
DEFAMATION: AN ANALYSIS

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INTRODUCTION

According to the definition of the word, defamation is the harm that a false remark does to someone's reputation. A man's reputation is regarded as his property, and anyone who harms someone else's property is subject to legal liability. Likewise, anyone who damages someone else's reputation is subject to legal liability. Section 499 of the Indian Penal Code 1860 defines defamation, and section 500 stipulates that anyone found guilty of a crime under this provision faces up to two years in simple imprisonment, a fine, or both. A number of clauses in the Indian Constitution grant its citizens the right to life, including article 21, which also guarantees their freedom from unwarranted and unlawful defamation. The right to freedom of speech is guaranteed under Article 19(1) (a) of the Constitution in addition to Article 21. The only restriction is that statements published must not be vile.

The word "defamation," which goes against the well-known proverb "Words will never hurt me, but sticks and stones will break my bones," comes from the Latin word "diffamare," which meaning "spreading evil report about someone." Inflicting harm to another person's reputation is the crime of defamation. Every person's reputation is incredibly important and frequently given priority in their lives. The desire to become well-known in one's area motivates people to strive for success, take calculated risks, and accomplish great things.

Justice Cave therefore very rightly defined defamation as a *“false statement about a man to his discredit.”*

Salmond and Heuston on the Law of Torts, 20th edition defined a defamatory statement as under- *“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 the society generally and in particular to cause him to be regarded with*

feelings of hatred, contempt, ridicule, fear, dislike or disesteem. The statement is judged by the standard of an ordinary, right thinking member of the society.

The right to reputation, which is recognized as a dimension of the right to privacy, fundamental right under Article 21 of the Constitution of India, is what is protected by the law of defamation. Reputation is how a person is perceived by others, i.e. the opinion of the community against a person. The Supreme Court in a landmark judgment held that an individual has a right to protect his reputation from being unfairly harmed and such protection of reputation needs to exist not only against falsehood but also certain truths. Intention to cause harm to reputation of a person is sine qua non of the offense of defamation. The value of reputation is a timeless quality that can be found in the Bhagawad Gita, Holy Quran, and Holy Bible. Although the interpretations of these texts vary and are stated in various contexts, the significance of reputation has always been emphasized.

Famous thinkers and philosophers have elaborated upon how reputation is an essential to all beings. **Aristotle once said-**

“Regard your name as the richest jewel you can possibly be possessed of – for credit is like fire; when once you have kindled it you may easily preserve it, but if you once extinguish it, you will find it an arduous task to rekindle it again. The way to gain a good reputation is to endeavor to be what you desire to appear.”

In India, Defamation is recognized both as a civil wrong and a criminal wrong. While the civil law is not codified, the criminal law on defamation is codified under Section 499, punishable under Section 500 to 502 of the Indian Penal Code, 1860. Section 499 of the Indian Penal Code, 1860 reads as follows-

“Whoever, by words either spoken or intended to be read, or by signs or by visible representations, 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 expected, to defame that person.”

ESSENTIALS FOR DEFAMATION

The statement must be defamatory:

*The publication of a statement that tends to damage someone's reputation in the eyes of right-thinking members of society or cause them to avoid that person is referred to as defamation. For example, if the Municipal Council's animosity resulted in them serving a practicing advocates with a warrant and seizing his books and furniture without any reason, that act would be considered defamatory against the advocate. Whether the statement is defamatory or not relies on the morally upright people of the community. Right-minded people in society are people who are reasonably intelligent, on average. If they claim that the remark that was released harms the other person's reputation, then such statement would be regarded defamatory. As in the case of **S.N.M. Abdi vs. Prafulla Kumar Mohanta** the article was published in Illustrated Weekly of India, made certain allegations for the wrongful use of man and muscle power by the then Chief Minister of Assam, Prafulla Kumar Mohanta. The article so published was considered defamatory and the plaintiff was awarded damages up to Rs. 5, 00,000/-.*

It must refer to the plaintiff:

*The plaintiff must demonstrate that the comment that was published about him mentions him and damages his reputation in order to establish defamation. Therefore, if it is established that the plaintiff was the target of the defamatory comment, it makes no difference if the defendant did not mean to harm him. It should be mentioned that the defendant need not have intended to cause defamation in order to be held accountable. The act of publishing a defamatory statement about someone else, even while it is accurate, could potentially result in the defendant being held accountable for the defamation of another party if the statement is published carelessly. As was held in the case of **Newstead Vs. London Express Newspapers Ltd.** in this case, defendants published an article that “Harold Newstead, a Camberwell man” has been convicted for bigamy. The statement was true but it was about Newstead Camberwell barman. The action for the same was brought by another Newstead, a Camberwell barber. It was held that as the words were considered to be understood as referring to the plaintiff, therefore the defendant was held liable for defamation.*

It should be published:

In order to hold someone accountable for defamation, the statement must be shared with persons other than the target of the reference. Since defamation damages a person's reputation, there cannot be a case of defamation unless it is disclosed to a third party. If the disparaging

remarks are directed solely towards the individual who is there, then defamation cannot occur. Similarly, if the remarks are delivered in a language that only the person being disparaged understands, then there is no basis for defamation either. Thus, in short, it can be said that where there is a reasonable chance of the defamed statement can be heard or seen by others, other than the person so defamed then only the person can be made liable for defamation. As in case of, ***Mahendra Ram vs. Harnandan Prasad***, the publication was made of a defamatory statement written in Urdu to the plaintiff by the way of written letter. Plaintiff did not know Urdu and therefore needs another person to read it.

It was held that the defendant can't be made liable until it is proven that the defendant knew that the plaintiff is unaware of the Urdu language and would need someone else to read it.

TYPES OF DEFAMATION

LIBEL: Libel is a defamatory statement that is made in writing by the defendants.

SLANDER: Slander is an untrue defamatory statement that is spoken orally by the defendants.

Libel and slander are not distinguished from one another in India. Slander and libel are both crimes. It can result in legal action and damage someone's reputation. In India, defamation is a criminal as well as a civil offense. The Law of Torts addresses the civil defamation remedy. A person who has been defamed has the right to file a civil defamation lawsuit in either the High Court or one of the lower courts and demand monetary damages from the accused. In contrast, a guilty party in a criminal defamation action faces a two-year prison sentence under sections 499 and 500 of the Indian Penal Code, 1860. The Indian Penal Code, 1860's Section 499 provides a broad definition of defamation along with 10 exclusions and four explanations.

Among the exclusions is "imputation of truth." These include the "imputation of truth," which is necessary for the "public good" and must be publicized, on any public official's behavior, on any individual raising a public concern, and on the merits of the public performance. ***Section 500 of Indian Penal Code, 1860, provides with the punishment for defamation, it reads: "Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with the fine, or with both."***

INNUENDO: Sometimes the statement may prime facie be innocent but it has some hidden or secondary meaning which will be considered as defamatory. Such statements are known as

innuendo. There is a distinction between libel and slander and this distinction was drawn by the High Court for the State of Telangana and Andhra Pradesh as follows-

“In common law the origins of defamation lie in the torts of “slander” (harmful statement in a transient form, especially speech), each of which gives a common law right of action. Defamation in the general terms used internationally, libel is in written form. Libel and slander both require publication. The fundamental distinction between libel and slander lies solely in the form in which the defamatory matter is published. If the offending material is published in some fleeting form, as by spoken words or sounds, sign language, gestures or the like, then it is slander.

Libel is defined as defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. Thus, criminal defamation may contain either “libel” or “slander”.

Therefore, defamation is caused by publication of untrue statements about a person with the intention of harming such a person’s reputation. It is clearly the duty of the prosecution to prove affirmatively that the accused published the libel and the defamatory words must be published within the territorial jurisdiction. The law of defamation seeks to protect an individual’s interest in their reputation. But, it has been greatly modified to ensure that public persons cannot hide behind actions in defamation in order to evade exposure of their actions and public responsibilities for which they are publicly accountable.

For instance, A disseminates false information alleging that B, a university professor, has engaged in corrupt practices using university funds. His reputation is damaged as a result, and he loses his position as a professor at the university. The following is **Explanation 1 to Section 499**, which addresses slander of the deceased:

"Explanation1.- Implicating anything about a deceased person may amount to defamation if the imputation would damage that person's reputation if they were still alive and is meant to cause hurt to his family or other close relatives. Thus, imputing anything to a deceased person may also amount to defamation. The Explanation lays down two postulates-

The imputation made against a deceased person must be of a kind that, had the person been alive, would have damaged his or her reputation, and it must have been done with the intention

of offending the family or other close relatives. In these situations, it is imperative that both requirements be met; otherwise, the defamation lawsuit would be dismissed. Furthermore, there should be actual hurt inflicted rather than harm that was planned. This is due to the fact that the latter test is irrelevant when dealing with a deceased individual.

Explanation 2 of Section 499 which deals with defamation of a Company or Collection of Persons reads as follows-

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

As a result, a company has a unique reputation. Defamation would occur if accusations were made about how the association or firm conducted its business, or if they were made about fraud, poor management, or financial status. In order to accurately state that a specific group of people, as opposed to the community as a whole, stood defamed, it is also imperative that the group of people be an identifiable entity. For instance, a business that has been in operation for the previous 20 years is currently facing accusations that its goods are unhealthy for ingestion by people. But the statement is predicated on unfounded allegations.

Despite the Company being cleared of all charges, the story was altered and published in a newspaper, giving the impression that the product remained unsafe for human consumption. Since the company's product was labeled as safe for ingestion, any such articles were false and defamatory since they damaged the company's reputation.

Explanation 3 of Section 499 deals with Defamation by Innuendo and reads as follows-

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

In this instance, the passage or material is initially not defamatory, and the person that feels wronged must demonstrate that the words, which on their face seem harmless, are in fact defamatory given the specific circumstances and publishing type.

Explanation 4 of Section 499 answers what harms the reputation. The Explanations states that-

“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 the person, or lowers the character of that person in respect of his caste or 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 disgraceful.”

BALANCING THE RIGHT TO FREEDOM OF SPEECH AND RIGHT TO REPUTATION

Both, Right to Freedom of Speech and Expression and the Right to Reputation are fundamental rights under the Constitution of India; however their co-existence in harmony has always been crucial.

The constitutional validity of Section 499 and Section 500 of the Indian Penal Code and Section 199(1) and Section 199(4) of the Code of Criminal Procedure were questioned in the case of *Subramanian Swamy v. Union of India and Others*^[21]. Several writ petitions were filed under Article 32 of the Constitution of India challenging the constitutional validity of Section 499 and 500 of the Indian Penal Code, 1860 and Section 199(1) and Section 199(4) of the Code of Criminal Procedure, 1973.

The previous two occasions where this issue was left unanswered was in *A. Rajagopala v. State of Tamil Nadu*^[22] and *N. Ravi and others v. Union of India and others*. Defamation was argued to have only applied to civil actions and not criminal ones; furthermore, it was argued that the provisions of Sections 499 and 500 went beyond the limitations set forth in Article 19(2) of the Indian Constitution; and finally, it was argued that Clause (2) of Article 19, which places reasonable restrictions on Article 19(1)(a) of the Constitution, could not be interpreted as providing authority for Section 499 of the Indian Penal Code, which criminalizes defamation of any person. Section 499 should be ruled illegal for another reason: it violates the national battle for freedom, which is a prized asset protected under Article 51A(b). The presumption of fact contained in Sections 499 and 500 as a matter of law renders the provisions arbitrary on their own. Thus, the clauses ought to be deemed to be beyond the scope of Articles 14, 19, and 21 of the Indian Constitution.

COURT'S OBSERVATION AND FINDING:

The Court affirmed the constitutional validity of Sections 499 and 500 of the Indian Penal Code and Section 199 of the Code of Criminal Procedure by striking a balance between the two fundamental rights of the right to freedom of speech and expression and the right to reputation.

PUNISHMENT FOR DEFAMATION UNDER SECTION 500, 501, AND 502 OF INDIAN PENAL CODE, 1860.

The punishment for defamation has been defined under Section 500 of the Indian Penal Code. It reads as follows-

“500. Punishment for defamation— Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

Consequently, in a defamation lawsuit, the guilty party faces a maximum sentence of two years in ordinary jail, a fine, or both. Defamation is a non-cognizable offense that is subject to bail. The Indian Penal Code, 1860, Sections 501 and 502 outline the penalties for printing or engraving known to be defamatory content or selling such item that contains the defamatory content. The crime in both cases is one of non-cognizable bailable offenses, punishable by a fine, simple imprisonment up to two years, or both. The widely discussed case of *Swami Ramdev v. Juggernaut Books Pvt. Ltd. & Ors* provides a detailed explanation of the idea of criminal defamation. Priyanka Pathak Narain, the author of "Godman to Tycoon: The Untold Story of Baba Ramdev," and M/s. Juggernaut Books Private Limited (the Publisher), M/s. Amazon India, M/s. Flipkart Internet Private Limited, and M/s. Manipal Technologies Limited were the targets of the lawsuit filed by Baba Ramdev. The book's information, according to the petitioner, was given with the goal of distorting the facts to the detriment of the plaintiff. Furthermore, the offensive material that Defendant No. 1 (the writer) wrote was presented in a way that was disparaging to the Petitioner, damaging his reputation and character. The petitioner requested an order prohibiting the defendants from releasing and selling the book on the grounds that it violated the basic right to reputation guaranteed by Article 21 of the Indian Constitution. In addition, he requested a ruling of permanent injunction order to have the offensive passages in the book removed and, until that time, to prohibit the book's distribution

or sale in any way on the open market. The injunction further prohibited the defendants from composing any future defamatory remarks on the petitioner.

DECISION:

The courts argued that, despite Baba Ramdev's status as a public figure, the respondent's defamation could not have been authorized by him. Following a thorough investigation into individual chapters of the book, the Court determined that the Petitioner, despite his status as a public figure, has the right to live with dignity and to a good social reputation. Given that reputation is highly valued and a crucial component of personal security, parts of the book give readers the impression that he is an ambitious villain, and as such, must be kept from publication and sale until the lawsuit is resolved.

The Court further cited the ruling in **Justice KS Puttaswamy (Retd.) v. Union of India**, which concluded that the right to reputation is protected by Article 21 of the Indian Constitution as a component of the right to privacy. According to the ruling in **Subramaniam Swamy v. Union of India**, the fundamental components of the right to life under Article 21 are the rights to honor, dignity, and reputation. It also declared unequivocally that "the balance of the two rights needs to be struck and that the reputation of one cannot be allowed to be crucified at the altar of the other's right to free speech." Reputation rights were thought to be inalienable. The Court came to the conclusion that reputation protection is a fundamental human right that also serves social purpose and that the right to free expression cannot be used to allow one person to disparage another. Additionally, it was noted that *"it has also been observed to the effect that the submissions that imposition of silence will rule over eloquence of free speech is a stretched concept in as much as the said proposition is basically founded on the theory of absoluteness of the fundamental right of freedom of speech and expression which the Constitution does not countenance."* Regarding the argument of "fair comment," it was noted that *"A sincere attempt to discover the truth is implied by the plea of fair comment; a mere belief in the existence of the truth without any supporting evidence is not the same as a legitimate plea. It is crucial to remember that a comment cannot convey imputations of disreputable motive unless it is sufficiently supported by evidence, and it must appear as a comment and not be so entwined with the facts that the reader is unable to discern between what is reported and what is commentary."*

INTERPRETATION OF THE SUPREME COURT ON DEFAMATION

Conflicts between using one's right to free speech and making a defamatory comment can occasionally perplex judges. Dr. Swamy contested the legitimacy of India's criminal defamation law in the case **Subramanian Swamy v. Union of India**. The Indian Penal Code's sections 499 and 500, which deal with criminal defamation, were upheld by a two-judge Supreme Court bench made up of Justices **Dipak Misra and P. C. Pant**. The bench noted that a person's fundamental right to live with dignity and reputation "cannot be ruined solely because another individual can enjoy his freedom." The presiding officer stated that the right to reputation, which is protected by Article 21 of the Indian Constitution, must be "balanced with the right to freedom of speech and expression provided to people" and that it cannot be sacrificed on the altar of another person's right to free speech. The court ruled that criminalizing defamation is necessary to safeguard people's reputations and sense of worth, and that doing so is a "reasonable restriction" on the fundamental right to free speech and expression. As a result, the criminal defamation laws are constitutionally permissible and do not infringe upon the freedom of speech. The bench of the Supreme judge found that a trial judge must be "very vigilant" in reviewing a complaint before issuing a summons in a criminal defamation case, while also emphasizing that criticism was not defamation.

DEFENCES FOR DEFAMATION

Justification or Truth

In civil law, the truth of the defamatory matter is a complete defense, however in criminal law the defendant must demonstrate that the statement was made for the public good in addition to being accurate. Even if the defendant had malevolent intents, he may still raise this defense. However, in order to use the defense of truth, the defendant must be able to demonstrate the veracity of the facts. In the case of **Radheshyam Tiwari v. Eknath**, the defendant was a newspaper editor who wrote a number of pieces that defamed the plaintiff by claiming that she was a corrupt official, had committed sexual crimes, and accepted bribes.

Even though the defendant denied the accusations, he was unable to provide evidence to support his claims, thus he was ordered to pay the victim's expenses and apologize. A woman filed a complaint against an advocate in *Salena Dandasi v. Gajjala Malla Reddy and Ors.*, alleging that he had sexually assaulted her. A newspaper carried this as a news story. The

advocate was described as sleazy and as an advocate for injustice by the press. It misrepresented the facts and made the implication that the advocate is not worthy of residing in the nation. The newspaper was unable to substantiate the information it published, thus the court determined that defamation had occurred. News organizations are obligated to provide true and accurate information. In order to raise the defense of justification in a defamatory matter containing two or more distinct allegations that cause harm to the plaintiff's reputation, the defendant must establish the veracity of each and every charge.

FAIR COMMENT

If the published defamatory statement is an expression of opinion that can be logically deduced from accurate facts and is made in the public interest, the defendant may raise the defense of fair comment. To support a fair comment, it is imperative to provide evidence that the statement is an opinion based on facts that the audience is aware of while reading the statement. An opinion will be regarded as a declaration of fact rather than a comment if it cannot be rationally inferred from the facts discussed. Additionally, the statement must be supported by true facts; otherwise, the defendant risks being found guilty of defamation. If the facts support the opinion and are largely true, even though some of the facts may not be proven, then the defense of fair comment may be used. "Any person is entitled to say, by way of comment on a matter of public interest, what he honestly thinks, however exaggerated, obstinate or prejudiced that may be," the court determined in *Silkin v. Beaverbook Newspapers Ltd.* "Such comment is fair and sustainable as a defence to a libel action unless it is so strong that no fair-minded person could have made it honestly." Therefore, if the defendant genuinely believes a certain way, the comment is deemed fair. A comment loses its fairness if it is uttered with the intention of harming the plaintiff. "The topic of discussion must be relevant to the general audience. An issue pertaining to public health and safety, the environment, the economy, or community well-being, government, a public figure, or a good, product, or service available in the market is considered to be of public interest.

PRIVILEGE

When the right to free speech is more important than the right to reputation, the law will sometimes accept words made that are defamatory as being made under privilege. Absolute privilege and qualified privilege are the two categories of privilege.

ABSOLUTE PRIVILEGE:

Whether untrue or malicious, defamatory remarks are immune from legal action under the doctrine of absolute privilege. Since the subject of these remarks pertains to the public interest, they are protected by the right to free expression.

PARLIAMENTARY PROCEEDINGS:

The defence of absolute privilege protects, throughout the course of Parliamentary proceedings, defamatory remarks made by members of Parliament, whether in writing or spoken, during either House of Parliament. In a same vein, statements made by members of State Legislations during the body's sessions are completely shielded by absolute privilege.

JUDICIAL PROCEEDINGS:

During the course of a case or trial before a court or other legally recognized body, judges, attorneys, witnesses, and parties are not held accountable for whatever they say or write. Nonetheless, the defence of absolute privilege will not be available to a witness or counsel if they make a defamatory statement unrelated to the subject of the investigation. The case of **Jiwan Mal v. Lachhman Das** involved a defamatory statement made by the defendant, who was unrelated to the plaintiff, in a trial court matter. Following a defamation lawsuit from the plaintiff, the defendant asserted absolute privilege as a defense.

The defendant was held accountable by the Lahore High Court because they could not raise the defense of absolute privilege because the plaintiff was not involved in the lawsuit. An individual is protected by absolute privilege if they make a statement to the police that they would affirm in court if testified under oath. A Karnataka High Court ruling in the matter of **V. Narayana Bhat v. E. Subbanna Bhatt** held that the defendant could not be held accountable for defamation even if he had falsely reported the plaintiff to the police since his complaint was shielded by absolute privilege. Absolute privilege protects statements, communications, and reports made by government offices or military officers to one another while they are doing official duties from being falsely accused of defamation.

QUALIFIED PRIVILEGE:

A person may assert qualified privilege as a defense if they make a defamatory statement in

good faith during a private event. In contrast to absolute privilege, the qualified privilege defense requires the defendant to establish two things.

The statement should be made on a privileged occasion:

It is appropriate to make the announcement on a special occasion. The fulfillment of a responsibility or the defense of an interest is referred to as a privileged occasion. A defamatory comment made in the course of carrying out a lawful, social, or moral obligation and without malice is protected under qualified privilege defense. It is necessary for the individual receiving the information to be interested in it. It is necessary to demonstrate a duty to the public if defamatory content has been broadcast on television or in newspapers. In **R.K. Karanjia v. Thackersey**, the Bombay High Court held that if the person communicating the matter does not have a responsibility to communicate it, it cannot be regarded a privileged occasion, even if it is of public interest. The reciprocity of obligation or interest is necessary. This implies that there must be an interest or obligation in relation to the information for both the publisher and the recipient. Absolute privilege applies to reports of parliamentary proceedings that are published with permission from either house of the legislature. But qualified privilege may be invoked if these reports are released without the House's approval. It should be within the defendant's power to demonstrate that the reports were released in good faith and without malice.

The statement should be without malice:

The qualified privilege defense is inapplicable if there was malice present when the defamatory statement was made. Thus, it is crucial that the defendant has no malicious intent. This is justified by the idea that the defendant should only be permitted to invoke the defense under special circumstances. The occasion loses its privilege if the defendant utilizes it for any dishonest or deceptive purpose. In **Horrocks v. Lowe**, it was decided that the defendant might assert qualified privilege even if he had published a defamatory allegation about the plaintiff and he honestly believed the statement to be accurate. If the defendant is of the honest opinion, he has utilized the occasion to fulfil a duty or safeguard an interest, and as a result, the occasion is considered privileged, even if there is cause to suspect that he had malicious intentions.

FREEDOM OF PRESS

Press freedom is a sign of people's freedom within a nation. The Supreme Court of India ruled in **Pandit M.S.M. Sharma v. Sri Krishna Sinha** that press freedom is a necessary component of a free and democratic state, but that it must be balanced with acceptable constraints. The court declared, "Every free man has an undeniable right to lay sentiments before the public; to forbid this is to destroy the freedom of the Press; but he must take the consequences of his own temerity if he publishes what is improper, mischievous, or illegal." The defence of fair criticism allows for a range of negative remarks if the case's facts are reported truthfully. However, the publisher could be held accountable for defamation if the published material is inaccurate and has a defamatory intent. The Delhi High Court ruled that the defence of fair comment or privilege can be invoked even in cases where a fraudulent statement has been published, as in the case of *Sardar Charanjit Singh v. Arun Purie*. There should be some basis for the publicized statement.

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The Delhi High Court ruled that the defence of fair comment or privilege can be invoked even in cases where a fraudulent statement has been published, as in the case of *Sardar Charanjit Singh v. Arun Purie*. There should be some basis for the publicized statement. "There must be an equal balance between the freedom of the press and the reputation of the hurt parties." "There must be an equal balance between the freedom of the press and the reputation of the hurt parties."

FILING A CIVIL SUIT IN DEFAMATION

A person can bring a criminal case against someone who has damaged their reputation, or they can file a civil lawsuit. Section 19 of the Civil Procedure Code, 1908 (CPC) permits the filing of a civil suit for any civil wrong committed against an individual. It does not, however, specifically mention defamation; yet, as stated by the tort law, defamation is a civil wrong that occurs when someone's private rights are violated. It is common knowledge that India does not have a codified tort law, and as a result, there is no set process for bringing a civil complaint for damages. The compensation is decided by the judge based largely on precedents with

comparable facts and circumstances, but also on the principles of equity, justice, and good conscience. Therefore, the following is the process for initiating a civil lawsuit:

- ☐ Order 7 of CPC mentions the filing of a civil suit and so a suit for defamation can be filed under this.
- ☐ The complaint can also be filed under Section 200 of the Code of Criminal Procedure, 1973.
- ☐ In civil cases, the parties to the suit are the plaintiff and the defendant.
- ☐ The cases that are of civil nature, must be filed in the civil courts.

PROCEDURE TO BE FOLLOWED

- ☐ The plaintiff files a formal plaint, or complaint, with the court, stating that all the material is true and providing the name, address, and type of individuals concerned.
- ☐ Depending on the circumstances of each case, a procedure charge of Rs. 25 and a necessary court cost of Rs. 10 must be paid.
- ☐ The hearing is the next stage. The court determines whether or not there is a substantial matter in the plaint on the first day of the hearing. A formal notice is delivered to the defendants if it does. The plaintiff has seven days from the date of notice to provide the necessary documentation and they are process fee and 2 copies of plaint.
- ☐ The following step is to submit written statements, which are done as soon as the parties obtain notice of the next appearance. It must include the defences made in response to the allegations and the defendants' own confirmation. The notification period is thirty days, but in extraordinary circumstances, you may have up to ninety days to submit it.
- ☐ The plaintiff must provide a replication, which is his answer to the defendant's written declaration. The pleading is considered finished at this point.
- ☐ The court then frames the issues, which is the following stage. Within fifteen days, the parties must file the list of witnesses. The parties may choose to summon the witness

directly, or if the court so decides, it may do so.

- ☐ The witnesses are cross-examined on a designated date, and the court sets the date of the final hearing.
- ☐ The court issues a certified copy of the final order as well as the order following the final hearing.
- ☐ The parties to the suit, if they are not satisfied with the order, have other options other than appeal, reference and review.

DEFAMATION AS CRIMINAL OFFENCE

Section 499 IPC defines slander as an offense. When someone is charged of defamation, they have to demonstrate that the remark was accurate and made with the best interests of the general public in mind. The part goes on to say that one must take into account the mens rea, or the intention of the person making the assertion. Defamation was defined as "any false statement about a man and his credits" in the Scott v. Simpson case (1882). Section 500 of the Indian Penal Code lays down the penalties for defamation offenses. The Section states that the following persons can be defamed:

- ☐ Memorial to a departed individual
- ☐ Any business, group, or kind of people
- ☐ Innuendo defamation, or any kind of indirect statement.
- ☐ Any statement that harms or lowers the moral or intellectual character of the person and also includes a remark on his caste.

INGREDIENTS

Section 499's components are as follows:

The dissemination of any remarks detrimental to an individual's image. An imputed amount expressed as:

- ☐ Words, whether spoken or written.
- ☐ Signs.
- ☐ Any representation that is visible.

Intention to harm the reputation of the person or the presence of *mens rea* to defame him.

EXCEPTIONS

Public interest

The conditions necessary for this exception are:

- ☐ True statement.
- ☐ Made for the public good.

Conduct of public servants

Purshottam Vijay v. State of Madhya Pradesh (1961) established the conditions required for the second and third exclusions under the clause, according to the High Court.

- ☐ The facts must be true.
- ☐ Fair comments.
- ☐ Criticism must be made in the good of the public.

REPORTS OF COURT PROCEEDINGS

According to this exemption, no statement made in a court hearing that is made public can be deemed defamatory. However, as was the case in Ananda Prasad v. Manotosan Roy (1953), the proceedings must be publicized regularly.

CONDUCT OF WITNESS AND MERITS OF PUBLIC PERFORMANCE

It implies that no one's actions during a judicial procedure may be considered defamatory, nor

can criticism of public performances or viewpoints on literature, art, or other media be considered defamatory.

CENSURE PASSED IN GOOD FAITH

The following acts of censure are included under this:

- ☐ Judge's censure of any witness's or officer's behavior.
- ☐ A subordinate of the department head.
- ☐ An instructor whose power came from the parents' criticism.
- ☐ A servant's censure by their master.
- ☐ The bank censured the cashier.

ACCUSATION IN GOOD FAITH

The definition of defamation includes any accusation made against an authorized individual acting in good faith. It is not required to provide evidence to support the claims or assertions, though.

CAUTION CONVEYED IN GOOD FAITH

Such caution must be exercised for the good of the person to whom it is addressed. Thus, the intention of the person conveying caution needs to be proved.

FILING OF CRIMINAL PROCEEDINGS

A person has the option to make a complaint in order to pursue criminal charges against the person who attempted to discredit him. The IPC's Section 499 will be used to charge the defendant. Section 156 of the 1973 Code of Criminal Procedure states that the police shall begin the investigation as soon as they receive the complaint and the magistrate's approval. Following the accused's presentation before him, the magistrate will preside over the trial and, after considering the facts and arguments presented by both sides, will sentence the accused. Section 500 of the Indian Penal Code stipulates that the punishment for defamation is two years

of simple imprisonment, a fine, or both. The Sessions Court has the authority to triage, set bail, and recognize the offense.

THE HISTORY OF DEFAMATION

Defamation law in the modern era has been characterized by an ongoing struggle between the right to free speech and the necessity to preserve people's reputations and privacy. Naturally, the passage of the Human Rights Act in 1998, which established formal rights to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), intensified this conflict. It is evident from the House of Lords' 1993 ruling in *Derbyshire County Council v. Times Newspapers* that "it is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism." Lord Keith made this statement. One inevitable consequence of the prospect of a defamation lawsuit is that free expression will be restricted. Consequently, the English legal system places a high value on the necessity to preserve a person's reputation. To keep our reputation from being damaged in the eyes of the more rational members of society, the law against defamation was established. First and foremost, it is important to determine if and to what degree this law complies with Article 10 of the ECHR. This analysis seeks to determine if the European Convention on Human Rights and the law on defamation are compatible. It will also be seen how, in its earlier iterations, English law fell short of fully recognizing the ECHR, but that began to change over time with the introduction of the Human Rights Act 1998 (HRA). One may view the HRA 1998's merger as a positive first step toward the two of them eventually coexist. But first, let's quickly review the definition of defamation law before delving into the impact of the ECHR and HRA 1998 and whether or not the proper balance has been found between defending an individual's reputation and their right to free speech. We recognize that the goal of English law is to safeguard a person's reputation, which, if damaged in the view of morally upright people, could give rise to a defamation lawsuit.

It's crucial to understand that there are two types of defamation, though. It might be a libel if the comment was made in a permanent way, like a wax sculpture. It should be emphasized that libel is both a tort and an actionable per se offense. Additionally, the assumption of damage in a libel suit is not considered a violation of Article 10 ECHR, according to the ruling in the case of *Jameel (Yusuf) v. Dow Jones*.

It should be remembered, according to the ruling in *Safeway Stores plc v. Tate*, that the likelihood of meaningful progress being made toward the protection of freedom of expression increases with the ease with which a claimant can prevail in a defamation action. According to *Hellwig v. Mitchell*, the second type of defamation is slander, which indicates that the remark was spoken orally or momentarily. In this case, the claimant must demonstrate special damages unless his claim is covered by one of three exclusions. Hence, in the end, a defamation action needs to demonstrate that the comment was so defamatory that it damaged the claimant's reputation among rational people *Sim v. Stretch* and exposed them to scorn or contempt, or that they were avoided or shunned. *Burchill versus Berkoff*. Assessing if the statement pertains to the claimant is the next stage. This does not require the claimant's name to be mentioned explicitly; a fictional character may be used as a point of reference. The next prerequisite is whether or not the statement was publicized; keep in mind that by publish, we mean that the claimant was not the only person to hear about it. The reasoning behind this rule is straightforward: the claimant's reputation in the eyes of others is what the law seeks to preserve, not his or her pride, so the defendant must publish the defamatory remark against the claimant. *Richardson v. Theaker*. Now that the main points of this conversation have been covered, let's examine how the Human Rights Act of 1998 and the European Convention on Human Rights have affected the defamation law. We examine the wording of the legislation since that is what the courts do, for the most part; let us examine Article 10 of the ECHR.

1. Everyone is entitled to the freedom of speech. This right includes the freedom to have beliefs, as well as the freedom to receive, transmit, and receive information and ideas without interference from the government or beyond national boundaries. States may still require licenses for broadcasting, television, and movie businesses
2. Since exercising these freedoms entails obligations, there may be formalities, requirements, limitations, or penalties that are mandated by law and essential to a democratic society, national security, territorial integrity, or public safety, disorder or crime prevention, health or moral protection, reputational or other rights protection, keeping confidential information private, or upholding the authority and impartiality of the judiciary.

Reading Article 10(2) of the ECHR makes it abundantly evident that the right to freedom of expression exists and is subject to attack. Through the HRA 1998, section 12 on freedom

of expression, the following is stated:

1. This clause is applicable if a court is debating whether to award any relief that could interfere with the exercise of the right to freedom of expression guaranteed by the Convention.
2. No such relief will be given unless the court is satisfied if the person against whom the application for relief is made (referred to as "the respondent") is not present nor represented.
 - a. that the applicant has taken all practicable steps to notify the respondent; or
 - b. that there are compelling reasons why the respondent should not be notified.

In the UK, the Human Rights Act of 1998 went into effect at the start of the twenty-first century. The HRA 1998's primary goal was to strengthen the freedoms and rights granted by the ECHR. Law committees issued recommendations. For instance, the Faulks Committee believed that the goal of defamation law was to balance the individual's right to protect his reputation with the public right to free speech. It is yet unclear if the existing law achieves the right balance and establishes equilibrium, and if so, to what degree. The case of *Tolstoy v United Kingdom* is a prime illustration of the balancing act the courts engage in. In this case, the plaintiff successfully persuaded the European Court of Human Rights that the £1.5 million in damages that the English jury had given him had violated his right to freedom of expression as guaranteed by Article 10 of the ECHR. It is important to highlight that although being a signatory to the Convention, the UK has not incorporated it into its constitution.

To support its ruling in *Derbyshire County Council v. Times Newspapers Ltd.*, the House of Lords attempted to apply common law principles to a broader definition of freedom of expression. It is clear that, notwithstanding the courts' correctness in denying the local government the ability to file a defamation lawsuit, the decision has a number of conceptual flaws that make it impossible to solve the issue of English law's incompatibility with the ECHR. It is interesting to note that Lord Keith believes public servants should be held to the same standards as private individuals; this is not only erroneous or deceptive, but it also violates Article 10. It should be mentioned that other countries, like Australia and Canada, have recognized the constitutional and tort law distinctions in defamation cases. Nonetheless, the

English courts continue to refuse to distinguish between political and private defamation, demonstrating the weaknesses in English law's inability to adequately strike a balance between the public's rights and the right to free speech.

LANDMARK JUDGEMENTS ON DEFAMATION

Knupffer v. London Express Newspaper Ltd. (1944)

FACTS:

The appellant in this instance belonged to a party. He was one of the twenty-four members living in England out of the 2000 total. The party was mentioned in a slanderous article that the respondents wrote. However, the appellant launched a defamation lawsuit against the publishing agency, claiming that the piece was a reference to him.

ISSUE:

Whether the respondents are liable for the defamation.

JUDGEMENT:

It was decided that an article cannot be interpreted as referring to a single individual when it makes reference to a sizable group of people or a class of persons. The reason for this is that it is extremely difficult to prove in a case like this whether or not the appellant was mentioned in the defamatory remark. As a result, the responders were exonerated.

T.V. Rama Subba Iyer v. A.M.A Mohindeen

FACTS:

In this instance, the defendants ran a story in their newspaper alleging that someone was smuggling drugs under the guise of agarbattis and exporting scented agarbattis to Ceylon, which is modern-day Sri Lanka. It added that the individual was detained and lived in Tirunelveli.

The plaintiff, who was from the same location as before, had a scented agarbattis business that exported goods to Ceylon. He lost money in his business as a result of this publication, and he

sued the defendant for defamation. The defendants argued that they had no desire to malign him, and the next day they amended the news story to remove any mention of the plaintiff.

ISSUE:

Whether there is any liability in India for a defamatory statement published without the intention to defame a person.

JUDGEMENT:

In rendering its decision, the Court cited the *Hulton and Co. v. Jones* case and concluded that, in India, statements made inadvertently are not subject to liability and, as such, the parties involved were not held accountable.

Cassidy v. Daily Mirror Newspapers Ltd. (1929)

FACTS:

In this instance, Mr. Cassidy, who was also occasionally referred to as Mr. Corrigan, was wed to a woman who was not his cohabiting spouse. "Mr. Corrigan, the owner of the race course, and Miss 'X's engagement has been announced," the defendants wrote in their newspaper. The woman, or Mr. Corrigan's wife, filed a libel lawsuit against the defendants, claiming that there was insinuation that he was not her spouse and that they had immoral cohabited. It was also demonstrated that as a result of such a publishing, some of their friends developed negative opinions.

ISSUE:

Whether the defendants will be held liable.

JUDGEMENT:

The jury concluded that there was shown innuendo and that the statement's purpose was defamatory. The accused were found guilty and did not have the option of claiming innocence.

Ram Jethmalani v. Subramanian Swamy (2006)

FACTS:

A commission was established in this instance to look into the details surrounding the assassination of the late Shri Rajiv Gandhi. At a news conference, the accused stated that the Chief Minister of Tamil Nadu has previous knowledge of the matter. The plaintiff cross-examined the defendant after being appointed senior counsel to the then-Chief Minister. The defendant claimed in a written submission submitted during the trial that the plaintiff had stolen money from the LTTE, an illegal organization. The plaintiff filed a lawsuit on the grounds that this statement looked to be defamatory.

ISSUE:

Whether the defendant is held liable.

JUDGEMENT:

The plaintiff's comment, according to the court, is unrelated to the case and immaterial. This demonstrated the defendant's malice, and the court found him responsible for defamation and awarded the plaintiff damages of Rs. 5 lacs.

CONCLUSION

Upon examining every significant facet of defamation as outlined in section 499 IPC, we have determined that the fundamental component of defamation is the harm done to an individual's reputation. And he has every right to sue the defendants for this injury. Libel and slander are the two categories of defamation. In India, both are regarded as criminal acts. This does have some exceptions, which are referred to as privileges. A civil wrong known as defamation occurs when someone's individual rights are violated. Defamation remedies include civil remedies wherein the plaintiff receives damages, or criminal remedies wherein the accused faces up to two years of simple imprisonment, a fine, or both. A defamation case may be brought before a magistrate, who will then order police investigators to begin an investigation and set up a criminal trial. According to Section 19 of the CPC, the plaintiff must file the plaint in the civil court in order to initiate a civil litigation. In this manner, a defamation lawsuit might be brought in the nation.

The goal of the defamation legislation is to shield persons from having their reputations damaged by untrue claims made against them. Since people can voice their opinions and make factual comments, it still complies with the right to freedom of speech and expression. This

field of law aims to shield someone's reputation from harm by prohibiting derogatory remarks. In a number of rulings, the supreme court has declared that while the scope of freedom of speech and expression is "sacrosanct," it is not "absolute." Additionally, it stated that a person's right to reputation is protected by Article 21 and cannot be infringed upon at the expense of another person's freedom of speech.