

## EFFECT OF DEFAMATION ON LEGISLATIVE BODIES UNDER CRIMINAL CODE

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### ABSTRACT

The present article concerns itself with the relationship between defamation and negligence in the protection of the interest in reputation. The bijection between defamation and reputation is typically thought of as perfect: defamation only protects reputation, while reputation is only protected by defamation. This article shows, however, that neither limb of the proposition is true; furthermore, there is no principled ground why they should be. In particular, there is no reason why the tort of negligence could not prima facie extend the scope of its protection to reputation. It might seem that the fact that negligence, as a tort, requires by construction *culpa*, whereas defamation appears to rely on either more or less than that as a standard of liability, would prove an insuperable stumbling-block in the way of this suggestion. The hurdle, however, is not nearly as formidable as it might appear at first, because, as this article documents, negligence has for more than a century been acting as a magnet on the law of defamation, surreptitiously bringing its standard of liability increasingly close to negligence-*culpa*.

The law of defamation contemplates the clash of two fundamental rights: the right to freedom of expression and the right to reputation. The rules of defamation law are designed to mediate between these two rights. The central proposition that this book makes is that defamation law needs to be reformed to balance the conflicting rights. This discussion flows from a theoretical analysis of the rights in issue; the value underlying the right to reputation that has most resonance is human dignity, while the value that is most apposite to freedom of

expression in this context is the argument that free speech is integral to democracy. The argument from democracy emphasizes that speech on matters of public interest should receive greater protection than private speech.

**KEYWORDS:** Defamation, reputation, to injure, committe

## INTRODUCTION

A man's reputation is his property and is more valuable than any other tangible asset. Every man has the right to have his reputation preserved inviolate. This right of reputation is acknowledged as an inherent personal right of every person as part of the personal security<sup>1</sup>. It is a jus in rem,<sup>2</sup> a right good against the entire world. A man's reputation is his property more valuable than other property.<sup>3</sup> Indeed, if we reflect on the degree of suffering occasioned by loss of character, and compares it with that occasioned by loss of property; the amount of the former injury far exceeds that of the latter.<sup>4</sup> The term defamation has been defined by many jurists and in many laws. Some of the definitions are: Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him.<sup>5</sup> Defamation is the injury to the reputation of 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.<sup>6</sup>

As per the Definition contained in the Section 499 of IPC, "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 excepted, do defame that person"

According to Black's Law Dictionary, Defamation is "The act of tendering the reputation of another by making a false statement to the third person."<sup>7</sup>

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<sup>1</sup> Blackstones Commentary of the Laws of England, Vol. 1 (IV Edition), p. 101

<sup>2</sup> Jus in rem- right to a thing

<sup>3</sup> Dixon v. Holden, (1869) LR 7 Eq 488

<sup>4</sup> De Crespigny v. Weslley, (1829) 5 Bing 392

<sup>5</sup> Ayesha, The Tort Of Defamation, <http://jurisonline.in/2010/10/the-tort-of-defamation-an-analysis-of-the-law-in-india-and-the-united-kingdom/>, Accessed on 31<sup>st</sup> October, 2011

<sup>6</sup> Bangia, Dr. R.K., Kumar, Dr. Narendra Law of Torts, 20<sup>th</sup> Edition, Allahabad Law Agency, 2010, p. 183

<sup>7</sup> Garner, Bryan A. Black's Law Dictionary, 9<sup>th</sup> Edition, West Publications, p. 479

According to Winfield, “Defamation is the publication of a statement which tends to lowers a person in the estimation of right-thinking members of the society generally; or which tends to make them shun or avoid that person.”<sup>8</sup>

The laws of defamation provides for balancing of interests. The competing interest which has to be balanced against the interest which a person has in his reputation is the interest which every person has in freedom of speech. The Law of Defamation provides defences to the wrong such as truth and privilege thus also protecting right of freedom of speech but at the same time marking the boundaries within which<sup>9</sup> it may be limited. In India, tort law is obtained from British Common Law and is yet uncodified. Therefore the existing law relating to defamation places reasonable restrictions on the fundamental right of freedom of speech and expression conferred by Article 19(1) (a) of the Indian Constitution and is saved by clause (2) of Article 19.

### **OBJECTIVES**

1. To examine the concept of Defamation under the Indian Justice System.
2. To specifically evaluate the provisions of defamation of Higher dignitaries and public servants under CrPC.
3. To study case laws regarding the topic filed in the Supreme Court and in the various High Courts in India.

### **RESEARCH METHODOLOGY**

The researcher has followed the doctrinal method for research purposes. The present study is a descriptive and analytical study based on review of both primary and secondary sources. Primary source includes various Constitution, International Documents, Law reviews, law reports etc whereas secondary sources include books, literature, newspaper articles, journals, web pages, etc.

Books, case laws and other reference as guided by Faculty of CrPC have been primarily helpful in giving this project a firm structure. Websites, dictionaries and articles have also been referred.

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<sup>8</sup> P.H. Winfield, A Textbook of The Law of Tort, 5<sup>th</sup> Edition, 1950. P. 242.

<sup>9</sup> SERVAI, Constitutional Law of India, 3<sup>rd</sup> Edition, Vol. 1, p. 495; S.N.M. Abdi v. Prafulla K. Mahanta, AIR 2002 Gau 75, p. 76

## TYPES OF DEFAMATION

The wrong of defamation may be committed by making defamatory statements which are calculated to expose a person to hatred, contempt or ridicule, or to injure him in his trade, business, profession, calling or office, or to cause him to be shunned or avoided in society. This is known as “publication” of the statement, which in its true legal sense means the communication of defamatory matter to some person other than the person of whom it is written. These statements can be made in the following three ways:

**Libel:** The publication of a false and defamatory statement tending to injure the reputation of another person without lawful justification or excuse. The statement must be in a printed form, e.g., writing, printing, pictures, cartoons, statue, waxwork effigy etc.

**Slander:** A false and defamatory statement by spoken words and/or gestures tending to injure the reputation of others. It is in a transient form. It also involves the sign language used by the physically disabled.

A learned judge of MP High Court holds that there may be a hybrid type of defamation not falling within the recognized categories of libel and slander. In that case it was held that the bride groom and his father in refusing to take the bride to their home after marriage in full gaze of the guests committed the tort of defamation and damages could be awarded for loss of reputation.<sup>10</sup>

**Cyber Defamation:** Nowadays, there is a new kind of Defamation through the internet space. It is termed as cyber defamation. Internet provides us with a very cheap and a quick way of communication. It has made the world a close nit organisation. Also, with the growth of social networking sites like orkut, facebook, etc., lot of personal information is shared amongst many people therefore, the chances of defamation through internet has become a major threat in today’s world. Even if a single defamatory email is forwarded, it becomes very difficult to trace and stop its circulation. Any article published on a website is open for the entire world to read. The damage or losses caused to the victim is very huge especially if the imputation is intended to harm the business of an individual or a business entity. Cyber Defamation would fall in the category of Cyber Crime Law.

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<sup>10</sup> Noor Mohd. V. Mohd. Jiauddin, AIR 1992 MP 244, p. 249 (para 15)

## ESSENTIALS OF DEFAMATION

These are the essentials for proving defamation against the defendant in a case:-

**1. The statement (the technically correct term is “imputation”) is defamatory.**

Defamatory statement is one which tends to injure the reputation of the plaintiff. It is an imputation which exposes one to disgrace and humiliation, ridicule or contempt, is defamatory. It could be made in different ways as in it could be oral, in writing, printed or by the exhibition of a picture, effigy or statue or by some conduct.

However, words spoken in anger or annoyance or in the heat of the moment are not defamatory as they no way reflect on the character of the one being abused. However, sometimes the statement being used to defame may be prima facie innocent but becomes defamatory because of some latent or hidden meaning. In such a scenario the plaintiff must prove the hidden meaning, which is the innuendo if s/he wants to file a suit for defamation.

**2. It refers to the plaintiff i.e. identifies him.**

The plaintiff has to prove that the statement which is claimed to be defamatory actually refers to him/her. It is immaterial that the defendant did not intend to defame the plaintiff, if the person to whom the statement was published could reasonably infer that the statement referred to the plaintiff, the defendant is nevertheless liable. It is sufficient if he is described by the initial letter of his name, or even by a fictitious name provided he can satisfy the Court that he was the person referred to.<sup>11</sup> It is immaterial whether the defendant intended the defamatory statement to apply to the plaintiff, or knew of the plaintiff's existence, if the statement might reasonably be understood by those who knew the plaintiff to refer to him. When the words are considered to be defamatory by the persons to whom the statement is published, there is defamation, even though the person making the statement believed it to be innocent.

**3. It has been published i.e. communicated to at least one person other than the claimant.**

Publication means making the defamatory matter known to some other third party and unless that is done, no civil action for defamation can lie in court. Communication to the plaintiff won't count because defamation is injury to the reputation which consists in the estimation in which others hold him and not a man's own opinion of himself. However, if

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<sup>11</sup> Le Fanu v. Malcolmson, (1848) 1 HLC 637, 668.

a third party wrongfully intercepts and reads a letter sent to the plaintiff it is not defamation. However when the defendant knows that the letter is likely to be read by someone else and it contains some personal information only meant for the recipient, then he will be liable.

### **DEFENCES TO THE ACT OF DEFAMATION**

The defences to an action for defamation are:

1. **Justification by truth**
2. **A fair and bona fide comment on a matter of public interest**
3. **Privilege**
  - **Absolute Privilege**
    - (i) **Parliamentary Proceedings**
    - (ii) **Judicial Proceedings**
    - (iii) **Military and Naval proceedings**
    - (iv) **State Proceedings**
  - **Qualified Privilege**

### **DEFAMATION—PUBLIC OFFICIAL VS. PRIVATE PERSON**

The distinction between the rights of a private person and the privacy rights of a public person is significant when considering a defamation claim. People who remove themselves from the private arena by becoming a public official or public figure do not give up all rights to privacy. However, there are specific restrictions applied to defamation claims with regard to someone who holds public office or chooses to be in the public eye.

#### **The Public Arena**

According to many courts, a public official is a government employee who has, or appears to the public to have, a significant role in the business of government and public affairs. Such people are considered to be held in a position that would draw or even demand public scrutiny. They also are considered to have significant ability to defend themselves regarding such public scrutiny and therefore cannot claim defamation unless the statement is not only proven to be false, but the defamer is proven to have shown reckless disregard for that falsity. *New York Times Co. v. Sullivan*, 376 U.S. 254.

This rule also applies to public figures. Not all courts have not specifically defined “public figure,” but they do identify candidates for public office and people who have achieved pervasive fame or notoriety as fitting this description. *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967). A public figure could also be someone who voluntarily enters the public eye because of a particular public issue or controversy.

Courts have upheld this rule based on the U.S. belief that the public should be able to freely discuss national issues without fear of repercussions. If a public official or public figure believes that he or she has been defamed, he or she must prove with convincing evidence that the statement is false. The public official also must prove that the defamer showed reckless disregard for that falsity, either because the defamer knew the statement was false or should have known. *Herbert v. Lando*, 441 U.S. 153, 99 S.Ct. 1635, 60 L.Ed.2d 115 (1979).

It is important to note that while Court decisions regarding this rule have primarily addressed issues related to freedom of the press, the rule applies to any statement, whether made in a newspaper or to an acquaintance on the street. *Hutchinson v. Proxmire*, 443 U.S. 111, 133 n. 16, 99 S.Ct. 2675, 2687, 61 L.Ed.2d 411 (1979).

### **The Private Arena**

Private individuals who believe they have been defamed must prove that the defamer showed negligence in considering or confirming that a statement is false prior to publication, rather than the more stringent reckless disregard. This rule applies also to public officials or public figures relative to personal or private matters.

A claim must also show fault on the part of the defamer, although the specific standard can vary from state to state. *Gertz v. Robert Welch, Inc.*, (1974) 418 U.S. 323. The question of fault is considered in the following contexts:

1. The statement is published or conveyed in some way to a third party;
2. The material is false, although the publisher may have believed it to be true;
3. The material in the statement may be construed as defamatory based on other extrinsic facts;
4. The actual statement may be an error, or may have used a word with more than one meaning; and
5. The defamed person may not be named specifically, but is described.

In any of these instances, the issue of liability is based on whether, in the individual situation, a reasonable person would believe that the defamer should have known that the

statement would be seen by a third party, that the content was false, or that the described person was easily identifiable. If a reasonable person would take the time to research the truth or falsity of a statement or believe that a statement should be confirmed before publishing, the defamer will be held to the negligence standard.

***Negligence:*** Conduct that creates an unreasonable risk of harm based on behavior of a reasonable person in like circumstances.

Showing negligence as opposed to reckless disregard is the key difference between a defamation action relative to a public official/figure and a private person or matter. The burden of proof remains on the plaintiff.

## **DEFAMATION UNDER CRIMINAL PROCEDURE CODE**

### **Section 199**

No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence; Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners sought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Government of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

Every complaint referred to in Sub-Section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

No complaint under Sub-Section (2) shall be made by the Public Prosecutor except with the previous sanction—



- a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;
- b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;
- c) of the Central Government, in any other case.

No Court of Session shall take cognizance of an offence under Sub-Section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

The object underlying this provision is to save a public servant from the embarrassment in respect of a defamatory statement or publication made against him in the discharge of his public duties. Under this section, the Public Prosecutor can make a complaint, but that shall be with the previous sanction of the State Government, and upon such complaint being made the Court of Session has to take cognizance of the offence.

#### **LOCUS – STANDI FOR DEFAMATION CASES**

No court shall take cognizance of the offence except upon a complaint made by the person aggrieved as provided in section 199 of the Code of Criminal Procedure. This is so because the words “person aggrieved” does not mean “person defamed”. The words “person aggrieved” has a wider connotation than the words “person defamed”. Section 499 of the IPC provides that any person whose reputation has been damaged (or was intended to be damaged) by the material in question can sue for defamation. ‘Any person’ refers to a single individual, an association or collection of persons or a company.

In a case between *Maulik Kotak V State of Maharashtra*, it is held by Honourable Bombay High Court that complaint for defamation is to be lodged by person aggrieved and the person defamed and not by any other person, by substituting the aggrieved person, who was not defamed.

In *Kondala v. Andhra Pradesh State Road Transport Corporation* wherein it is observed "Though under the provisions of the Act, the State Government has some control, it cannot be said either legally or factually that the State Road Transport Corporation, which is

a body corporate having a perpetual succession and common seal, is a department of the State Govt."

In Public Prosecutor, *Angole v. A. H. Dara*<sup>12</sup> a learned single Judge of this court held that a Block Development Officer of a Panchayat Samithi a body corporate, is not a person who can be said to be employed in connection with the affairs of the State at the relevant time and therefore S. 199(2) is not attracted.

*In State of Punjab v. Raja Ram*, the Supreme Court held that the Food Corporation of India is an autonomous body capable of acquiring holding and disposing of property and having the power of contract, and is not a Government department. In *S. S. Dhanoa v. Delhi Municipality*, their Lordships of the Supreme Court held that "the term" 'corporation' is wide enough to include private corporations. But in the context of Cl.(12) of S. 21 of the Penal Code, the expression 'corporation' must be given a narrow legal connotation, and means a corporation created by the Legislature and not a body or society brought into existence by an act of a group of individuals." Their Lordships also observed :

"A Government employee working on deputation in a co-operative society, can by no stretch of imagination be said to be employed in connection with the affairs of the Union within the meaning of S. 199 Cr.P.C."

## **PERSONS LYING UNDER SEC 199(2) of CrPC**

### **Higher dignitaries and public servants**

1. the President of India,
2. the Vice-President of India,
3. the Government of a State,
4. the Administrator of a Union territory or
5. a Minister of the Union or of a State or of a Union territory,
6. or any other public servant employed in connection with the affairs of the Union or of a State

## **CASE STUDIES**

### **P.C. Joshi and Another Vs The State of Uttar Pradesh<sup>13</sup>**

The Public Prosecutor, Kanpur, filed a complaint in the Court of Session, Kanpur, charging the appellants with having published a news item which was false and defamatory of the

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<sup>12</sup> 199(2)0 Cri LJ 377

<sup>13</sup> 1961 AIR 387, 1961 SCR (2) 63

Chief Minister of Uttar Pradesh. The complaint complied with the requirements of s. 198-B, Code of Criminal Procedure. The appellants contended that the complaint should have complied with the requirements of s. 198-B of the Code also and, as it was not signed by the Chief Minister, the Sessions judge had no jurisdiction to entertain it. Held, that it was not necessary for the Chief Minister also to sign the complaint filed by the Public Prosecutor. The non obstante clause” notwithstanding anything contained in this Code” in sub s. (1) of s. 198-B Excludes the operation of the other provisions of the Code relating to initiation and trial of the offence of defamation, which provides that the provisions of s. 198-B shall be in addition to and not in derogation of s. 198-B merely preserves the right of the person defamed to file a complaint under s. 198-B. The two sections provide alternative remedies. The provisions relating to the award of compensation to the accused in case of false and frivolous or vexatious accusation do not affect this conclusion. Normally it is the public servant who moves the Government for taking proceedings and under subs. (5) he is required to be examined as a witness to support the prosecution, and it cannot be said that he has no concern with the lodging of a complaint under s. 198-B. *C. B. L. Bhatnagar v The State and R. Sankar v. The State*, disapproved.

At that time the provision regarding defamation of Higher authorities was Sec 198 CrPC, now it is Sec 199 of CrPC.

#### **Vijaykant v State of Tamil Nadu<sup>14</sup>**

The petitioner Thiru Vijaykant, Leader of Opposition in Tamil Nadu Legislative Assembly has filed three writ petitions, to challenge the sanction order passed by the Tamil Nadu Government, appointing Special Public Prosecutor to file complaint for offence of defamation against the him. Vijaykant was leader of opposition and he allegedly defamed the C.M. in his speeches in the assembly and outside. Court held the action of govt. valid as per Sec 199(2).

#### **Rajdeep Sardesai vs State of A.P. & Ors<sup>15</sup>**

CNN IBN conduct a program alleging an IPS officer to be involved in the fake encounter of a criminal named Sohrabuddin. The state initiated prosecution under sec 199(2). This was challenged in the Supreme Court. The court dismissed the appeal to quash the prosecution by the Public prosecutor for the state in favour of the IPS officer.

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<sup>14</sup> I.L.R. (2013) TN 195

<sup>15</sup> CRIMINAL APPEAL NO.857 OF 2012

**Nakkheeran Gopal's Case**

In case of Tamil Nadu-based editor and publisher, Nakkheeran Gopal, the Supreme Court stayed proceedings against him in 15 criminal defamation cases lodged in Chennai local courts. Validity of penal laws on defamation law and CrPC provisions were challenged in this case.

**Shamurailatpam Gopal Sharma vs Public Prosecutor<sup>16</sup>**

The chief minister of Manipur was defamed by a news paper for attending marriage ceremony. Proceedings were initiated against the regional news paper's editor under Sec 199(2) by the public prosecutor. He challenged the proceedings by filing petition in Supreme Court. The SC quashed the petition and held the proceedings valid as per Sec 199(2).

**SUGGESTION**

The law of defamation seeks to protect individual reputation. Its central problem is how to reconcile this purpose with the competing demands of free speech. Since both these interests are highly valued in our society, the former as perhaps the most dearly prized attribute of civilized human beings while the latter the very foundation of a democratic society. The apex court gave an interim time period of eight weeks to the petitioner within which they can challenge. For instance, in a progressive economy like India, is resorting to penal provisions justified especially in an era, where reformatory justice is replacing retributive justice. Besides the growing intolerance in the nation is another issue which might get a reason due to this judgement. In such situations, there becomes a need to shed one's inhibition and discuss viable solutions. One such proposition in this area would be the right to reply. Of course, this has been debated earlier. However, owing to the chilling effect which might be incumbent on the individual/organization; right to reply has just added on the scepticism. However, right to reply appears as a civilised manner to address matter rather than jumping on conclusions, convicting and seeking damages. The discussion brings us to the point that in cases of constitutional interpretation, the stakes become higher. It is easy to criticize rather than actually get into the depths of matter. Of course, a healthy criticism fosters creativity and growth. Nowadays, it is easy to have a critical approach rather than actually get into the skin of the matter. Also, it cannot be ignored that the judiciary tries its

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<sup>16</sup> (1999) 1 GLR 664

best to give a harmonious construction in such matters. As citizens, we too, have a responsibility– it is time to revisit ourselves.

## CONCLUSION

Conduct refers to persons behaviours department, mode of action, any positive or negative act (Black's Law Dictionary). Any imputation concerning any person intending harm or knowing or having reason to believe that such imputation will harm the reputation of such person relating to the conduct of such person in the discharge of his public function. A defamatory statement involving personal behaviours or mode of act of those persons specified in sub-section (2) which may be justifiably and reasonably connected or related to discharge of his public function which may not be strictly associated with such acts cannot be disassociated from the discharge of the public function of such person. A public functionary when goes to private function does not cease to be a public functionary. If the allegation however, is relating to personal life of a public functionary like that of a private citizen which in no way revolve around on his public function. In this case the Section will not be operative and cases are to be decided on the factual matrix of each case.

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