
CRITICAL ANALYSIS OF DEFAMATION JURISPRUDENCE IN INDIA

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ABSTRACT

Defamation according to law is, causing harm to someone's reputations by fake allegations against that person. It is a statement that injures a person's reputation. Defamation is covered by tort law in civil law and it is covered under section 499 to 502 of the Indian Penal Code, 1860. It is a punishable offence up to two years in jail or fine under section 502 of the Indian Penal Code. Any false intentional communication it can be either written or spoken that harms a person's reputation, decreases the respect, confidence and regard. Every individual has a right to possess a flawless reputation and a good, prestigious name which shall be recognized in the society. Reputation is also based on the thoughts and opinions of what other person talks about such individual, and if a person intentionally makes a false statement which results in disregard and harm's a person's reputation then the person against whom the statement is made can file a case under defamation. Defamation comes under both Criminal wrong and Civil wrong. Also, legality of defamation is a great topic of discussion as in India it is criminalized in the Indian Penal Code and Constitution. We will discuss further about it in detail with certain case laws.

Introduction

Defamation which is refer to destroying the reputation of a person or organization, it can be either written or spoken which is known as libel and slander respectively. The history of defamation can be easily traced in Roman and German law. Earlier insults were punished by cutting out the tongue in German and English law. In India, defamation can be both a Civil or a Criminal wrong\offence. Criminal defamation is an act of defaming or offending a person by committing a crime or an offence, it is stated in the Indian Penal Code as a criminal wrong. Civil defamation is not a criminal offence but one can sue the person on account of civil defamation to get a legal compensation, it is stated under law of torts as a civil wrong. Every individual has a right to protect his\her reputation and keep it preserved and unharmed, reputation is the most valuable thing than any other tangible asset and when a certain person is defamed then his\her basic rights are also violated. There are two types of defamation which is slander (spoken) and libel (written). Slander which means when a defamatory statement is made against the person in form of a speech which is audible to the public, it is a defamation which is in a transient form of speech or by gestures, and it is only actionable when the alleged person has sufficient evidence to file a petition in court and can claim damages in form of compensation. Libel which is caused in a permanent form i.e., written or printed, can be defined as the permanent proclamation of defamatory and false statements, it is actionable and can be presented as evidence in the court. Slander and Libel both are considered as a criminal offence under section 499 of Indian Penal Code (IPC).

Essentials of Defamation

1. The words must be false and defamatory

The words which are being said by the person against another person, should be false and incorrect, and must said in a defamatory way. Now lets further read about a famous case law:

South India Railway Co. Vs. Ramakrishna (1890)

In this case a ticket checker of railway suspected the plaintiff is travelling illegally in the train i.e. without ticket but the ticket checker was wrong as the plaintiff had the ticket with him so later the plaintiff sued him for defamation. The court held that it was bona fide as it was his duty to ask for

identity proof and other documents, so there is no defamation in this case as he also has not published any defamatory statement against him.

Ram Jethmalani Vs. Subramaniam Swamy [AIR 2006 Delhi 300, 126 (2006) DLT 535]

In this case, Subramaniam Swamy (defendant) accused the then CM of Tamil Nadu Ms. Jayalalitha that she had earlier information about the attack identifying the death of Rajiv Gandhi, and that she had association with Liberation Tigers of Tamil Eelam (LTTE). So then, Ram Jethmalani (petitioner) drew in as a senior advice to speak to the CM. Then the petitioner cross examined the defendant, to which the defendant said something against Ram Jethmalani. Subramaniam Swamy made a defamatory statement that he has two spouses which was not applicable in any matter. Later, the defendant in one his written concluding argument accused Ram Jethmalani that he is getting cash from the LTTE which is being deposited in his son's account in CITIBANK, New York. To which the court held that, the statement made by the defendant was prima facie defamatory, and this has also harmed the image of the plaintiff at large and such allegation has further destroyed his personal and political reputation, as LTTE which is a banned organization and connecting someone's name to it is a loss of reputation for that person. Also, compensation of Rs. 5 lacs awarded in favor of the plaintiff.

2. Statement must refer to the plaintiff

In action for defamation, the plaintiff has to prove that the statement, which he claims defamatory should refer to him or must be made against him.

T.V. Ramasubha Iyer Vs. A.M.A Mohideen AIR 1972 Mad 398

In this case the defendant published a defamatory statement without any intention to defame the plaintiff. The statement was related to a particular person who was carrying on a business of agarbattis to Ceylon and has been arrested for the offence of smuggling. The plaintiff was also carrying on similar business and as a result of this statement his reputation was also nearly damaged.

Harsh Mendiratta Vs. Maharaj Singh 95 (2002) DLT 78

In this case the plaintiff filed a case of defamation saying that the defendants act has been defamatory towards her husband. To which the Delhi High Court dismissed the suit and said that no defamation has taken place and further stated that an action for defamation was maintainable only by the person who is being defamed and not by his family, friends or relatives.

3. Statement must be published

This means that the defamatory statement\matter must be known to some other person rather just than the person defamed. So public should know about the publication through which a person is being defamed.

Mahender Ram Vs. Harnandan Prasad AIR 1958 Pat 445

In this case a defamatory letter was received by the plaintiff which was written in Urdu and the plaintiff doesn't know Urdu, so he asks another person to read it. So, in this case the court held that it is not defamation unless it was proved that when the defendant was writing the letter, he knew that Urdu was not known to the plaintiff.

So, as we all know that in India defamation is of two types civil and criminal, in civil defamation we can only claim damages, whereas in criminal punishment is given in the Indian Penal Code under sections 499 and 500. The section 499 tells us about the meaning of defamation and also defines the 10 exceptions of defamation under which an individual cannot be charged for defamation if they fulfill any of those 10 exceptions. The punishment for anyone who found guilty of making a defamatory statement is there given section 500.

Ten Exceptions which are given under section 499 of the Indian Penal Code

1. Suggestion of truth for public good: here, any suggestion made by anyone which is true with respect to another person and if it is for public good then this shall not fall under defamation.
2. Public conduct of public servants: if any good faith any opinion is made with respect to the conduct of a public servant regarding their performance of their public duties, shall not be deemed as defamation.

3. Conduct of any person touching any public question: in good faith, any view related to the conduct of any individual stirring any public question, respecting their character is no defamation.
4. Publishing reports of court proceedings: if any substantially true report of any court or the result of such proceedings is being published then this shall also not be considered as defamation.
5. Stating views decided by court: if any view is expressed with respect to any case, that has been decided by the court, respecting the character of such individual is no defamation.
6. Merits of public performance: if in good faith, any view regarding the merits of any performance is expressed, is also no defamation.
7. Censure passed in good faith by person having legal authority over another: if a person has legal authority over another, either by a legal contract or granted by law, any such criticism can be passed in good faith on the other person's conduct with respect to matters that is related to that legal authority, is not defamation.
8. Accusation placed in good faith to authorized individual: if an accusation is made against any person, who have legal authority over that individual with respect to the subject matter or accusation, does not consider as defamation.
9. Claim made in good faith by person to protect their or other's interests: if a claim is made in good faith to protect the interests of the person who is making the claim or even for public welfare, on the character of another person, shall not be deemed as defamation.
10. Caution intended for welfare of person to whom it is conveyed or for public welfare: conveying a caution, for the welfare of the individual, is no defamation.

Defamation which is considered as a valued asset for an individual, is also antithetical to fame, reputation and public image which is earned by a person in his\her lifetime. The courts have rightly balanced the freedom of speech, expression with reasonable restriction to that of the right to life with dignity for an individual, is equally important with no less value in public life. Also, it's the

brilliance, collaborative and collective wisdom of our institutions that has now upheld the principles guaranteeing the rights, and ensuring progress, righteousness and continuity with balance by ensuring justice. Let's, discuss one more important case law under defamation:

D.P. Choudhary Vs. Manjulata AIR 1997 Raj 170

So, in this case a defamatory news was published against Manjulata, a 17-year-old girl at that time. A news article was printed on 18th December 1997, with nasty statements and misleading imputations claiming that she had eloped with her lover named Kamlesh, which was false as she went out with the purpose of attending extra classes at her college. So, the news article was completely false and in result it had led to defamation against Manjulata including her family. Later, Manjulata was rewarded with damages of Rs. 10,000.

We all are well aware of our certain fundamental rights given to us under the Constitution of India, such as Right to Freedom of Speech and Expression [Article 19(1)] and many more. So, as it is stated in Article 19(1) that it is our fundamental right, but certain restrictions are also given there, which is ignored by many of us and as we have freedom of speech, we can speak anything, anywhere. Certain reasonable restrictions and limits are given. Contempt of court, defamation and incitement to offence are certain things which are not allowed under right to freedom. Also, freedom to express need not and should not annihilate the right to life with reputation and dignity. We should keep in mind this thing and before making a defamatory statement against anybody we should also think about the consequences as it is also considered as a criminal offence in India. Harming one's reputation is really a big crime in our society, reputation which needs a lot of effort and hard work, is the most important thing for a person and hurting someone's reputation can also hurt their sentiments badly, also let's not forget that one can get punished for defamation under tort law in India. A man's reputation is the thing he\she loves the most and if it is getting destroyed by actions or words of someone else then it is not tolerable. Because it nearly take's a whole life to build our reputation and no one can listen against their reputation, harming someone's reputation is basically a kind of character assassination. So, one should keep this in mind and act, should make a statement against another person responsibly, not hurting his reputations and sentiments as well.