

DEFAMATION

- Defamation can be defined as an injury to reputation of a person without lawful excuse.
 - **Winfield-** “Publication of statement which tends to lower a person in the estimation of right-thinking members of society generally or which makes them shun or avoid that person”
 - *“A man’s reputation is his property, and if, possible, more valuable, than other property”.* – **Dixon v Holden (1869)**
 - Defamation is both a **civil and criminal wrong**. A person can institute criminal proceedings against the writer or the publisher or he can sue him in a civil action for damages in tort for the injury he has suffered.
 - Law of defamation creates a balance between freedom of speech and right to the reputation of another person. It is a reasonable restriction for the freedom of speech under **Article 19 (2)** of constitution of India.
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- In English law, the defamation is of following two kinds:
- 1. Libel:** It is a publication of a false and defamatory statement in some permanent form tending to injure the reputation of another person without lawful justification or excuse. It must be in some permanent and visible form such as writing, print, pictures, effigies or even by means of Cinema film for gramophone record
- CASE-** **Yousoupoff v Metro-Goldwyn- Mayer Pictures Ltd (1934)** where the defendants made a film which falsely imputed that the plaintiff had been raped or seduced. The defamatory matter was in pictorial (as opposed to soundtrack) part of the picture and was held as libel. The judge in the case,

Slessor Lord Judge referred it to a permanent matter capable of being seen by the eye.

- 2. Slander:** it is a false and defamatory verbal or oral statement in transitory form intending to injure the reputation of another without lawful jurisdiction or excuse. Slander is the publication defamatory statement in a transient form, whether visible or audible, such as gestures or in articulate but significant sound.
- ✓ If defamatory words are uttered with an intention that they shall be recorded in a permanent form it will amount to be libel

<u>Sr.no</u>	<u>Libel</u>	<u>Slander</u>
1.	It is addressed to the <u>eyes</u> .	It is addressed to the <u>ears</u> .
2.	The defamatory statement is made in some <u>permanent</u> and visible form, such as writing, printing, pictures and effigies.	The defamatory statement is made by spoken words or some other <u>transitory form</u> , whether visible or audible, such as gestures, hissing or such other things.
3.	It is an actionable tort as well as a criminal offence.	It is a civil injury only and not a criminal offence except in certain cases.
4.	It is actionable <i>per se</i> (in itself) i.e., without proof of actual damage.	It is actionable only on proof of actual damage.

- But in India, any such distinction has not been made with respect to kind of Defamation. All kinds of defamation are treated alike and are offence under **section 499 and 500 of the Indian Penal Code.**

- **ESSENTIALS OF DEFAMATION IN TORTS**

1. The words must be defamatory.

- ✓ Whether the statement is defamatory or not depends on the factor that includes whether the right thinking man of the society construes it as defamatory or not and also whether those words are actually lowering the reputation or not.
- ✓ The words should be such that if published, it will lower his reputation, expose him to hatred and ridicule him. Any intention to defame is not necessary to establish defamation. It is no defence to say that such a statement was not intended to be defamatory.
- ✓ **South India Railway Co. v Ramakrishna I.L.R (1890)**- The railway guard, while checking the tickets and calling upon the plaintiff to produce his ticket said to him in the presence of the other passengers, “ I suspect you are travelling with a wrong (or false) ticket. “ The plaintiff produced the ticket and it was in order. Held that the words spoken by the guards were spoken bona fide and under the circumstances of the case there was no defamation.
- ✓ Even if the statement prima facie is not defamatory and there is **latent meaning** hidden which is defamatory, it is a case of innuendo and a case of defamation can be filed.
- ✓ **Innuendo**- Sometimes the statements may prima facie be innocent but because of some latent or secondary meaning it may be considered to be defamatory. The statement that a lady has given birth to a child is defamatory when the lady is unmarried.
- ✓ **Cassidy v Daily Mirror Newspapers Ltd. (1929)** - Mr. Cassidy did not live with his lawful wife (Mrs. Cassidy) but occasionally came and stayed with her at her flat. The defendants published in their newspaper a photograph of Mr. Cassidy and Miss ‘X’ with the words “ Mr. M. Cassidy, the race house owner, and Miss ‘ X’ whose engagement has been announced. “Mrs. Cassidy sued the defendant for libel alleging that the innuendo was that Mr. Cassidy was not her husband and he lived with her in immoral cohabitation. Held that the innuendo was established.

- ✓ **Tolley v Fry & Sons Ltd (1931)** - The defendants advertised their chocolate with a caricature (cartoon) of the claimant, who was a famous golfer, showing him with the defendants' chocolate in his pockets while playing golf. The advertisement compared the quality of chocolate with the golfer. The claimant did not consent to or knew about the advertisement; he contended in court that the use of his image made him look someone who prostituted his reputation for advertising purposes and was thus unworthy of his status. (Advertisement by celebrities was not that common in those day). So This was held to be defamation

2. The word must refer to the plaintiff.

- ✓ The plaintiff has to prove that the defamatory words were referred to him. if publication of Defamatory statement refers to plaintiff then the defendant is made liable
- ✓ It is immaterial if the defendant pleads that he didn't intend to defame the plaintiff.
- ✓ **Halton & Co. v Jones (1910)** - A newspaper published an article [fictional] in their newspaper by which imputations were cast on the morals of a fictitious person. A real person of the same name brought an action against the defendant for libel. The defendant was held liable. The principle in this case that liability for libel does not depend on the intention of the defendant but on the facts of defamation
- ✓ For such situation the defendant must prove:
 - a) That the words which had been published by him were published innocently, and
 - b) That as soon as he came to know that these words published by him resulted in the defamation of the Plaintiff, an offer of amends (a suitable correction and an apology) was made
- ✓ **Defamation of a class of person**- Defamation is an injury to a man's reputation, which is a right in rem by its very nature, reputation is that of an

individual and not a class of persons. If a man wrote that all lawyers were thieves, no particular lawyer could sue him.

- ✓ **Defamation of the deceased**- Defaming a deceased person is no tort. Under criminal law, 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/other near relatives (Sec. 499, Indian Penal Code).

3. The words must be published.

- ✓ It simply means that the words of defamation referring to the plaintiff must be made known to at least one person other than the person defamed. If the defendant has said some defamatory words to the plaintiff only, it does not qualify as defamation because defamation is an injury to reputation and reputation is what others think of you and not a man's own opinion about himself.
- ✓ **T J Ponnem v M.C. Verghese (1970)** - Husband wrote a letter to the wife containing a defamatory matter about the father-in-law (wife's father). His wife had passed on those letters to her father (M.C. Verghese) and the father sued the defendant. The husband (Ponnem) contended that the letters addressed by him to his wife are not admissible in evidence by virtue of Sec. 122, Evidence Act. It was held that the husband is liable for defamation but the defamatory statement has to be proved from evidence other than of the wife.
- ✓ If a third person wrongfully read a letter meant for plaintiff and gets to know the defamatory statement then it is no Publication in eyes of law. [**Huth Vs. Huth**] but in case the defamatory letter is likely to be read by someone else then it will amount to Publication.

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- ✓ **Defences to defamation**

- ✓ Following defences are available for Defamation.
 - (i) Justification or Truth
 - (ii) Fair comment
 - (iii) Privilege

I. Justification or Truth

- ✓ If the defendant is able to prove that statement made by him but true then it will be a complete defence
- ✓ The defence is available even though the publication was made maliciously.
- ✓ **Radheyshyam Tewari v Eknath (1985)** The defendant who was editor printer and publisher of a newspaper published a series of articles against the plaintiff, a Block Development Officer, Alleging that the plaintiff had issued false certificates, accepted bribe and adopted illegal mans in various matters. In an action for defamation, the defendant could not prove that the facts published by him were true and therefore, he was held liable.

II. Fair Comment

- ✓ following are the essentials of fair comment
 - (i) **It must be a comment that is an expression of opinion rather than assertion of facts**
 - (ii) **The comment must be fair-** fair comment means to critically analyze the facts, it is appreciation of facts. To be fair the analysis of facts must be honest and relevant a comment cannot be fair when it is based upon untrue facts[**Tushar Kanti Ghosh vs. Bina Bhowmik 1953**]
 - (iii) **The matter commented upon must be of public interest-** further, the comment must be 'fair' i.e. Without malice and must be in public interest. 'Public interest' means matters relating to administration of government departments, public companies. Public institution and local authorities, public meetings, pictures, theatres, public entertainments, text books, novels, etc.'

- ✓ **McQuire vs. Westren Morning News Co. (1903)**- The comments in question was “ A three act musical absurdity, written and composed by T.C. McQuire is composed of nothing but nonsense of a not very humorous character, whilst the music is far from attractive. “Held that the words may be fairly called criticism
- ✓ **Tushar Kanti Ghash v Bina Bhowmic (1953)**- The Amrit Bazar Patrika Published a news item which contained statement like ‘day light robbery’ which were factually incorrect as they were untrue statement of fact, the defence of fair comment was defeated. Therefore, Comment can’t be fair when it is based upon untrue facts.

III. Privilege

- ✓ The law recognizes that the right of free speech outweighs the plaintiff’s right to reputation on certain occasions. Such occasion are treated as ‘privilege’ by the law. It is of two types:
 - (i) **Absolute**- NO action lies for the defamatory statement even though the statement is **false or has been made maliciously**. It is recognized in ‘Parliamentary proceedings’, judicial proceedings’, and state communications **[Article 105,194]**
 - ✓ In general, absolute privilege exempts persons from liability for potentially defamatory statements made:
 - a) During judicial proceedings
 - b) By high government officials
 - c) By legislators during legislative debates
 - d) During political broadcasts or speeches, and
 - e) In between spouses
 - (ii) **Qualified** – It is usually used in cases where the person communicating the statement has a legal, moral, or social duty to make it”.
- ✓ The person has to show that he has made the statement in good faith, believing it to be true and that the statements were made without malice.

- ✓ One example of qualified privilege is the immunity of members of the press from defamation charges for statements made in the press in good faith unless it can be proven that they were made with malice.
- ✓ Some of the statements for which a qualified privilege applies are
 - a) statements made in governmental reports of official proceedings
 - b) statements made by lower government officials such members of town or local boards
 - c) citizen testimony during legislative proceedings
 - d) statements made in self-defense or to warn others about a harm or danger
 - e) certain types of statements made by a former employer to a potential employer regarding the employee, and
 - f) published book or film reviews that constitute fair criticism

- ✓ **RK Karanjia versus Thackersey 1970** an article was published in Blitz, an English weekly making attack directed against the 'House of Thackersey' Business organization. The action for defamation was brought against R K Karanjia, the editor of Blitz Weekly, owners of the newspaper, printers and the persons who furnish the material for article. The high court rejected the defence of qualified privilege as:-
 - a) The element of duty in communicating the statement was missing
 - b) That the article was published maliciously, not with the idea to serve public interest but with a view to expose the plaintiff , as on earlier occasion made the editor to apologize for publishing a defamatory article

- ✓ **Ram Jethmalani v/s Subramaniam Swamy 2006**
 The case was filled by Ram Jethmalani against Subramaniam Swamy, asserting the charges of defamation on him. Subramaniam Swamy issued a couple of disagreeable remarks throughout procedures of a case under Justice M.C. Jain Commission of Inquiry, which was constituted under Commission of Inquiry act 1952. These procedures were going on for that inquiry in the assassination of Late

Prime Minister Rajiv Gandhi, in which Ms. Jayalalitha's summon to the court was being mulled over in the court. Ram Jethmalani was going about as counsel for Jayalalitha against whom there were charges of linkage with LTTE. Over the span of continuing Subramaniam Swamy additionally purportedly put forth defamatory expressions about RamJethmalani. Consequently Ram Jethmalani sued Subramaniam Swamy for remuneration of 50 lacs. The judgment was given in support or Ram Jethmalani with compensation of 5 lacs. This case sets a good precedent where malice statements are given and privilege are claimed but claim is not reasonable to be applied as it was beyond its power.