

FREEDOM OF PRESS IN INDIA AND THE LAW OF DEFAMATION

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Abstract

According to the Bhagwad Gita, Defamation is worse than death for a man of honour. It is regarded as a source of enormous harm. Reputation is a critical and vital aspect of an individual's dignity, and the right to reputation is an inherent right protected by Article 21 of the Constitution of India. Defamation is an attack on a person's reputation. The idea of defamation evolved as a result of the continuous conflict between the protection of an individual's character and privacy and the right to free speech and expression. Article 19 of the Constitution vests people with a variety of liberties. Article 19(2), on the other hand, imposes reasonable restrictions on the freedom of speech and expression guaranteed by Article 19(1)(a). This paper discusses the law relating to defamation in India with special reference to freedom of Press.

Keywords: Media, Freedom, Defamation, Law, Speech and Expression

INTRODUCTION

According to Article 12 of the Universal Declaration of Human Rights¹:

"No one shall be subjected to arbitrary attacks upon his honour and reputation. Everyone has the right to protection to the law against such attacks."

Defamation has a long history in Roman and German law. In Roman times, abusive chanting were death offences. Insults were punished in early English and German law by amputation of the tongue. Slander in late-eighteenth-century England was defined as impugning criminality or social sickness or casting doubt on professional competency. Defamation is a criminal offence in Italy, and truth seldom justifies defamation. Because defamation is regarded as a serious evil, the restriction clause (2) of Article 19 provides for a justifiable legislative abridgement of the freedoms of speech and expression and of the press in connection to defamation. Article 19, restricted clause (2), as originally formulated, did not include the term 'defamation'. Rather than that, the terms 'libel' and 'slander' were included as grounds for prohibition. They were repealed by the Constitution (First Amendment) Act, 1951, and replaced with the phrase 'defamation.'

At the moment, defamation legislation is divided into two sections², one civil and one criminal. In India, civil law dealing to defamation is mainly governed by English common law principles. For instance, in common law, a person cannot sue for harm to a character he does not possess or a reputation he has no legitimate claim to. Similarly, a fair and honest remark made without malice and in the public interest is a strong defence to a libel lawsuit³.

¹ Universal Declaration of Human Rights, Article 12, in *International Bill of Human Rights*, p. 6.

² D. D. Basu, *Law of the Press in India*.

³ *A.D. Narayan Sah v. Kannama Bai*, AIR 1932 Mad 445.

The four primary components of the civil law of defamation are as follows:

- (i) Defamation as a tort consists in the publication of a statement (concerning the plaintiff) to a third person, exposing the plaintiff to hatred, ridicule, or contempt or which causes him to be shunned or avoided or which tends to injure him in his office, profession or calling;
- (ii) For the tort of defamation, what matters is the harm caused to the plaintiff and not the intention of the defendant. Hence, it is immaterial that the defendant had no intention to defame the plaintiff;
- (iii) The statement must be published by the defendant to a third person. Publication only to the plaintiff when no third person could have heard the statement or read it is not enough;
- (iv) The statement must be false. A true statement cannot attract civil liability.

Defamation is a criminal offence under Section 499 of the Indian Penal Code, 1860, which 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 hereafter excepted, to defame that person”.

There are four explanations to this Section. These are:

Explanation (1). 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 if intended to be harmful to the feelings of his family or other near relatives.

Explanation (2) it may amount to defamation to make an imputation concerning a company or an association or collections of persons as such.

Explanation (3) An imputation in the form of an alternative or expressed ironically, may amount to defamation.

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 and intellectual character of that person or lowers the character of that person in respect of his caste or of 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 as disgraceful.

The ten exceptions to the section protect the following classes of statements from criminal liability for defamation:

1. Public good.
2. Public conduct of the public servant.
3. Conduct of any person touching any public question.
4. Reports of proceeding of the court.
5. Merits of a case of conduct of witnesses/parties.
6. Merit of public performances.
7. Bona fide censure.
8. Bona fide accusation.
9. Bona fide imputation.

10. Conveying caution.

Thus, Indian criminal law makes no difference between verbal and written defamation. It is referred to as libel in the written form and slander in the verbal form. Defamation is defined broadly as the publishing of a false and defamatory remark about someone without justification or justification, resulting in harm to his reputation. Additionally, in regard to media law, the issue arises as to which news creation constitutes defamation and which is protected by the First Amendment's freedom of speech and expression. The media is critical in reaching out to the public through news and in connecting with them. Media outlets have a duty to ensure that any news they publish or transmit is objective and not biased. Within the ambit of media law, one cannot claim ignorance of what to publish and what not to publish. Whether it be print or broadcast media, it is important to remember that the publishing does not result in a defamatory remark. The job of a journalist has the same risk as other sectors since they might be charged with an offence while doing their duties. The owner, the compositor or word-setter, the editor, the publisher, and the author are all accountable, since they are the entities that accept the collection of items for publication. Ignorance and deed of omission cannot be utilised as defences in this case. The editor or chief editor, as the case may be, is liable for the publishing of any news content based on the accusation and evidence of his involvement in the selection and publication of the news material. To publish is to contribute to the reader's intellect, or to inform or make something known to him. To publish a defamatory statement, matter, or news item is to make it known to any other person that the one defamed exists; a single communication is sufficient, but it must have been made to a third person, as communicating a matter is technically the object of defamation, which equates to defamatory statement. A defamatory statement may be transmitted to the other party through a manner that reaches them. It is critical that any news that is released adheres to the media person's or journalist's ethical standards. One should ensure that the information conveyed is accurate, directs the masses in the right direction, and does not have a negative influence. In a society, the law vests each individual with the right to keep and protect his or her reputation. Every person's intrinsic right to reputation is recognised. A man's reputation is his most important asset, maybe more valuable than any other.

THE DEFAMATION BILL, 1988

Since time immemorial, the harsh law of defamation has been widely criticised. With the passage of time and the advancement of technical advancements, instances of others' reputations being harmed have swiftly multiplied. On the other hand, a progressive democratic path and acceptance of basic rights such as freedom of speech and expression have sometimes called into doubt the validity of defamation, which is a criminal offence. The fact that individuals have the right to freely express their thoughts and to be informed about modern topics drives lawmakers to enact required amendments to the defamation legislation. One such episode occurred in 1988, when the then-governing party, in an attempt to rein in the press's enormous influence, enacted legislation barring the press from publishing scurrilous pieces that had criminal connotations in the eyes of the general people.

The press and the people complained that the stated Bill abridged their Right to Free Speech by encouraging criminal prosecution of journalists for transparent explanation. Additionally, it obliterated the public's right to know. However, the outpouring of demonstrations and resistance

to the Bill finally resulted in the Bill's removal.

The law of defamation raises concerns about the criminalization of free speech and expression, as well as the applicable defamation statute. Because defamation law protects an individual's reputation organically, it is in continual confrontation with the basic right to free speech and expression. It becomes even more critical for the appropriate authorities to strike a balance between the two while yet providing justice to the victim. On the one hand, it is critical to protect people's reputations, which are considered their property; on the other hand, it is the responsibility of the appropriate authorities to recognize the right to free speech and expression while also protecting the public's right to know the truth in certain matters.

The Defamation Bill 1988 was construed to safeguard an individual's reputation at the expense of press freedom. Protests throughout the country compelled the government to repeal the Act on the grounds that it violated basic rights.

RESPONSIBILITY OF MEDIA

Regardless of the medium, media has always been a leader in connecting with the public. The news that is delivered by the media has a tremendous amount of influence. As a result, any news that casts uncertainty may wreak havoc on a global scale. Prior to posting any type of media on a public platform, it should be thoroughly analysed and should leave no room for dispute about its veracity. The media has a moral obligation to serve the country with unambiguous news coverage. The media should provide individuals with a picture of the true situation and allow them to judge if each subsequent move is proper or not, rather than making definite statements. It is not the responsibility of the media to make a definite declaration about any problem and to sway the public opinion via its dissemination. Citizens, particularly in a democratic country context, are the nation's primary backbone. As a result, any negative influence or influential information causes a significant concern for the nation's future. Prior to any of the legislative rights, it is the media's moral obligation to defend its authority by using it within its area of jurisdiction and without causing harm to the country. If media self-regulate and carry out their tasks properly, the issue of legal regulation would be moot. If the scenario falls beyond the scope of self-regulation, the chapter of legal rules must be consulted for justification. Thus, it is the media's moral and legal obligation to conduct themselves in accordance with their code of ethics while doing their duties.

CONCLUSION

The relationship between the media and defamation cannot be determined definitively since it is a vast subject with a broad scope. Because media is a sector that touches on every area, it is critical to examine every facet of the industry. With the level of interest in every subject, it is necessary to ensure that the information disclosed is accurate and that defamation does not occur. Defamation and the media are two roads that lead to the same place. The utility of both phrases must be determined in such a manner that they do not overlap, so avoiding defamation. It is essential that any information spread on a large scale be beyond reasonable question, and since media serves that function on a daily basis, the role of media becomes critical. In a democratic society like India, media has the greatest influence on its inhabitants. As a result, if false information or even the tiniest uncertainty occurs because of the information broadcast, there will be a negative consequence. It must be ensured that those developing their opinions based on the information broadcast are not negatively impacted. While it is a broad industry, one could argue that defamation



and media are two sides of the same coin, the key is to ensure that they do not overlap and operate within their self-imposed boundaries.