
USE OF DEFAMATION, THE LACK OF IT AND PENDING CASES

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ABSTRACT

Defamation has been part of our system since the inception of the law. But defamation in India has been taken with a very light approach with most of the cases never seeing an outcome. The use of defamation in India has been a topic of debate in recent times. Defamation has become one of the most exploited parts of our legal system. This paper attempts to open a comparative outlook between the defamation cases in India and other countries along with the issues faced by defamation cases in India. This paper also attempts to showcase how the law of defamation is exploited in India and the plethora of pending defamation cases in India.

Introduction

Defamation is defined as an injury to 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.¹ Defamation is used to create an apprehension in the minds of people and force people to think twice about statements they put out in public. Defamation consists of two types: libel and slander. Both of which are considered to be a crime under section 499 of IPC. This part of defamation is exclusive to India's law as English law only finds libel as a crime whereas slander is not. Defamation is an instrumental tool in countries like the USA and the United Kingdom. But Defamation in India has been a problem for our judiciary. Though Defamation in India has been in our system since its inception then also India sees a lack of defamation cases in the court. Most of the cases that reach court are either solved through a settlement outside of court which results in cases taken back and not proceeding with the defamation case or the judgment is stuck for years. Thus it becomes imperative to put light on these issues to have a fair and impartial justice system.

Issues

- A. Whether defamation is used as a political tool?
- B. Whether social media has changed the use and meaning of defamation?
- C. Whether India's defamation law is as strict as other nations?
- D. Do pending cases hamper the effect of defamation?

Challenges

The challenges addressing these issues have been a burdened judiciary. The sheer amount of cases that have been recorded in Indian courts has led to overworked and burdened courts. There is also a lack of concern among citizens towards issues of defamation which has become a challenge to the integrity of the nation. Defamation in India has been partly ignored with cases being used as a tool of pressuring individuals.

¹ R.K.BANGIA, THE LAW OF TORTS 186 (22nd ed., Allahabad Law Agency 2010).

The challenge has been also to tackle the workarounds which have been found for Defamation which people use to prevent themselves from a defamation case. By using tricks like turning a statement into a question has been one of the ways that has been used to avoid a defamation case while passing these partly defamatory statements. There has also been the challenge of criminal defamation and if it is relevant in today's day and age. This issue was put in court by Subramaniam Swamy in his case *Subramanian Swamy v. Union of India*² which highlighted the issue of lack of need for criminal defamation.

The law of defamation is old and updating it and adapting it to this modern age has been one of the major challenges. Defamation in social media has been a problem for the country's judiciary to tackle. What is defamation on social media and what is not is a question that is being debated upon? How would one categorize defamation on social media and should it follow the same rule as print media? A challenge is also the battle of Defamation vs Freedom of speech. What should be categorized into defamation and what should be passed through as freedom of speech. A challenge often faced in cases of defamation is where and when to file the case of defamation.

Analysis

Defamation is the act of attacking another's reputation through false publications or passing false information in public. As stated above defamation is of two types that is libel and slander both of which is an offense in India. Libel is represented in permanent form like written, picture, etc. and Slander means depiction through transit form like gestures. This brings the question: what are the essential elements of defamation? The essential element of defamation is that the statement must be published, it must refer to the plaintiff and the statement must be defamatory in nature. Defamation also includes innuendo which means that some statements may be prima facie innocent but have a hidden second meaning to them. But the introduction of social media has somewhat complicated its concept. Some countries treat broadcasted statements and images in defamation as libel, others as slander. Television presents similar problems and social media takes this problem to another level. The law also observes that printed defamation is more likely to be injurious than "mere talk". Few defenses of defamation

² Subramanian Swamy v. Union Of India, AIR 2016 SC 2728.

include Justification of truth, Fair comment, and privileges like Absolute privilege and Qualified privileges³.

A. Use of Defamation in India

In India defamation is being used as a political tool. The law of defamation is being used as a method to degrade the political images of people and term them unreliable and dishonest. *Arun Jaitely v. Arvind Kejriwal & others*⁴ is an example of this. In this case, Arun Jaitely filed a defamation case against Arvind Kejriwal and 5 other AAP members who had alleged financial irregularities during his tenure as DDCA president. Arun Jaitely filed a defamation suit in Delhi High Court claiming compensation of Rs 10 crore. He also filed another defamation suit against him after his then-lawyer Ram Jethmalani had used objectionable words against him during cross-examination. Although the remarks made were found to be untrue and defamatory in nature, the end of the case raised some questions. The case ended abruptly as Arun Jaitely took his case back after accepting the apology given by Arvind Kejriwal. This raised the question that even though the statements were defamatory, was there any intention to even get any compensation, or was it just to get Arvind Kejriwal to apologize. Many such cases are filed for political motives. Such cases intend to prove the other put forth false statements and are hence not fit to be in power.

But this is true not only in the political context but also in the broader arena of commercial disputes as many of the cases are against media outlets which end up in a loss. A study by Professor Franklin revealed that approximately ninety-five percent of plaintiffs who bring cases against media defendants ultimately lose the defamation case⁵. That is because the media through the years have found workarounds to the law of defamation and now dodge any claim which may come their way. Media companies have also been found to use the method of settlement outside of court by offering money to the plaintiff and thus making them retreat from the filed case. But the media is not free from its own share of false defamation cases where many powerful people file defamation cases and try to create a 'chilling effect'. The chilling effect in legal context

³ R.K. BANGIA, THE LAW OF TORTS 204 (22nd ed., Allahabad Law Agency 2010).

⁴ *Arun Jaitely v. Arvind Kejriwal*, CS(OS) 3457.

⁵ M.A. Franklin, *Winners and Losers and Why: A Study of Defamation Litigation*, 5 AMERICAN BAR FOUNDATION RESEARCH 455, 498(1980).

describes a situation where a speech or action is suppressed by the fear of penalization. That is why the media also enjoys a special privilege under freedom of speech that safeguards any unpopular opinion printed which has been used as a strong defense in cases of defamation.

B. Defamation in the age of social media

Cyber Defamation has been introduced by countries to tackle the problems that arise in this new age of social media. The creation of online space has introduced the world to cyber defamation or online defamation. Cyber defamation takes place when a computer that is linked to the internet is used as a tool, or a medium to defame a person or an entity⁶. For example, posting a statement that is defamatory in nature on social media platforms like Twitter, Youtube, Facebook, Instagram, etc., or sending emails that incorporate defamatory content about a person with the intention to defame the person. Further, given the wide range in which the internet is spread and the rate of dissemination of information on this platform, it becomes difficult to establish the range of damage in any economic value. The first case of cyber defamation in India was of *SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra*⁷ which regarding defamatory emails sent by an employee to the employer and all its subsidiaries around the world. But defamatory statements on social media sites like Twitter still ask the question that has defamation law been molded for the modern age. Most of the time people are not aware of the laws and most of them are also too negligent to realize whether such content is defamatory or not. There are still many holes in the system and the biggest one is awareness among people. There is a need for a system that educates people about what content is defamatory and what is not on social media platforms. There is also a need for awareness among people to differentiate between which statements are valid criticisms and which are intended to harm their reputation.

C. Defamation in India Vs Other Countries

⁶ Meril Mathew Joy & Shubham Raj, *India: Defamation On Social Media- What Can You Do About It?*, MONDAQ (Jan. 7, 2020), [//www.mondaq.com/india/libel-defamation/880758](http://www.mondaq.com/india/libel-defamation/880758).

⁷ *SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra*, CS(OS) No. 1279/2001.

There is a difference between the law of defamation in India and the law in other countries. Since there is a difference in the law hence the use of defamation is also different.

The law of defamation in some of the countries are as follows:-

- **English Law:** Under English law, there is a difference between libel and slander. The major difference being in English law libel is only treated as a criminal offense whereas slander is no offense. Under the law of torts, slander is treated as an offense, and libel is always actionable per se without any proof of damage. In the following four exceptional cases, slander is also actionable per se : (i) Imputation of a criminal offense to the plaintiff; (ii) Imputation of a contagious or infectious disease to the plaintiff, which has the effect of preventing others from associating with the plaintiff; (iii) Imputation that a person is incompetent, dishonest or unfit in regard to the office/profession, calling, trade or business carried on by him; (iv) Imputation of unchastity or adultery to any woman or girl is also actionable per se⁸. Thus the basic difference between Indian and English law is that slander is a civil wrong while in India it is also a criminal offense.
- **American Law:** In American Law, defamation law is much more strict towards the plaintiff as compared to English Law. In America, Congress makes no law respecting an establishment of religion, or prohibiting the free exercise or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances as stated in their First Amendment⁹. American law only allows one claim per every primary publication. There is also no distinction between libel and slander. This is because America has given the freedom of defining libel and slander to its state. Hence some states have criminal libel laws while some states put libel and slander in the same set of laws.
- **Australian Law:** In Australian law, there are various statutory provisions taken from old laws but they still retain the basic principles of the common law. Under

⁸ R.K. BANGIA, THE LAW OF TORTS 184 (22nd ed., Allahabad Law Agency 2010).

⁹ U.S. CONST. amend I

the uniform defamation laws, corporations with 10 or more employees cannot sue. However, individuals or groups of individuals employed by or associated with that corporation - such as company directors, CEOs, or managers can still sue if they are identified by the publication. Not-for-profit organizations can still sue for defamation, no matter how many employees or members they have¹⁰.

That was the law of defamation in some of the countries. When you see in comparison to India it shows how the laws are in contrast with Indian laws. That is why we also see the contrast in its use-case too. India's law is very strict and in some cases even stricter when compared to some of the countries. In India, everyone comes under the law of defamation whether that is civil or criminal. In non-exceptional situations, Indian courts have proven an inclination to support free speech, and have not shown a tendency to grant injunctions that would have the effect of muzzling speech on the ground of possible defamation¹¹. Hence the problem in India is not its laws but how the cases are processed through court.

D. The Effect Of Pending Cases

Today in India there is more than 3 crore pending cases in total out of which many of the cases are from over 10 years old¹². This is not only true for the cases of defamation but the effect of pending cases on defamation has sort of had a devaluing effect on it. The question arises how? That is because the cases of defamation are about lost reputation. Thus if the cases are solved fast the information whether true or false is proven and hence reputation can be restored. But if the case is delayed the damaged reputation gets stamped in the minds of people and even if the information turns out to be false then it gets very difficult to improve and change the image in front of the crowd and as the popular saying goes the justice delayed eventually turns to be justice denied. This is also directly related to the above-mentioned issues like the use of defamation and even the defamation in India vs other countries.

¹⁰ *Defamation in Australia*, THE NEWS MANUAL, http://www.thenewsmanual.net/Resources/medialaw_in_australia_02.html.

¹¹ Nandita Sakia, *Civil and Criminal Defamation Law in India*, IN CONTENT LAW (Feb 6, 2012), <http://copyright.lawmatters.in/2012/02/defamation.html>.

¹² BQ Desk, *India's Pending Court Cases On The Rise: In Charts*, BLOOMBERGQUINT.COM (Sept. 29, 2020, 8:38 AM), <https://www.bloomberquint.com/law-and-policy/indias-pending-court-cases-on-the-rise-in-charts>.

Pending defamation cases hamper the use of law as many people file cases based on false claims and since the cases take a long time to get solved hence the false claim actually damages the company or person's reputation. This can also be termed malicious defamation where the actual intent is to degrade one's reputation based on a false claim. Although the judiciary has tried to change this and tried to complete these cases as early as possible and also fining heavily to the party that filed a false claim still there are many who exploit such a system. Pending cases also play a part in the difference between its use in India vs other countries. As other countries don't have as many pending cases as India hence more and more cases are solved hence fined heavily. Thus more and more people get aware of the law of defamation and get inspired to file cases that seem to hamper their reputation while in India since there are so many pending cases most people don't file defamation cases to avoid the financial burden that comes with a long case. This creates a major difference when compared to the use of defamation in India and other countries.

Recommendation

In such cases, it is the responsibility of one to shed some light on possible solutions. One such recommendation in this area can be right to reply. Now, the right of reply or right of correction generally means the right to defend oneself against public criticism in the same venue where it was published¹³. So suppose if one publishes a statement in the newspaper then others can reply to it in the newspaper too. However, the right to reply appears as a civilized manner to address the issue rather than jumping to conclusions or convicting, and seeking damages. Some states of the USA and other countries like Brazil have imbibed this into their system. Definitely, we can also find a use case of a concept like this in our system. That said there is much difference between theorizing a concept and actually applying it and given the pending cases and expanding population this concept has to be implemented carefully or else it has a chance to be exploited. Also, it cannot be ignored that the judiciary tries its best to give a balanced construction in such matters. Hence trust in our wise judiciary can be one of the best recommendations to follow through with.

Conclusion

¹³ WIKIPEDIA.COM, //en.wikipedia.org/wiki/Right_of_reply

The law of defamation was brought into the system to safeguard a person's reputation which shows that the reputation of man has been kept equivalent to a person's life in today's day and age. Its central problem is how to unite this purpose with the competing demands of free speech.

Every law comes with its own advantages and disadvantages and the law of defamation is not an exception. Still, this fact cannot be debated that the law of defamation has not been given the due credit that it deserves and neither has it been used at its full potential. But what stops this law to be used at its full potential is the issues that come with it. These issues not hamper the use of defamation but also hamper the effect of it. On one side it safeguards not only a man's reputation but also freedom of speech both of which are very important with the former being a prized attribute of humans while the other being the foundation of democracy. But on the other hand, the issues that come with it like defamation being used as a political tool or the problem of pending cases expose mankind to a greater risk of losing dignity as well as privacy.

Thus we require an update to the law of defamation where these issues are dealt with with respect to the requirement of people. But that doesn't free the citizens from all the burden as they have the responsibility to get aware of the safeguards that have been integrated for the protection of our reputation and use them not for personal benefit but to create an aware and responsible and overall better society for our country.