

Defamation: A Legal Analysis

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Abstract

Defamation is a crucial aspect of the law that safeguards reputational rights from malicious acts. It is generally defined as the communication of false and harmful statements to a third party encompassing both civil and criminal dimensions in India criminal defamation is codified under section 356 of Bhartiya Nyaya Sanhita, 2023 while civil defamation is governed by Tort law historically defamation law has been shaped by English common law and Roman legal principles distinguishing between libel and slander. Comparative legal studies reveal diverse global approaches to defamation while New Zealand follows a unified civil defamation law Bangladesh places greater emphasis on criminal defamation the Indian legal landscape has seen significant judicial scrutiny particularly in landmark case of *Subramanyam Swamy vs Union of India (2016)* where the Supreme Court upheld criminal defamation as a reasonable restriction on free speech under article 19 while balancing it with the right to reputation under article 21 however concerns persist regarding the potential misuse of criminal defamation laws to suppress dissent stifle press freedom and shield influential figures from public scrutiny the rise of social movements such as #METOO underscores the evolving societal attitudes towards accountability and freedom of expressions decriminalization of defamation has gained traction globally with many jurisdictions favoring civil remedies over criminal penalties legal reforms emphasize streamlining civil deformation procedures and implementing safeguards against strategic lawsuits against public participation. This paper critically evaluates the constitutional challenges posed by criminal defamation and explore the need for legislative reconsideration in India it argues that while defamation loss serves a legitimate purpose their criminal nature may be prone to abuse and require urgent reform to ensure a fair balance protecting individual dignity and promoting Democratic expression.

Keywords: Defamation, Libel, Slander, Indian Penal Code, Free Speech

1. Introduction

Reputation is often regarded as a person's most valuable asset defamation laws exist to protect individuals from false and damaging statements that can harm their personal and professional standing however the criminalization of defamation remains a subject of intense debate while some argue that it is necessary to uphold public order and personal dignity others content that it stifles free speech and is frequently misused by powerful entities to suppress criticism. Defamation refers to the act of publishing or communicating false statements either orally or in writing that damage an individual's reputation in legal context it is broadly categorized as civil wrong and a criminal offence defamation laws have gained prominence worldwide particularly due to the growing number of cases filed by the political leaders against each other many such cases are given by political vendettas and often result in cross deformation suits where both parties accuse each other of defamatory statements in India defamation as a criminal offence is codified

under section 356 of Bhartiya Nyaya Sanhita ,2023. However, as a civil offence defamation is uncodified and falls under tort law. Section 356 of Bhartiya Nyaya Sanhita ,2023 provides a detailed define of defamation outlining various exceptions where statements may not be considered defamatory such as those made in good faith or Public. The section prescribes imprisonment for up to two years fines or both for individual found guilty. The constitutional validity of criminal defamation has been challenged multiple times in India critics argue that it violates the fundamental right to freedom of speech and expression and article 19 of the Indian Constitution however in the case of *Subramanyam Swamy vs Union of India*¹ the Supreme Court upheld the constitutionality of criminal defamation reasoning that the right to free speech is not absolute and must be balanced against an individual's right to reputation the court emphasized that while free speech is a crucial in a democratic society it should not be exercised at the cost of tarnishing someone's dignity without justification despite this ruling concerns processed over the misuse of criminal defamation law many journalists activists and opposition leaders have been targeted through frivolous. Defamation cases often filed by influential figures to silence dissent the misuse creates a chilling effect discouraging individuals from speaking out against injustice or corruption internationally there is a growing trend towards decriminalization of defamation countries like United Kingdom the United States Sri Lanka have either abolished or significantly limited criminal defamation laws emphasizing civil remedies. Organizations such as United Nations and European Court of human rights have advocated for the decriminalization of defamation highlighting its potential to infringe upon freedom of expression while protecting an individual's reputation is essential criminalizing defamation poses significant risk to free speech India's legal framework on deformation needs reform to strike a fair balance between safeguarding reputation and upholding democratic principles moving towards civil remedies rather than criminal sanctions would align India's legal stance with evolving global standards.

HISTORY

We do not need Shakespeare to emphasize the inestimable value of good name. Reputation is the result of judgement others formulate regarding one's character influenced by various means of communication including spoken and written words sign symbols photographs and caricatures consequently the law of deformation must address all forms of communication that transmit ideas unfortunately the English law of defamation has not been a deliberate creation of any. Rather it has evolved through incremental changes with minimal legislative intervention resulting in anomalies and inconsistencies historically in early mediaeval England reputation was protected by both spiritual and secular authorities however after nationalization of Justice by the king's judges in the latter half of the 16th century the jurisdiction of defamation shifted to the king's court where political and social conditions restricted actionable claims defamation law at that time was primarily an exception to free speech rather than an independent cause of action with the advent Of the printing press in the early 17th century the monarchy sought to control the dissemination of information this led to the adoption of Roman law principles without considering their limitations into English law initially printed deformation was addressed through criminal law but over the time it influenced civil law as well this resulted in distinction between spoken defamation that is slander and printed defamation that is libel. A differentiation that was absent in other legal systems and did not have a clear rational basis .Similarly Roman law treated verbal injuries as criminal or quasi criminal

¹ *Subramanian Swamy vs Union of India, Min. Of Law. on 13 May, 2016*

offences it had two categories the severe provisions of libelous famosus, applicable to anonymous and widely disseminated defamatory materials and the more lenient injuries covering minor personal insults later, Roman jurisprudence refined these into two heads public defamation where truth was not a defense and private deformation where truth could be served as complete defense the Roman approach sought to balance open discussion of personal character with the need to prevent unnecessary harm and insult. The evolution of defamation law across legal system demonstrates that courts have consistently adapted their doctrines to align with the contemporary societal needs in England defamation was initially treated as public offence under common law influencing legal systems worldwide in India lord Macule incorporated criminal defamation into the first draught of Indian Penal Code in 1837 primarily to shield British officials from criticism despite evolving democratic values in their constitutes to retain criminal defamation under sections 499 to 502 of the IPC till the year of 2022 but later in the year 2023 the new act was incorporated that is Bhartiya Nyaya Sanhita which changed the provisions. While many countries have decriminalized defamation India's criminal defamation laws remain in force often misused by politicians corporations and powerful figures to suppress dissent codes have upheld these laws citing the need to protect an individual's reputation however critics argue that the stifle free speech and should be replaced with civil remedies to align with international human rights standards a legal framework balancing the right to free expression with reputation protection remains a crucial challenge in modern democracy.

DEFINATION AND NATURE

Defamation refers to injuring a person's character fame or reputation by false and malicious statements it can be pursued as civil action for damages in taught law or as criminal proceedings under the Bhartiya Nyaya Sanhita defamation requires that the statement be published without consent of the injured person and be interpreted in its common usage and context. English law divides defamation into two categories Libel that is the publication of false and defamatory statements in permanent format example writing printing effigies whereas slander the publication of false and defamatory statements in transient form examples spoken words or gestures. The recoverable damages for libel and slander differ in libel journal damages that is loss of reputation and special damages that is economic loss can be claimed while in slander only special damages are typically recoverable unless the case falls into certain serious categories.

ESSENTIAL

1. The statement must be defamatory and should harm the plaintiff's reputation
2. The statement should be referring to the plaintiff and must be understood by the reasonable people as referring to the plaintiff statement should be published and must be communicated to third party
3. The proof of special damage in slander Must be proved or must fall under actionable per se categories.

However, the burden of proof lies on the plaintiff if in defamation cases the plaintiff must highlight the special circumstances that make the words defamatory and specify the sense in which they were defamatory when defendant raises a defense the burden shifts to them the defendant must clarify their justification and the meaning and the context of the statement in a defense of fair comment the defendant must prove that they have not misstated any fact. In a defense of privilege they must show that statement was made under privileged circumstances if the defendant successfully establishes their defense the burden shifts back to the plaintiff to prove malice.

LEGAL FRAMEWORK

Indian penal code was replaced by Bhartiya Nyaya Sanhita in 2023. Section 356 of Bhartiya Nyaya Sanhita, 2023 defines the defamation as any statement spoken written or depicted that harms a person's reputation unless it falls under one of the ten exceptions such as truth or public good faith fair criticism or privileged statements. If anyone convicted under section 356 faces up to two years of imprisonment a fine or both. The provision classifies defamation as non-cognizable and bailable offence meaning an arrest requires magistrate's approval. The *Subramanian Swamy*² case where the constitutionality of criminal defamation was upheld by the Supreme Court ruling that the right to reputation is an integral part of article 21 that is right to life and personal liberty. The code balances free speech under article 19 with reasonable restrictions under article 19 (2) concluding that criminal defamation serves a legitimate state interest. However, this judgement has faced criticism for failing to consider the chilling effect on the speech and press freedom as stated in *Dixon vs Holden*³ "a man's reputation is his property and if possible more valuable than other property". This statement implies that reputation is one of the most critical assets a person possesses and if lost it can lead to social ridicule and loss of standing in the society.

DEFENCE

1. Justification or Truth: In civil defamation cases truth is a complete defense however in criminal defamation truth alone is not a defense unless it is shown to be for the public good.
2. Fair Comment: A fair comment on matters of Public Interest is a defense. The only essentials here are that the statement was mere opinion not a fact, must be fair and subject must be of Public Interest.
3. Privilege: Certain occasions grant immunity to defamatory statements prioritizing free speech over reputation protection. These statements are classified as either absolute or qualified privilege.

The legal framework surrounding criminal defamation remains a contentious issue with ongoing debate about its role in protecting reputation while ensuring freedom of speech. Critics argue that criminal defamation is often misused by powerful entities to silence dissent suggesting that civil remedies should be preferred to align with international human rights standards.

COMPARITIVE ANALYSIS

Defamation laws vary significantly across jurisdictions reflecting different approaches to balancing free speech and reputation protection. Under this section we look on to different countries and their defamation laws.

1. United Kingdom: Under Defamation Act 2013 defamation is purely civil offence. The law abolished the distinction between Libel and slander and introduced stricter requirements for claimants to prove serious harm.
2. United States: Defamation is treated as a civil tort with strong First Amendment protections. The burden of proof lies heavily on the plaintiff specially in cases involving public figures.

² Supra

³ Dixon v. Holden: Landmark Case on Defamation, 1869

where actual malice must be demonstrated.

3. New Zealand: The Defamation Act 1954 merged libel and slander in civil law But criminal defamation persists under the Act 1961 the law considers public dissemination of defamatory material a criminal offence in certain circumstances.
4. Bangladesh: Unlike India defamation is exclusively a criminal offence and applies to both label and slander with no distinction between them the laws also extend to imputations against deceased persons companies and organizations.
5. European Court of Human Rights: It has repeatedly ruled that criminal defamation laws violate free speech emphasizing the chilling effect they have on journalism and political discourse.

Despite international trends favoring civil remedies over criminal penalties India retains criminal defamation under Bhartiya Nya Sahita this has been criticized for being misused by powerful individuals and institutions to suppress dissent the comparative study highlights that while many democracies have decriminalized defamation countries like India and Bangladesh continue to uphold stringent criminal provisions raising concerns about their impact on free expression and free press freedom.

CASE ANALYSIS OF MOBASHAR JAWED AKBAR vs. PRIYA RAMANI ⁴

FACTS

The complainant Mr. Mubashir Javed Akbar a journalist turned politician filed a criminal defamation case against Priya Ramani a journalist who had accused the former of sexually harassing her on October 12, 2017 an article titled to the Harvey Weinsteins of the world by Priya Ramani was published in the Vogue, Where Ramani had shared her sexual harassment experience by her boss by mentioning him as predator in October 2018 Ramani tweeted naming the complaint as the predator she had mentioned in her 2017 vogue article and this triggered the former to file the against Ramani later Ramani was accused by Akbar of irrevocably harming his exceptional reputation by propagating scandalous claims about him in print media via tweets and articles on online platforms.

ISSUES

The issue before the court was that whether tweets made by Priya Ramani were defamatory or not.

CONTENTIONS OF COMPLAINANT

Complainant was represented by advocate Geeta Luthra and alleged that the accused made baseless and defamatory statements about him in order to smear his character he further claimed that the accused action were motivated by some concealed interest according to the complainant articles that were published and the tweets on some of the most prominent sites such as Vogue , Twitter, livement etc. were negatively impacted his reputation it was also claimed by the complainant that accused failed to meet the burden of proof in the case of the preponderance of the evidence to be covered by exception of section 499 of the

⁴ ROUSE AVENUE DISTRICT COURTS, NEW DELHI , 17 February, 2021

Indian Penal Code which defines the notion of defamation accused must discharge the burden of establishing the existence of circumstance that would qualify the case for one of the defamation exceptions complainant also stated that accused attempted to turn the entire matter around without filing the burden of proof furthermore the accused claims no such good intentions were present when articles were published and as a result the accused has presented the entire case incorrectly and the key point has been purposely obscured by the accused.

CONTENTIONS OF ACCUSED

The accused was presented by advocate Rebecca John and claimed that the entire process was conducted in good faith and Public Interest .She claimed That her case fell under section 499 of IPC while recounting the incident that the accused was involved in she said that the complainant harassed her in a hotel room 25 years ago while interviewing her she was devastated but due to in effect redress process she was unable to reach the appropriate authorities Until the #METOO movement gained traction. The cast doubt on complainants great reputation by pointing to his prior misconduct because of the opposition of the authority it became impossible for the victim to speak out against the crimes he did the dread of losing one's employment as well as the underlying stigma of the society had a great influence on the victims mind forcing her to stay under the shed for decades later the accused whole defense was based on the fact that she did it for public good and had no vested interest in the outcome thus falling under the exceptions of section 499 of the IPC.

JUDGEMENT

After hearing and critically analyzing the contention from both parties the Honorable District Court of the Delhi acquitted Priya Ramani saying that the statements made by her against the complainant were not defamatory the court agreed with the accused argument that the complainant does not have a good reputation later it was also discovered that no matter how well respected some members of the society are they may certainly be nasty to their females counterparts furthermore the court stated that it cannot be overlooked that a person in a position of power breathes impunity in the minds of the abusers who expect no repercussions of their actions the court also observed that the lack of competent procedure is the reason why women do not raise their voices against the crimes in the initial place there was number process to resolve the sexual harassment complaints when the occurrence was done the workplace was subjected to systematic abuse even if there were a plethora of appropriate redresses process in place the underlying social stigmas and prejudices that exist in the society would deter people from seeking justice the court acknowledged that women should be given more opportunity to express themselves about their issues in the topic on whatever forum of their choosing women raise their voices on numerous online social platforms when the decision came out the term any platform was construed by the code to cover both courts and media platforms the court went on to say that freedom to speak out on any platform can be used at any moment even decades later in an empathetic manner it was notified that the victims are in significant distress as a result of societies stereotypical portrayal of women female counterparts development is often hampered by the customary notion which prevents them from expressing themselves as a result it is necessary to consider the current situation and expand the area of legal protection that is currently limited by limitation. The code also stated that under article 21 of the Constitution of India women's rights to life and dignity cannot be infringed upon on the basis of criminal charge of defamation the court defended the purity of women threatened by such acts of abusers by eluding to Indian mythology as a result the court

saw the necessity to clear the way for them to exercise their rights without hindrance it was also added that criminal defamation should not be used as a weapon against women's rights.

Conclusion

Defamation is the act of harming an individual's reputation by making false statements to the third party. It infringes upon persons' reputational interests and can have severe personal, social, and professional consequences. The primary purpose of defamation law is to protect individuals from malicious attacks that could unfairly damage their dignity. However, in practice, defamation laws often create a chilling effect on free speech and are frequently used by powerful individuals or institutions to silence criticism. This raises a fundamental challenge to how to reconcile the protection of reputation with the equally important right to freedom of speech. In any democratic society, both reputation and free expression are highly valued. Reputation is essential to personal dignity and social standing, while free expression is the cornerstone of an open and democratic society. The laws aim to strike a balance between these two by competing rights by ensuring that individuals can express their opinions without unjustly harming the reputation of others. However, balance is difficult to maintain, particularly when laws are misused to suppress dissent or shield influential figures from accountability. One of the significant issues with these laws in India is its complexity and inefficiencies. Litigation is often referred to as 'luxury litigation' because it is time-consuming and expensive, making it inaccessible to the average citizen. Civil defamation cases require plaintiffs to pay court fees proportional to the damages they seek, along with their representation costs. Providing defamation in court is a challenging task. Defendants often invoke defences such as 'truth', 'fair comment', and 'public interest'. Plaintiffs struggle to establish loss of reputation that justifies substantial compensation. As a result, many defamation cases either drag on for years or fail to yield meaningful outcomes. Criminal defamation laws, on the other hand, are criticized for being a tool of oppression rather than justice. This criminalization has been challenged multiple times for violating Article 19 of the Indian Constitution, which guarantees freedom of speech and expression. However, the Supreme Court has consistently reiterated the constitutionality of criminal defamation, arguing that the right to reputation is an essential component of the right to life under Article 21. While this interpretation underscores the importance of reputation, it also raises concerns about the potential misuse of criminal defamation laws to stifle free expression. Globally, many democracies have decriminalized defamation, recognizing that civil remedies provide sufficient recourse without infringing upon free speech. They offer protection against frivolous lawsuits while ensuring accountability for false and damaging statements. They also repeatedly ruled against criminal defamation, stating that it disproportionately restricts freedom of speech. In contrast, India continues to retain criminal defamation laws, which are often invoked by politicians, corporations, and influential figures to target journalists, activists, and dissenters. In a democracy, criticism is a natural and necessary component of government, as it serves as a self-corrective mechanism fostering transparency and accountability. While defamation plays a role in protecting individuals from false and malicious statements, they should not be misused to curb legitimate dissent. A well-functioning democracy should encourage open debate and free expressions rather than creating legal barriers that discourage public discourse. Critics argue that in a truly democratic society, defamation laws should be reformed, if not abolished, to ensure that freedom of speech remains a fundamental right rather than a privileged subject to excessive restrictions.

Bibliography

Books & Articles

1. Dicey, A.V., *Introduction to the Study of the Law of the Constitution*, Oxford University Press, 10th ed., 1959.
2. Winfield, P.H., *Winfield and Jolowicz on Tort*, Sweet & Maxwell, 19th ed., 2014.
3. Salmond, John, *Law of Torts*, Sweet & Maxwell, 17th ed., 1977.
4. Gaur, K.D., *The Indian Penal Code*, Universal Law Publishing, 6th ed., 2017.
5. Basu, D.D., *Commentary on the Constitution of India*, LexisNexis, 9th ed., 2015.
6. Ponnuswami, K., *Defamation Laws in India: Balancing Free Speech and Reputation*, Journal of Indian Law Review, Vol. 5, 2021.

Cases & Judgments

1. *Subramanian Swamy v. Union of India*, (2016)
2. *M.J. Akbar v. Priya Ramani*, (2021)
3. *Dixon v. Holden*, (1869)

Legislation & Reports

1. Bhartiya Nyaya Sanhita, 2023.
2. Indian Penal Code, 1860 (before its replacement by BNS, 2023).
3. Defamation Act, 2013 (United Kingdom).
4. First Amendment of the U.S. Constitution.