

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 2

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Navigating the Legal Landscape: Defamation Laws in India

KHUSHNOOR KAUR¹

ABSTRACT

In India, defamation law is a constantly changing area that is influenced by a complex interplay between statutory requirements, judicial interpretations, and socio-cultural factors. This essay aims to offer a thorough examination of the various facets of Indian defamation law, clarifying its legislative background and significant court rulings.

The paper explores the statutory provisions controlling defamation under the Indian Penal Code and the Civil Law regime. It looks at the components of defamation, such as the differences between slander and libel, and the defences that can be used by the accused. The text examines notable court rulings that have influenced the development of defamation law in India, highlighting the subtle differences in judicial interpretation and implementation.

This study seeks to promote a broader understanding of defamation law in India by examining the intricate relationships between legal concepts, judicial decisions, and societal dynamics. This will enable informed discourse and future advances in this important field of law.

Keywords: Defamation, Crime, tort.

I. INTRODUCTION

Defamation is defined as harm or damage to a person's reputation. The term defamation is derived from the Latin word *diffamare*, which meaning to circulate or spread information about a person that may hurt that person's reputation. As a result, defamation is defined as harming one's reputation. Both a civil and criminal offence, defamation is a serious matter. Defamation is a criminal offence that is codified, but it is not a civil offence. Defamation is covered under tort law in civil law, but it is covered by Sections 499 to 502 of the Indian Penal Code, 1860 in criminal law.

Defamation is punishable by up to two years in prison or a fine under Section 500 of the IPC[2]. In India, defamation cases have been on the rise in recent years. Government leaders file defamation lawsuits against each other on frivolous grounds, followed by cross-defamation

¹ Author is a student at Amity University Rajasthan, India.

cases. Arvind Kejriwal, Rahul Gandhi, and Smriti Irani have all been charged with various offences. This has prompted a media controversy, stressing the need for India's defamation laws to be reviewed.

II. ESSENTIAL INGREDIENTS

1. Making or disseminating an allegation about another individual.
2. Words, writing, signs, or visible representations are the methods of such imputation.
3. The imputation must have been made with the goal of hurting the reputation of the person about whom the imputation is broadcast.

(A) Reputation

Reputation is mainly concerned with the views of others about a person, in layman language it is what others think of that person. In other words it is the collection of hearsay leading to a common perception about an individual. In short it is what others think let's say A,B,C are people belonging to the society their opinion about a person X is that person's reputation.

A person's reputation is an asset to that person, it helps a person in various ways like helps to secure a loan from the creditors.

(B) Publication

Publication forms another important aspect of defamation. It is only through publication that one knows about the or hears about the false imputations.

Illustration- for example A is angry at B for some apparent personal reason so he says some harsh words to him about his character and then writes a letter about the same to him. This does not amount to imputation as it is said to be done when other people come to know about the same. In this case only the person to whom it is referred is aware so does not amount to imputation.

III. IS DIRECT COMMUNICATION A PART OF DEFAMATION

In the case of **Taki Hussain**² a majority of the Full Bench of the Allahabad High Court held that direct communication to the defamed was ruled to constitute no publication under the IPC. The defendant served a lawsuit on a police officer, claiming damages for an unjustified search of his home conducted by the latter, accusing him of malice and bribery. A prosecution was brought at the police officer's request. A suit was filed against the defendant for issuing a lawsuit notification that contained highly defamatory language regarding the police officer. The Full

² (1884) ILR 7 All 205.

Bench, for the most part, agreed that there was no publishing as defined by the Act as there was no communication with anyone other than the person who had been defamed.

In **Sukdeo Vithal Pansare v Prabhakar Sukdeo Pansare**³ the Bombay High Court declared in⁶ that making a defamatory remark and transmitting it to a person other than the person about whom it is made is considered publishing. The accused, on the other hand, will be liable if he knows that his message will be read by others or known to others in the ordinary course of business.

(A) In case of lawyers

The accused, on the other hand, will be liable if he knows that his message will be read by others or known to others in the ordinary course of business. The accused was found guilty of publication of defamatory matter under this section in **Sukhdeo**⁴, where the accused made a defamatory imputation in his reply to the President of a Municipality and the President laid the reply before the Councillors in the regular course of business. However, even if a third person learns of the defamatory content, a letter containing defamatory imputations dictated by a lawyer to his stenographer who transcribed it and then transmitted it to the relevant person does not amount to publishing

Such a defamatory imputation practically does not go beyond the lawyer's professional range. Similarly, a letter received by a lawyer containing scurrilous allegations or imputations about his client does not tantamount to publication⁵. Similar is the case of issuing of notice by a lawyer⁶ or exchange of notices containing defamatory allegations, through lawyers, by the parties to a case.

(B) Is publishing again or already published matter defamatory

CJ put it: 'Because one man does an unlawful act to any person, another is not to be permitted to do a similar act to the same person. Wrong is not to be justified or even excused by wrong. The IPC does not make an exception for a second or third publication over the first. Even if he republishes the defamatory matter, the publisher of the defamatory matter is liable⁷.

The high courts in India have likewise followed this principle. In the Indian judgement of **Howard**⁸, the accused was found guilty of republishing an extract of a defamatory article from

³ 1974) Cr LJ 1435 (Bom).

⁴ (1932) ILR 55 All 253.

⁵ *Kader v Fousia* (1990) 1 Crimes 352 [LNIND 1989 KER 336].

⁶ *Njothi v Rajamani* (1996) Cr LJ 2435(Mad).

⁷ *Harbhajan Singh v State of Punjab* AIR 1961 Punj 215, (1961) Cr LJ 710(P&H).

⁸ (1887) ILR 12 Bom 167

another paper. It was decided that the fact that the same matter had been published in another magazine could not be used as a defence to avoid culpability.

There are four different sorts of publications:

- i. Written words
- ii. Signs
- iii. Visible representation
- iv. Spoken words

There is no distinction between written and spoken defamation, i.e. libel and slander. 20 The term 'visible representation' will be used to refer to any kind of defamation that human ingenuity can concoct. A statue, a caricature, an effigy, chalk marks on a wall, placards, or images, for example, could all be considered libellous. Defamation by signs and illust (c) by visual representation is an example of illustration S 499.

(C) **Intention to injure**

The person who defames another must have done so with the intent to hurt or knowing or having reason to suspect that such imputation will harm the reputation, according to section 499. The intent to harm a person's reputation is a pre-requisite for the crime of defamation. 25 The essence of the defamation offence is the harm done to a person's reputation. The commission of a defamation offence or the publication of any imputations about a person must be done with the intent to hurt or knowing or having reason to believe that the imputation will cause harm.

Words like 'you stupid,' 'you scoundrel,' and others, which carry no definite imputation injurious to one's reputation, have likewise been determined not to constitute defamation⁹. In the instance of Amir Hasan, the same viewpoint was adopted. The accused was a pleader for the defendant in the case of **Ram Ghulam v Mendailal**, and was being heard before a munsiff when he remarked something about the parties' position during his argument. 'Who was Ram Ghulam's father, exactly?' He was scrubbing grass when he died.' 'What does Amir Hasan know about pleading?' Ram Ghulam asked, peering through a little door in the munsiff's court. He and his father were peddlers and hawked tiny items across the streets until yesterday.' Mutual prosecutions and convictions resulted from these remarks, but Straight J overturned the convictions, claiming that the words were "no more than vulgar slurs that did not amount to defamation."

⁹ *Penfold v Westcote* 2 Bos & PNR 335.

IV. DEFAMATION UNDER CRIMES AND TORTS

There is no distinction between libel and slander in India. Libel and slander are both punishable offences. It can be separated into two groups for easier comprehension which are civil and criminal.

(A) Defamation In Crimes

Defamation is basically defined as 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, to defame that person¹⁰

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 is intended to be hurtful 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 collection 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 or 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.

Illustrations

- i.** A says—'Z is an honest man; he never stole B's watch'; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.
- ii.** A is asked who stole B's watch. Points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it falls within one of the exceptions.
- iii.** A draws a picture of Z running away with B's watch, intending it to be believed

¹⁰ Section 499 of The Indian Penal Code, 1860

that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(B) Defamation In Torts

When it comes to defamation under tort law, the focus is usually on libel (i.e., written defamation) rather than slander (i.e., spoken defamation). It must be proven that a statement is-

- i. Untrue
- ii. Written
- iii. Defamatory
- iv. Published

In order to establish that it is libelous.

A fascinating feature of defamation as a tort is that it is only a crime if the defamation is of a sort that hurts the reputation of a living person. In most circumstances, this means that defaming a deceased person is not a tort because, in most cases, the plaintiff must be able to prove that the defamatory comments were directed at him.

This does not rule out the possibility of a cause of action if a deceased person is defamed; for example, if a defamatory comment harms the reputation of a deceased person's heir, a defamation action could be pursued. Furthermore, if a defamation action is filed and defamation is deemed to have occurred, damages will be awarded to the plaintiff (usually, the person defamed). Furthermore, a person who is concerned about being defamed in a publication may obtain an injunction to stop the publication. Prepublication injunctions, on the other hand, are rarely issued since Indian courts have tended to follow the approach set down in the 1891 decision of **Bonnard v. Perryman**¹¹:

The Court has jurisdiction to restrain by injunction, and even by an interlocutory injunction, the publication of a libel. But the exercise of the jurisdiction is discretionary, and an interlocutory injunction ought not to be granted except in the clearest cases—in cases in which, if a jury did not find the matter complained of to be libelous, the Court would set aside the verdict as unreasonable. An interlocutory injunction ought not to be granted when the Defendant swears that he will be able to justify the libel, and the Court is not satisfied that he may not be able to do so.

In the 2002 case of **Khushwant Singh v. Maneka Gandhi**¹², a division bench of the Delhi

¹¹ (1891) 2 CH 269.

¹² AIR 2002 Delhi 58.

High Court applied this concept. 15 As a result, even if there is a risk that the information is defamatory, it is unlikely that publishing will be halted unless there are extraordinary circumstances — presumably, those in which the later payment of damages would plainly not be enough to make up for the injury done to the person defamed. In non-exceptional circumstances, Indian courts have tended to uphold free speech and have not granted injunctions that would have the effect of stifling speech on the basis of potential defamation.

(C) Section 499's constitutional validity

It is alleged that it violates Article 19(1) [8] of the Indian Constitution, which guarantees the right to freedom of speech and expression. Is defamation subject to Article 19(2) of the Constitution's fair constraints on the state?

- The Court must decide whether or not this restriction is reasonable.
- There are no easy comparisons: on the one hand, a criminal case, whatever of its outcome, is unquestionably more difficult for a person convicted of defamation to deal with than a civil action, which is sometimes placed nearly entirely in the hands of lawyers.
- The burdens of proof, on the other hand, vary, and if the purpose is to protect a reputation, the bar of proof imposed in civil court is lower than that necessary in criminal court.
- According to subjective evidence, criminal defamation is not solely utilized to safeguard people's reputations.
- There appears to be no discussion of misuse, or any data-based comments concerning the repercussions of criminal defamation, among the arguments against criminal defamation.
- Alternatively, the possibility of misuse appears to have been highlighted in support of Section 499's ongoing existence: presumption of constitutionality.
- In considering the reasonableness of limits, the Court has broad discretion to evaluate things of common report, historical context, common knowledge, and the circumstances at the time of legislation.
- The word "fair limitation" refers to constraints that are not arbitrary or unreasonable. If criminal defamation laws are generally reasonable, the fact that they are misapplied or violated does not make them invalid.

V. INDIVIDUAL VS. PUBLIC REMEDY IN DEFAMATION

Defamation, according to the petitioners, is a quarrel between two people in which one person's credibility is questioned by the other. As a result, the logic stated above applies. The Supreme

Court scrutinizes every detail with utmost attention. The court uses the arguments in the constitutional assembly to indicate that the founders of the Constitution did not want to limit the meaning of the word slander.

By declaring that defamation has its own identity and cannot be reduced to a restricted definition, the court rules out the use of the idea of *noscitur a social*. Credibility has been recognized to be a component of article 21 in **Dilipkumar Raghavendranath Nadkarni**¹³, **Mehmood Nayyar**¹⁴, and **Umesh Kumar**¹⁵.

Criminal defamation cannot be utilized as a public remedy because it includes ruining an individual's image. Individuals make up the group, the apex court says, and defamation law protects each individual's integrity in the eyes of the general public. Furthermore, crime notions attempt to construct a nexus in which every crime is an injury; every public offence is, in fact, a private wrong, and so on. It has an impact on both the individual and society. Citizens' fundamental rights are governed by the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redress) Act of 2013, as well as the Noise Pollution (Regulation and Control) Rules of 2000, both adopted under the Environment (Protection) Act of 1986. As a result, the petitioners' argument that treating defamation¹⁶ as a criminal offence has little public interest and thus serves no common interest or collective good is without merit

(A) **Contravention of art. 19**

The fundamental right to freedom of speech and expression, which allows people to participate fully and effectively in the country's social and political activities, is one of the most crucial parts of a democratic democracy. People's right to free speech permits them to express their religious and political ideas. It finally leads to societal and economic well-being. As a result, freedom of expression provides a framework for striking a reasonable balance between peace and social change.

The court concluded in the case of **State of West Bengal vs. Subodh Gopal Bose**¹⁷ that the state has a duty to protect itself against such unlawful activities and can pass legislation to do so. Article 19(1) (a) establishes a non-absolute and unrestricted right. To grant an unlimited right, there must be a liberty that is absolute in nature and unregulated in practice.

If there had been no constraint, the rights and liberties would have been synonymous with

¹³ AIR 1983

¹⁴ (2012) 8 SCC 1

¹⁵ AIR 2013

¹⁶ Defamation StatPearls, <https://www.statpearls.com/ArticleLibrary/viewarticle/34715> (last visited Apr 22, 2022)

¹⁷ 1954 AIR 92

anarchy and turmoil. **Jagjivan v. S. Rangarajan**¹⁸ The restriction should be founded on the concept of least invasiveness, according to the Court, which means that it should be imposed in a way and to the extent that is unavoidable in a specific context.

VI. DISCUSSING LANDMARK CASE LAWS

(A) Subramanian Swamy V. Union of India¹⁹

Justice Dipak Mishra and Justice P.C. Pant of the Supreme Court decided to uphold the constitutional legitimacy of the country's criminal defamation legislation, holding that the rules do not conflict with the right to free expression. As a result of the ultimate judgment, several leaders and media figures were rounded up. Some even claimed that it would impede freedom of speech. The case will be remembered for its indistinct colorful languages more than its instructional significance.

The announcement makes it obvious that the impact on freedom of expression has been chilling. They claimed that their research demonstrated that the loss of credibility they suffer has a public requirement, thus they opted to incorporate public solutions for private wrongs.

The article, however, does not say whether it covers both criminal and civil defamation. In terms of the link between the degree to which freedom of expression has been violated and the public interest at risk, fair implies a proportionality component. Everyone in the chorus does not have to sing the same tune.

A magistrate should use considerable discretion when issuing summons on a plea for the beginning of criminal defamation litigation. It's worth mentioning that the centre used the anarchy of Indian culture to justify the criminal provisions, claiming that criminal defamation hinders people from exercising their right to free speech and expression. It has been shown that politicians make up the majority of persons facing criminal defamation accusations. In *Subramanian Swamy v. Union of India* (2016), the Supreme Court upheld the constitutionality of Sections 499 and 500 of the Indian Penal Code, which deal with criminal defamation.

(B) R. Rajagopal v. State of Tamil Nadu²⁰

This lawsuit is on the constitutionality of civil defamation. The Supreme Court of India cited a historic US Supreme Court ruling in **New York Times v. Sullivan**²¹, which held that a government person on duty can only be compensated if the truth argument is untrue and there

¹⁸ 1989 SCR (2) 204

¹⁹ on 13th May, AIR 2016

²⁰ 1995 AIR 264

²¹ 376 U.S. 254 (1964)

is a willful disregard for truth. In this decision, the courts looked at the link between free speech and civil defamation. The court determined that Article 19(1) of the Constitution imposed an unfair restriction on common law defamation by exaggerating no-fault liability. The main criticism leveled about Section 499 was that it made a crime out of what is fundamentally a private conduct. The Section then proceeded to impose restrictions on free speech²².

VII. CONCLUSION

Defamation legislation exists to safeguard people's reputations. Its main concern is how to strike a balance between this purpose and competing demands for freedom of expression. Because both of these values are highly valued in our society, the former as possibly the most prized feature of civilized humans, and the latter as the foundation of a democratic society.

According to the highest court, the petitioner has an interim time limit of eight weeks to file an appeal. Meanwhile, other cases have surfaced, particularly in political circles, such as Gogoi's defamation suit. The decision brings the matter to a close, but it raises a number of questions.

The right to respond, on the other hand, has only added to the distrust because of the potential chilling effect on the individual/organization. Jumping to conclusions, convicting, and seeking damages, on the other hand, tends to be a more civilized approach of dealing with a situation. Several states in the United States and other countries have adopted this definition. We will undoubtedly apply this principle as well.

The argument has led us to the conclusion that the stakes are higher when it comes to constitutional interpretation. It is far easier to condemn than to investigate a subject in depth. Constructive criticism, of course, promotes creativity and development. It is much easier nowadays to be dismissive rather than to get to the root of the problem. It should also be noted that in such circumstances, the judiciary makes every effort to build a harmonic framework. We, too, have a responsibility as individuals, and it is past time for us to assess our circumstances.

²² The Risks of Defamation: An Analysis into the Driving Factors Determining the Outcome of Commercial Defamation Cases ResearchGate, https://www.researchgate.net/publication/339509176_The_Risks_of_Defamation_An_Analysis_into_the_Driving_Factors_Determining_the_Outcome_of_Commercial_Defamation_Cases (last visited on Apr 24, 2022)

VIII. BIBLIOGRAPHY

(A) Cases Cited

1. Taki Hussain (1884) ILR 7 All 205.
2. In Sukdeo Vithal Pansare v Prabhakar Sukdeo Pansare(1974) Cr LJ 1435 (Bom).
3. Sukhdeo (1932) ILR 55 All 253.
4. Kader v Fousia (1990) 1 Crimes 352 [LNIND 1989 KER 336].
5. Njothi v Rajamani (1996) Cr LJ 2435(Mad).
6. Harbhajan Singh v State of Punjab AIR 1961 Punj 215, (1961) Cr LJ 710(P&H)
7. Howard(1887) ILR 12 Bom 167
8. Penfold v Westcote 2 Bos & PNR 335.
9. Bonnard v. Perryman (1891) 2 CH 269.
10. Khushwant Singh v. Maneka Gandhi. AIR 2002 Delhi 58.
11. Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni, AIR 1983
12. Mehmood Nayyar Azam v. State of Chhattisgarh (2012) 8 SCC 1
13. Umesh Kumar v. State of Andhra Pradesh, AIR 2013
14. State of West Bengal vs. Subodh Gopal Bose1953 AIR 93
15. Jagjivan v. S. Rangarajan, 1989 SCR (2) 204
16. Subramanian Swamy Vs Union of India, Ministry of Law & Ors, on 13th May, AIR 2016
17. New York Times Co. v. Sullivan, 376 U.S. 254 (1964)

(B) Books Referred

1. P S Atchuthen Pillai; PSA Pillai,s CriminalLaw,Lexis Nexis, G K I Vibhute, Gurgaon , Haryana, 14TH E.D.
2. K D Gaur, IndaN Penal Code, Universal Lexis Nexis, Delhi, 7th E.D.
3. V.N. Shukla , Constitution of India ,Mahendra Pal Singh. Publisher: Lucknow : Eastern Book Company, 2019. Edition/Format: Print book : English : 13th ed.
4. M. P. Jain , (1962). Indian constitutional law. Bombay, N.M. Tripathi.

(C) Journals

1. All India Reporter
2. Indian Law Reporter
3. Supreme Court Cases
