

DEFAMATION : IN INDIAN CONTEXT

Sujata Dahiya

Research Scholar,

Department of Law, Kurukshetra University

Kurukshetra

Every man is entitled to have this reputation Preserved inviolate

J. Blackstone -

Abstract: In our democratic society, our constitution provides us various fundamental rights in which Right to freedom of speech and, expression (Article 19(1) (a) and right of life Article 21) most indispensable part of our life and over all development in all spheres of life. Along with this rights, certain restrictions also imposed by law to maintain peace & security in the country in the form of sections (499-502) of I.P.C & Article 19(2) of the constitution. All rights with out restrictions may be proved injurious to the community, so section 499 of Indian Penal Code 1860 put reasonable restriction on freedom of speech and expression not to violate it.

Keywords: Defamation, Libel, slander, Reputation, freedom of speech and expression.

1.1 Introduction:

Every man love himself as well as his reputation. Today we living in the modern era as well as in 21st century with lot of modern views we keep in our mind for our personality & reputation think by the others & we also think that no our has power or Authority to think & speak wrong about us Because in this era a Man reputation is his property even more valuable than his property¹. Even a Man has the right to protect his reputation. For securing the reputation of men certain legal provisions also enacted by our legislation. Now come to know what do you by defamation? Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking member of society generally; or which tends to make then Shun or avoid that person."² Every person has the right to live with dignity, honour & integrity because right to reputation should be stand on the same footing like our other fundamental right like right to life, liberty, property & all comfort & luxurious need to maintain & Survive in the society. Right to reputation in an inherent personal right of every person this right is jus in rem, a right against all the world so no one having the right to defame our reputation. In India, we consider defamation civil as well as criminal wrong. If a wrong affect the Single Individual it is civil wrong & if whole society then criminal wrong. Defamation under civil law comes under law of Touts but in criminal law it is codified in section 499 to 502 of Indian penal code 1860. Certain legal penal provision enacted by legislature to penalise the accused under section 500 of I.P.C & in civil law it become the liability of Accused to pay Damages to the victim in the form of Monetary compensation.

2.1 What is Defamation:

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers, which tends, that in so say, to lower him in the estimation of right thinking member of society generally and in particularly to cause him to be regarded with feeling of hatred contempt ridicule fear, dislike or disesteem"³ reputation is that what people think about us not our own opinion and view we think about our self because every person consider himself best personality constituting good qualities even not having single negativity. So defamation is that statement which having tendency to lower down our position in the estimation of right thinking member of the society. In *South Indian Railway co. v. Ramakrishan*⁴ it was held that word spoken is bonafide way & under circumstances of case, there is no defamation & no one is label for the same.

2.2 Kinds of Defamation

Slander : Temporary form, spoken by words or gestures

Libel : Permanent form writing, printing or statute.

In English Law:

Libel has been recognized as offence of actionable per se (action with out any proof of damage & in slander case, slander is actionable only on proof of special damages. But in four exceptional cases slander is actionable per se:

- Imputation of criminal offence to the plaintiff

- Imputation of a contagious or infectious disease to the plaintiff, which has the effect of preventing other from associating with plaintiff.
- Impulsion that a person is incompetent, dishonest or unfit in regard to this office, profession, calling, trade to business carried on by him.
- Imputation of unchastity or adultery to any women or girl.⁵

In Indian law there is no difference between libel & slander both are consider as criminal offence under section 499 of Indian penal code 1860.

2.3 Essential Elements of Defamation:

- i) The statement must be defamatory
- ii) The statement must refer to the plaintiff
- iii) That statement must be published.

3.1 Defamation as Tort

As you know that English law divide the Defamation in two part (i) libel (ii) slander. In English law libel is offence & slander is not offence but categories as offence in situation of proof of some damages. But in India libel & slander both are considers as actionable per se (without proof of damages).

The word *Innuendo* also play a significant role in civil law Defamation. Some time a statement in primary facie defamatory when in natural & obvious meaning look defamatory but in certain cases it is prime face Innocent because it secondary meaning lead to defamatory if aggrieved person want to bring action, he must prove secondary meaning. When Innuendo is proved, the words which are not defamatory automatically become defamatory.

Mere hasty expression spoken in anger, or vulgar abuse to which no hearer would attribute any set of purpose to unique character would not be actionable.⁶

3.1.1 Defences of defamation:

- i) Justification or truth,
- ii) Fair comment,
- iii) Privilege,
 - i) Absolute
 - ii) Qualified.

i) Justification or Truth:

In civil law, the only proof that statement is true is complete defence, but in criminal it is not sufficient defence to prove that statement is true, it also mandatory to prove that imputation made in interest of public good.

ii) Fair Comment:

Fair comment on matter on public interest is also defence.

- 1) It must be comment i.e., expression of opinion rather assertion of facts.
- 2) The Comment must be fair.
- 3) The matter on which comment made must be of public interest.

iii) Privilege

On some occasion law permits the right of free speech out weights the right to Reputation.

Absolute Privileges:

No action lies even statement is false or maliciously this privilege recognized in some cases:-

- i) Parliamentary proceedings
- ii) Judicial proceedings.
- iii) State communications.

Qualified Privileges:

- i) The statement made in discharge of duty or protection of an Interest, or it is fair report of parliamentary, judicial or other public proceedings.

ii) The statement should be made with out Malice.⁷

4.1 Defamation in Criminal Law:

Defamation is Injury to the reputation of a person. Defamation is both civil and criminal wrong. Any person aggrieved by the statement of which having the tendency to Injure the reputation of that person, such aggrieved person may file criminal prosecution under the Indian penal code 1860 & Civil suit under law of Tort. When any criminal complaint withdraw by prosecution than no one bar him to file civil suit unless and until barred by agreement. Civil law is uncodified law & criminal law is codified law & provisions of defamation mention in section 499 to 502 I.P.C. defamation against state in section (124-A), (Section 153) of the code provides for defamation of community. (Section 295-A) (deal with outrage religious feeling by insulting or attempt in insult). In civil law mere prove that statement is true is sufficient to escape the liability, but in criminal law in spite of the fact that statement is true it is also prove that it is made for public good.

4.2 Section - 499 : Defamation

Whoever, by words either spoken or intended to be read, or by signs or by visible representation, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1: It may amount to defamation to impute 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.

Explanation 2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4: No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers that character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

First Exception : Imputation of truth which public good requires to be made or published

It is not defamation to impute anything, which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception : Public conduct of public servants

It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception : Conduct of any person touching any public question

It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception Publication of reports of proceedings of courts

It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation: A Justice of the peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is A court within the meaning of the above section.

Fifth Exception - Merits of case decided in Court or conduct of witnesses and others concerned.

Sixth Exception - Merits of public performance

It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation: A performance may be submitted to the judgement of the public expressly or by acts on the part of the author which imply such submission to the judgement of the public.⁸

Section 500 of the Indian Penal contain the provision that punishment of accused for 2 years or fine or without is non-cognizable, bailable & triable by court of session. Even also contain the penal Provision for printing or engraving matter known to be defamatory and sale of that matter.

5.1 Analysis of Article 19(1)(a) Freedom of Speech & Expression:

As we know that our preamble contain "liberty of thought & expression" & Article 19(1)(a) of constitution give us the freedom of speech & expression because all we have the right to express our opinion & ideas. In our democratic country freedom of speech & expression is very indispensable. In *Ramesh Thapper v. state of Madras*,⁹ Patanjali Sastri J. right observed that

"Freedom of speech of the press lay at the foundation of all democratic organizations, for with out free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible."

Article 19(1)(a) Means that every citizen shall have the right to freedom of speech & expression but certain restriction also put on this right by Article 19(2) for preserving the security of state, decency, morality & to prevent the defamation civil & criminal. In any modern state absolute individual right cannot be guaranteed because with out restrictions these right proves injuries to the society as a whole it people were given complete & absolute liberty without any social control the result would be ruined¹⁰ but all these restrictions must be reasonable.

6.1 Whether section 499 of I.P.C. violates our fundamental right Freedom of Speech & Expression: Article 19(1)(a)

Defamation Means any statement which having the tendency to injure the reputation of some person. Section 499 of I.P.C contain the criminal law relating to defamation. It is codified law. In *Subramanian Swamy vs. union of India*¹¹, the Supreme court held the term 'defamation' used in Article 19(2) cannot be given restricted Meaning. The aim of law of defamation to protect the reputation of every person. Reputation is Indispensable part of our life & also basic element of Article 21 & Our legislation Impose panel provision in Section (499-502) of I.P.C. which does not have in any way curtail the right to freedom of speech & expression. The right to reputation is a main constituent of Article 21 of the constitutional & it is individual fundamental right. So at last I can say that aim of defamation law to protect the feeling of fraternity, dignity & honor of every person in the society.

7.1 Conclusion

Reputation is that valuable assets which a man earn during his whole life Journey from Birth to death so no one having any authority to speak wrong about some one. Defamation is that harmful and injurious tool that can be used by any person which may be proved injurious to the whole society so decriminalization of it prove obstacle in the progress of society as well as for the country. Supreme Court in *Subramanyam Swami vs. union of India* upheld the constitutional validity of section 499. The right to keep one's reputation is our fundamental right and for that purpose penal provision also enacted by our legislature.

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