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The Law of Defamation Deviance and Manipulation

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ABSTRACT

The misuse of defamation is severe since it has been developed mainly through common law in England but has been inappropriately fitted into the criminal system and civil litigation in India. The very fact that India does not have a civil law on defamation, results in the criminal law on defamation being used inappropriately. Defamation as a law, was never formulated to be used by and against political opponents. The monetary power of opponents overwhelms litigation in such cases, subverting the due process of law. In the same context, satire against political personalities especially must be protected as a livelihood. Reports by established media houses must face greater scrutiny in certain cases. Truth or falsity of the statement must be considered foremost in most cases, especially with regards to statements on public figures. Degrading metaphors may not always be defamatory on a prima facie view if opinion of the person is not formed on the basis of it. Vulgar slangs, abuses make such metaphors disparaging in essence. Honest opinions based on true facts and academic discussions can never qualify as defamatory. In India, speech is restricted by the standards of the society. Most of these restrictions are applicable on statements in relation to women, children, religious figures.

I. INTRODUCTION

In today's hyper connected world, the use of defamation against online opponents, whether ideological or otherwise has become rampant. The offence defamation is present in the Bhartiya Nyaya Sanhita, 2023. It would be of utmost service to the nation to see the law being updated according to the changing times. A passing comment on a public figure, giving due regard to it being true or false, is easily forgotten and wiped out from the memory of the public. It is of course, much more significant if the imputation is made in permanent form. However, in today's hyper connected dynamic world, even a statement made in permanent form on social media is forgotten after some time.

The very fact that defamation is encoded within a criminal law in India, changes the development of this law by confining it to the specific language given to it in the IPC or BNS. Thus, there is no scope for reform or improvement. However, in India, Courts are increasingly

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resorting to common law procedures to settle disputes of controversial speech and statements. Such statements are not, for the majority of cases defamatory, but are being understood to be within the prohibited degree of Article 19 (1) (2) of the Constitution of India. These restrictions on free speech and expression as set out include statements affecting sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement to an offence. Since India lacks a civil law on defamation, Courts are frequently giving a very wide definition and scope to the civil wrong of defamation. To set out an example, a commission of an act that adversely affects public order or decency can also include defamation to a very negligible degree. Despite this, the civil wrong of defamation is being clubbed together along with the other prohibited acts mentioned in Article 19 (1) (2).

II. SLAPP LITIGATION AND NEWS MEDIA RESPONSIBILITY

The law of defamation was never meant to be used as remedy against political statements, opinions and allegations. It has always been used against news companies and newspapers for imputing false information concerning a person's character or personality. In this situation, it was understood that there was always a connection of good faith between the publisher and the general public. However, there is no such concept of good faith between political opponents who are constantly bent on tarnishing the image and reputation of each other. Thus, defamation suits between political opponents must be dismissed summarily.

Defamation enables powerful conglomerate entities to initiate SLAPP litigation against their opponents, thus suppressing free speech. SLAPP, which stands for '*strategic lawsuit against public participation*' is an action that silences critics by burdening them with the cost of prolonged litigation² The Hon'ble Supreme Court has recognized the principle of SLAPP in *Bloomberg Television vs Zee Entertainment*, wherein it laid out guidelines to prevent misuse of SLAPP litigation². In India courts are taking cognizance of clear cases of SLAPP litigation. In the opinion of this author, there cannot lie a case of defamation for mere political allegations or opinions. In SLAPP cases, the organisation with more financial power is bound to dominate their political opponents, thus subverting the democratic process. Defamation cases are filed with impunity, with the aim of draining resources and time, or exhausting the target person. In India, governments are brought into power with a particular ideology in the religious, cultural, social and economic spheres. To criticize the government would definitely

² Yamika Khanna, *Shaping Judicial Safeguards Against SLAPP Suits: Emerging Protections in Indian Law*, OXFORD HUMAN RIGHTS HUB, (07:13 PM, July 21), <https://ohrh.law.ox.ac.uk/shaping-judicial-safeguards-against-slapp-suits-emerging-protections-in-indian-law/>

include criticizing persons associated with these spheres. Moreover, other criminal laws exist to restrict freedom of speech in relation to these areas. In a recent case, the Supreme Court has correctly questioned as to who will decide whether the alleged defamatory statement amounts to defamation.³ This is because the truth of such political statements cannot be decided by a judicial bench. This applies even if the person has been acquitted in relation to an offence of which he was accused of in a defamatory allegation. As correctly stated by Mahatma Gandhi, *“There is a higher court than courts of justice and that is the court of conscience”*.

In the above context, satire has always been used to target political opponents. For some notable personalities like Kunal Kamra, making satire of controversial figures is a form of livelihood. It must be left outside the ambit of the offence of defamation. In multiple cases, Courts have held that satire is a defence to the charge of defamation. The Hon’ble Delhi High court has held in *Ashutosh Dubey v. Netflix* that satire is an important component of a democratic society. The very nature of satire is that it is ironic, witty and ridiculous.⁴ Satire is indeed a professional occupation that maintains social health of the citizenry.

Likewise, broadcasting laws should be made much more stringent for media houses, since the public is much more likely to believe a statement as true, if it comes from an established media house. These media houses carry a certain level of responsibility for broadcasting correct and true information to the general public. Journalists are rightly reluctant to reveal the sources of their news with the general public as it may compromise these sources, making it difficult to ascertain of the truth or falsity of the broadcasted news. This argument gives rise to a question. What differentiates investigative journalism by an established media house from the report of a single individual journalist which is published with the same level of evidences and investigation? The answer is that both enjoy the same rights and come under the same level of scrutiny of law. Thus, when a claim or a statement is backed by substantiated evidences and proofs, the same destroys any distinctions between established media houses and individual journalists.

III. DEFAMATION AND PUBLIC FIGURES/ORGANISATIONS

Defamation has become a powerful weapon in the hands of public figures who wish to restrict free speech with reference to themselves even though such speech may have been made without malice. Malice is a very significant component of the offence of defamation, especially in relation to public figures. Recently, an array of defamation cases have been filed

³Ani Media Pvt. Ltd. v. Wikimedia Foundation INC, (2025) SCC OnLine Del 2134

⁴ Ashutosh Dubey v. Netflix, 2020 SCC OnLine Del 625

by high profile individuals over posts made online targeting them. Most alleged defamatory posts are subject to an equal chance of it being either true or false. Consider if a person A calls person B a liar. Whereas, it is known that person B is a liar, the opinion of a significant number of people is also that person B is not a liar. How far will truth act as a defence in such a case to a person who has made the defamatory statement?

For the above reason *inter alia*, an injunction prohibiting further disclosures or defamatory speech is better than seeking damages, especially with regard to public figures. People who like to throw a public spectacle and show their lives to the general public cannot seek an injunction of damages in against anyone since they are literally inviting the general public to comment on their social media pages.

The punishment for defamation as prescribed under the Bhartiya Nyaya Sanhita is 2 years imprisonment with or without fine. Courts are rightly, reluctant to award imprisonment and often urge the parties to settle the matter. In most cases the accusation of defamation is nothing short of an attempt to harass the person making the imputation. The litigation costs of arguing the case is enough of a harassment. If the statement is made against a public figure, he/ she has the opportunity of defending the allegations publicly.

Abuses and swear words constitute an unnecessary burden on freedom of speech and expression. The Hon'ble Andhra Pradesh High Court recently observed that “vulgar, hate filled and abusive posts in social media have become the new age norm. The “trolls” as they are called, attract lightning responses all over...”

The bench also suggested auto blocking of such words by the intermediaries through an instruction by the state government.⁵

In the opinion of this author, a list of abusive words should be published or maintained by the relevant platform on which the comments are made, which if used would certainly amount to defamation. Thus, the choice of words become very important in a case of defamation. Where saner language could have been used to criticize a public figure, the use of humiliating words tilts the balance in favour of the Plaintiff.

A form of defamation consists, in comparing a person to a degrading object using a metaphor. It is clear that such a comparison is from malice. However, a question arises whether this comparison really damages reputation of the person concerned? Most often such comparisons

⁵ Sparsh Upadhyay, *Andhra Pradesh HC flags surge in online trolling; abusive posts, suggests auto blocking of swear words on social media*, LIVE LAW (11:25 AM, May 31, 2025) <https://www.livelaw.in/high-court/andhra-pradesh-high-court/andhra-pradesh-high-court-online-trolling-abusive-posts-auto-blocking-swear-words-social-media-293708>

are only rhetorical and the audience as well as the offender know that such a comparison is false. Such a metaphor is very common in the political sphere of social media where influential people frequently use various kinds of slangs and degrading terms for each other. The allegedly defamatory statement is usually in the form of an opinion and is never understood as fact. Moreover, nobody will believe it to be true unless the defamer produces evidence to prove the metaphor true. In the opinion of this author, courts must not concern themselves with an injunction of deleting the allegedly defamatory statement when cause of action in a suit arises from the use of such a metaphor. However, there are exceptions to the above, especially when such a metaphor becomes repetitive, or is made to look true, or when the defamer supports the metaphor with any kind of evidence.

In a recent case titled *ANI v. Mohal Mangal*⁶, a person had uploaded a video on YouTube criticizing ANI (Asian News International) for allegedly collecting copyright fees from youtubers, despite a fair use policy of YouTube, the Delhi High Court passed an order where it did not consider the truthfulness of the facts, on the basis of which, the statements containing metaphors were made against ANI. The court ordered the deletion of metaphorical words from the Defendant's video. The words compared the policy of ANI of collecting copyright fees from users to 'hafta vasooli' (extortion) as in the opinion of the Defendant, this was an unfair policy.

The question should be, Is the metaphor causing prejudice to the person? If the allegations are an opinion based on true facts, then on what basis does the plaintiff seek a remedy in defamation?

In most cases, abusive or swear words make a metaphor defamatory. In a recent case⁷ where a person had abused journalists working at Newsland with repeated racist and sexist slurs, the Delhi High strongly condemned the use of such language on a public platform. The Defendant had referred to the journalists as 'prostitutes' and their workplace as 'brothel'. The bench held that it was personal humiliation to refer to women in such terms.

IV. SOCIETAL CONSIDERATIONS

Defamation as an offence is bound by societal considerations. If a statement is said to defame a person, courts have had to frequently consider whether the said statement is wrong according to the standards of the society. Certain comments on sensitive figures like women, children and religious figures must be subject to the law of defamation. Comments, whether

⁶ *ANI Media Pvt. Ltd v. Mohak Mangal* (2025), Delhi High Court, CS(COMM) 573/2025

⁷ *Manisha Pande and Ors v. Abhijit Iyer Mitra*, Delhi High Court, CS(OS) 332/2025

true or false, targeting a woman's modesty, accusing her of unchastity, adultery, other sexually flavoured comments are easily actionable by defamation as it is difficult to establish the veracity of allegations.

The same logic goes for religious entities or figures. Remarks against religious figures must be made actionable when anything false is said about them. The Indian public takes strong exception when remarks are made against religious figures. Although sufficient remedy exists within the criminal laws to protect religious figures, the same can be said to be excessive and too broad in scope. The primary section that deals with this is section 299 of the BNS 2023:

"299. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or through electronic means or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both"

The only words that make sense in the section is deliberate and malice intention. The purport of the section is to ensure public order when feelings of a particular section of the society is hurt by remarks against a religion. However, such remarks can be subjected to the same conditions and requirements that common law defamation is subject to. The essential condition must be that the remark made is false and the secondary condition must be that the statement is made out of malice. To bring this section on parity with defamation would ensure that truth is upheld as an ultimate parameter of each offence.

The law of defamation is diluted due to the presence of various sections in the BNS that criminalize free speech or the consequences of it. All these sections punish an offence, on the sole basis of public peace being likely to be disturbed. These offences may *inter alia* include sections 196, 352, of the BNS 2023. They are alternate remedies that are much more powerful in suppressing free speech. Thus, the applicability of defamation is reduced.

Historical personalities and dead persons must be spared from being included into any exception to defamation. This is because, there is no one to represent such persons if a malicious and false statement is made against them. The descendants or relatives of the dead person may not even come to know of the defamatory statements made against him. A living person can always easily rebut the allegations made against him/her and thus ensure a level of reputation concerning his personality. The parameter of truth or false statement must also hold true concerning a dead person.

V. DEFENCES TO DEFAMATION

A. *Opinion and truth*

The law of defamation consists of several defences. One of these defences is fair comment or a fair opinion. This defence is not very restricted in terms of its application. In fair comment, the defendant only has to prove that the opinion was honestly held.⁸ However, the defence of honest opinion has been largely absent from Indian judicial proceedings. In the UK, under Section 3 of the Defamation Act 2013⁹, honest opinion has been given a broad application to cover almost all types of defamation. The term opinion is very terse and this further weakens the enforceability of defamation law in the UK. The Act lists only three conditions. The most important of these is that the opinion must be based on a specific fact which existed at the time of the publication. It is very interesting to note, that comments on matters of public interest is a totally separate defence from honest opinion and the two defences have not been clubbed. Thus, unlike the BNS, where the defence of opinion is watered down by levying several minute conditions like public servant, public question which limit the applicability of the defence, the Defamation Act, 2013 of the UK provides opinion as a complete defence to defamation.

An opinion may be such as that can hurt some, irk some or may actually lower the reputation of some. However, even if it does, it may never constitute an offence of defamation. Some statements of opinions challenge the status quo in the society and are thus sure to offend the target persons. The entire controversy in such cases boils down to the test whether such statements are true or have been made on true facts. In such case, courts must have less regard to the language used against the defamed and more regard to the truth of the statements or the basis of the arguments of such opinions. However, this proposition has its limitations too. Facts of a matter may be disputed. Some members of the society may consider the Defendant's statements to be a true reflection of the reality, whereas others may consider them to be false. This is because no one has a monopoly on facts, especially with regards to matters that are hidden behind a cloud of bureaucracy, government machinery, powerful interests, etc. However, courts in India have been reluctant to examine the truth of the defamatory statements against any entity and have ordered injunctions without testing the truth. A very recent example is the defamatory case launched by Himalaya Wellness Company against a liver doctor who discusses current medical issues related to his field online. Popularly known as the 'Liverdoc', he levelled serious allegations of adulteration and quackery against a

⁸ Tort Law, B.S Markesinis and S.F. Deakin, Oxford, Pg 593

⁹ Defamation Act, UK, 2013, Section 3

medicine sold by the Company named Liv52. In this case, titled Dr. Cyriac Abby Philips vs M/S Himalaya Wellness Company¹⁰ the Bengaluru Civil court hearing the matter granted an ex-parte injunction, suspending the X account of the Livdoc and restraining him from posting any further defamatory allegations against the Company. The Court, in this case, refused to investigate whether the allegations were made on true facts and even granted the injunction ex-parte. When the Defendant appealed against the ex-parte order in the Karnataka High Court, the Court refused to consider the allegations of defamation and simply ordered to take down the defamatory content temporarily, while allowing him to regain access to his account¹¹. A precedent of such a procedure in dealing with cases of defamation is likely to derail most public discussions on health or any other important matter. Truth is not an absolute defence, yet it is a substantial one.

A plea that can overcome the defence of truth is malice on part of the defendant. Thus malice should be considered only after the truth of the statements is confirmed or denied. In the ANI vs Wikimedia case¹², the news agency alleged that the statements on published on Wikipedia were of a defamatory character in as much as they did not fall under the first publication rule, nor were they matching the context where the statements were originally published. The imputations against the Plaintiff can be summarized as: -

1. *“Plaintiff consistently acts at the behest of the Government of India and the Bhartiya Janta Party;*
2. *Plaintiff is a 'propaganda tool' and a 'mouthpiece' for the Government of India and the Bhartiya Janta Party; c. Plaintiff is engaged in 'low quality journalism' that led to news organizations ceasing their subscription with the Plaintiff; d. Plaintiff is engaged in the spread of fake news or false news; and e. Plaintiff mistreats its employees and staff.”*

The Hon'ble single judge bench of the Delhi High Court passed an interim order directing Wikipedia to take down the alleged defamatory content without considering whether the material published was defamatory with regard to its truth or falsity. The Supreme Court rightly held in its judgment after overruling the abovementioned order, that the question of who will decide whether the statements are defamatory remains to be answered¹³.

¹⁰ M/s Himalaya Wellness Company v Dr. Cyriac Abby Philips, (2023), O.S.No.6211/2023

¹¹ Dr. Cyriac Abby Philips vs M/S Himalaya Wellness Company, (2023), WP No. 22716 of 2023

¹² Ani Media Pvt. Ltd. v. Wikimedia Foundation INC, (2025) SCC OnLine Del 2134

¹³ supra at 3

B. Proper Procedure

The proper response to a defamatory statement must involve an affected party, sending a legal notice to the Defendant, warning them about the impending legal action that would be taken if the defamatory material is not removed within a specific timeframe. This was the procedure employed by the Plaintiff in *Lakshmi Murdeshwar Puri v. Saket Gokhale*¹⁴ where the Defendant, despite receiving the notice, did not take down his defamatory notice. The procedure is remarkable as it does not prejudice the expression rights of the Defendant and the Defendant has a chance to correct their mistake. In the instant case, the allegations of corruption were against a public servant, there was no truth to the allegations against the Plaintiff and thus the posts were held to be defamatory.

C. Defamation of a Group of People

- *Unspecified class of people*

In *Satish Jarkiholi v. Dilip Kumar*¹⁵, the Karnataka High Court held with reference to a particular remark that it was not defamatory as the remark was not directed towards a particular class of people and thus does not fulfill the criteria of explanation 2 of the Section 499 of the Indian Penal Code, 1860 which states that:

“It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such”

This provision is subject to criticism on the basis that defamation as an offence has always been applied by singular individuals who are prejudiced by the impact on their reputation. The wording of the sentence gives rise to actions taken for comments against a very broad group of people. It must be remembered that entities do not qualify as a collection of people. An entity should be considered as a separate legal person for the law of defamation. In the same manner, a country must be considered as a single legal entity for the purpose of country defamation. However, the same logic does not apply to a class of unidentifiable people. This would include classes like Hindus, Muslims, Bengalis, Marathis, Kannadigas, etc.

In a recent case in which renowned actor Kamal had stated that Kannadiga is born out of the Tamil language, a defamation suit was filed against him for hurting the sentiments of a class of people, namely the Kannadigas.¹⁶ The civil court ruled that sentiments were hurt and restrained Kamal Hassan from making further remarks against Kannadiga people. It is difficult to conclude how such a statement against an undefined, uncountable class of people

¹⁴ LAKSHMI Murdeshwar Puri v. Saket Gokhale, (2024) SCC Online Del 4446

¹⁵ Satish Jarkiholi v. Dilip Kumar, (2024), CRIMINAL PETITION No.8574 OF 2024

¹⁶ Kannada Sahitya Parishattu v. Kamal Haasan alias Parthasarathy Srinivasan (2025), O.S. 0004689/2025

can amount to defamation. The suit was, of course, filed by a group of people under a representative capacity, under Order 1 Rule 8 (2) of the CPC. The obstruction to justice is how will the Court decide if the Plaintiffs in such a case are indeed prejudiced by such a statement. This is because the statement may be injurious to some whereas innocuous to some others. Under what grounds, are a group of people permitted to represent such a large undefined class of people? It could very well be that the group is sustained financially by a political party which may have its own reasons to initiate litigation against the defendant. Thus, the cause of action is tainted enough for the Court to declare such suits as frivolous.

The principle highlighted in the above paragraph stands true wherever the Plaintiff is unidentifiable, uncountable or is mentioned in such a way that there is a disputed possibility that the defamed is the Plaintiff.

VI. GENERIC DISPARAGEMENT

The principle developed by Indian Courts in the law of Disparagement defamation or trade libel is unfounded. In a number of cases courts have held that defamation in an advertisement need not target a specific brand or a company. It has been held frequently that denigrating competing brands in a broad unspecified manner will suffice defamation.

In a recent case Dabur India Pvt Ltd initiated a suit against Defendant Patanjali for an advertisement wherein the following defamatory statement was made:

“Those who do not possess knowledge of Ayurveda or Vedas Charak, Sushrut, Dhanvantri aur Chyawanrishi

In accordance with the said traditions / procedures, how will they prepare original Chyawanprash?

We, who possess the heritage of Sages. And based on their (sages”) knowledge, using 51 priceless medicinal herbs.”

The Plaintiff’s unfounded concept of generic disparagement was accepted in the judgement. The law of trade libel has been stretched too far to include disparagement of unspecified competitors. It was rightly held by the Court that the statements in the above telecasted commercial amounted to misrepresentation in terms of the facts stated in the advertisement. However, the same could not have amounted to disparagement of Dabur as there is no specific reference to it. The Defendant Dabur could not prove any monetary loss from the advertisement. Another point to consider is that the statements are standalone allegations against competitors without any further substantiated arguments consisting of established

facts.

In another case titled Hindustan Unilever Ltd VS RSPL¹⁷, the following statements in an advertisement of Ghadi detergent brand, owned by the Defendant RSPL were held to defamatory or disparaging surf excel, the flagship brand owned by Hindustan Unilever:

“Iske jhaag acche hai, daam acche hai”

Na Na, yeh dhoka hai’ and ‘Aapka kare badi baatein, dho nahi patey”

It was submitted to the Court that Surf Excel was disparaged as the packaging of the Ghadi detergent powder was light blue and dark blue. Besides this, it was submitted that the expression ‘daam acche hai’ is a reference to the slogan of Surf Excel “Daag acche hai”. The Court accepted these arguments and granted ad interim injunction, ordering the Defendant to remove the above-mentioned statements from the advertisements.

From the above cases, it is clear that Courts are inclined to grant relief when generic disparagement is alleged at the slightest similarity. This is in contrast to other parts of the world where generic disparagement is actionable in the rarest of rare cases.

¹⁷ Hindustan Unilever v. RSPL limited (2025) SCC Online Del 4569