

## A COMPARATIVE STUDY OF DEFAMATION

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### Abstract

*Damaging the reputation of one person through writing or gestures known as defamation. It is treated differently in many countries. This article provides a information about defamation and it's definitions. There done essentials to be proved for the compensation. In this we could see and analysis difference between Indian law and English law. This article includes case laws relating to the defamation. It is treated as Criminal and civil based on cases.*

**Keywords:** reputation, defamation, libel, slander, false statement

### Introduction

Defamation is an injury to the person's reputation. In "salmond on the law of torts", the following proposition on the nature of defamatory:-

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 society generally and in particularly to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem

### Definitions

There are some definitions which is given below. They are,

- According to **Merriam Webster**, defamation is "The act of communicating false statements about a person that injures the reputation of that person."
- "The offense of injuring a person's character, fame or reputation by false and malicious statements." – **Black law**

- "The act of damaging someone's reputation by saying or writing bad or false things about them." – **Oxford**

### Essentials

These are some essentials or essential conditions are there for statement that should declared as defamation.

- **Defamatory statement:** The statement must be defamatory i.e the statement should be against the reputation of the one person (plaintiff). In **Deepak Kumar biswas vs National Insurance co Ltd.**, The Gauhati High court held that the Insurance company had no motive to defame or slander the appellant. And also court held that the statement also not defamatory.
- **Refer to the plaintiff:** The given statement must be refer to the plaintiff, that statement should be understood by a reasonable thinking and sound person and mainly it should refer to the plaintiff.
- **It must be published:** The statement which is given must be published. In simple sense the statement must be communicated to others than plaintiff. In **Mahendra Ram vs. Harnandan Prasad**, the defendant sent a letter to plaintiff which was defamatory written in Urdu.

### English law

Defamation is an act of communicating or spreading a false statement or defamatory statement to a third party that results in the damage of the person or person's reputation. In English law, defamation are divided or classified into two types:

1. Libel :- it is made in the permanent form such as written words, pictures and other visual symbols.

In **Youssouf vs. M.G.M. Pictures Ltd**, in the course of film produced by an English company, in this film a lady, was shown as having a relations of rape seduction with man, section 1 of the Defamation Act 1952, provides that broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form.

2. Slander:- it is the publication of defamatory statement in a impermanent form. It may be spoken words or gestures or actions.

Under English law, the difference between libel and slander is material for two reasons:

- i. Libel is considered as an offence under criminal law and slander is not an offence. Libel is
- ii. Under the law of torts slander is applicable.

#### Exceptions

- o Attribute of criminal offence to the plaintiff
- o Attribute of an infectious diseases to the plaintiff
- o Imputation that a person is incompetent, dishonest.
- o Imputation of adultery to any women or girl is actionable per se. This exception was made by the slander of women act 1891.

#### Indian Law

As English law divides the defamation into two categories such as libel and slander, and libel is considered as a criminal offence and slander is a civil in nature. According to Indian criminal law i.e IPC doesn't make any classification or

distinction between libel and slander. Both are criminal offense Under the 499 of IPC.

In **D.P Choudhary vs. Manjulata**, the plaintiff about 17byrs belonged to a an educated and distinguished family and pursuing BA. There was news publication that she was elope (ran away) with her boyfriend. This news was published negligently. Court held that defamatory statement are actionable per se and Rs.10,000/- were given as a compensation. Defendant was liable to pay compensation.

#### Defamation on internet

The defamatory statement can be published on social media such as Twitter, Facebook, YouTube, Instagram and so on as an article in newspaper but Information are spreading wider as faster in social media than the newspaper. Now, the newspaper become the old mode of communication and it is been competed by many social medias.

It may cause more damages to a person because of they spread the messages rapidly. There are many chances for the defendant not to be made liable, the defendant may edit, alter, or delete the statement which is posted, so that it is safer to take screenshot of it.

#### Defamation claim

Defamatory statement can be filed as a suit and that suit begins with a claim letter

- ❖ Where the defamatory statement is published
- ❖ What was the defamatory statement
- ❖ How it cause serious harm to plaintiff

#### Time limit

Every suit has a specific or certain time period for filing a suit, within that period the claimant should file a suit against the other( respondent). A suit or claim must be brought within the period of one year of the statement published (limitation period). First publication is the starting point.

## Defense

There are some defense for the defamation which is helpful for the defendant. The Defenses are:

- ✓ Truth
- ✓ Honest opinion /comment
- ✓ Privilege
- ✓ Fair comment

## Remedies

There are some remedies are available and provided for the defamatory statement. The defendant has the responsibility to pay the compensation or penalty if he was in his /her mistake. As there is no hefty or heinous punishment for the defamation but it has some three remedies for the defamation

### ➤ **civil defamation**

a) Compensation: A compensation can be given to the plaintiff who's reputation has been spoiled by the defendant's action or thought. Damages are given for the loss of reputation and that damages are of different types:

- i. Nominal Damages
- ii. Contemptuous Damages
- iii. Compensatory Damages
- iv. Aggravated Damages

### ➤ **Criminal defamation**

It is a bail able, non-cognizable and compoundable offense, which basically means the court has to give a permission to police to start an investigation and they cannot file a case against you. As per the provisions provided under Section 499 and 500 of IPC of 1860, an individual found guilty of defamation can be imprisoned up to two years.

b) An apology: Apology can be the one of the remedy but it is not accepted as remedy because plaintiff had faced a lot of issues due to the the defendants action.

c) An injunction: Injunction is an order which is given by the court to do or to obtain from doing any such activities, so plaintiff can

go ahead for the injunction to stop the act doing again from the defendant.

## Conclusion

Damaging or spoiling the one's reputation with or without intension leads to defamation and that statement is called as defamatory statement. This can be brought as a suit against the defendant who has intention or not. If the essential are proved then it is said to be defamation. The punishment which is provided may vary from one Country to other but it an offense. Punishment could vary based on the statement and losses to the plaintiff.

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