be a weak man. Z's book is indecent; Z must be a man of impure mind."¹ These are only comments based on Z's book and A will be protected if he has said that in good faith. But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine."² It is not a comment on Z's book but is rather a statement of fact, and the defence of fair comment cannot be pleaded in such a case

- 3. Privilege:-
- There are certain occasions when the law recognizes that the right of free speech outweighs the plaintiff's right to reputation : the law treats such occasions to be "privileged" and a defamatory statement made on such occasions is not actionable. Privilege is of two kinds : 'Absolute' privilege and 'Qualified' privilege.
- Absolute Privilege In matters of absolute privilege, no action lies for the defamatory statement even though the statement is false or has been made maliciously. In such cases, the public interest demands that an individual's right to reputation should give way to the freedom of speech. Absolute privilege is recognized in the following cases : (i) Parliamentary Proceedings Article 105 (2) of our Constitution provides that : (a) statements made by a member of either House of Parliament in Parliament, and (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. A similar privilege exists in respect of State Legislatures, according to Article 194 (2).

- (ii) Judicial Proceedings No action for libel or slander lies, whether against judges, counsels, witnesses, or parties, for words written or spoken in the course of any proceedings before any court recognized by law, even though the words written or spoken were written or spoken maliciously, without any justification or excuse, and from personal ill will and anger against the person defamed.

- Qualified Privilege:-
- in certain cases, the defence of qualified privilege is also available. Unlike the defence of absolute privilege, in this case it is necessary that the statement must have been made without malice. For such a defence to be available, it is further necessary that there must be an occasion for making the statement. Generally, such a privilege is available either when the statement is made in discharge of a duty or protection of an interest, or the publication is in the form of report of parliamentary, judicial or other public proceedings. Thus, to avail this defence, the defendant has to prove the following two points :
- (1) The statement was made on a privileged occasion, i.e., it was in discharge of duty or protection of an interest; or it is a fair report of parliamentary, judicial or other public proceedings.
- (2) The statement was made without any malice.