DEFAMATION AND THE FREEDOM OF PRESS

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INTRODUCTION

→ Background
"Every man has a right to have his reputation preserved inviolately. This right of reputation is acknowledged as an inherent personal right of every person as a part of the right of personal security."1

Defamation is an attack on the reputation of others through false publication (reporting to a third party), which leads to the discredit of others. This concept is elusive, and its diversity is only limited by human intelligence. Thousands of years ago, similar doctrines existed in English Law; in Roman Law, offensive hymns were punishable by death; in early English and German Law, the punishment for insulting people was cutting off the tongue; until the 18th century. In England, Defamation is only regarded as an allegation of crime or social illness and Defamation related to professional competence. It was not until the Defamation Act of 1891 made the allegation of lack of virtue illegal that no crime was added. Suppose the donation is related to a public figure. Modern German Defamation is similar but usually admits the truth as a defense. He rarely defended slander because slander would be punished there. Usually, the premise of Defamation is that the report is false and without the consent of the person accused of Defamation. The text or image is interpreted according to common usage and the context of the publication. Harm to feelings is not slander; reputation must be lost. The name of the defendant is not required, but it needs to be verified. If the publication applies to all its members, especially if the group is tiny or if individual members are given special responsibilities, then the group is only considered defamatory.2

The advent of electronic communications has made classification somewhat complicated. Radio defamation is considered Defamation in some countries, while in other countries, it is considered Defamation. T.V. will have similar problems. The Law also recognizes that slander in the media is more like slander. It is more harmful than "empty talk." The claims for damages for Defamation and Defamation are also different. Defamation claims include compensation for all detrimental consequences of Defamation. If it involves image loss, it is called general compensation, and if it involves specific economic losses, it is called special compensation.3

→ Types of Defamation
Defamation is divided into two categories:(will discuss the types in detail in the next Chapter)
1. Libel
2. Slander

→ Essentials of Defamation
3. The information must be defamatory
4. Must refer to the plaintiff
5. Must be published

→ Comparative Analysis

1 Blackstones Commentary of the Laws of England, vol 1, 4th Edn, p101
2 Supra 4
3 Supra 4
1. English Law
The Defamation Acts of 1952 and 1996 constitute the important English statutes that lay down the defamation law. There is a difference between Libel and slander under English Law. There were two reasons given. Firstly, the penalties for defamation are not slander. Slander is no crime. Therefore, divorce can always per se be activated. Second, "special damage" must be shown in most cases of slander. Concerning the Law of torts, slander may only be applied to particular harm in exceptional circumstances.4

Thus, in England, slander is only a civil wrong. However, it is to be noted that civil action is more demanding than a criminal action.

2. American Law
In United States (U.S.), defamation law is much less plaintiff-friendly as compared to its European counterpart due to the enforcement of the First Amendment:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

One crucial distinction is that jurisdictions of the European and Commonwealth adhere to the theory that each publication of Defamation gives rise to a separate claim to allow Defamation to be brought on the Internet in any country that reads the statement. In contrast, American Law allows only the first publication to be claimed. In addition, between Libel and slander, there is no distinction. This is because there are different definitions in various states. Some countries codify into a single set of laws what constitutes slander and divorce. Some countries have criminal libel laws in books, but old legislation is seldom enforced.5

3. Australian Law
In Australia, the Law on Defamation was different from state to state until uniform laws on Defamation were enacted in 2006. The Law on Defamation became similar in all states and territories after this Act was passed. The uniform laws passed several statutory provisions of ancient laws but still retained basic common law principles. Corporations with ten or more employees are not allowed to sue under uniform laws on Defamation. This was not the case with the old state system, where virtually anyone or any other organization or company could file a defamation lawsuit.6

4. Pakistani Law
In Pakistan, Defamation is subject to the Defamation Ordinance 2002. Defamation and Defamation themselves will be prosecuted. When publishing defamatory material, there is no need to prove specific damage. Violation of the above laws constitutes damages of at least 300,000 rupees. Although the decree (amended in 2004) is still regarded as a new law, since the company still has not closed cases against publishers and journalists, the defamation

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4 W.E. Peel, J. Goudkamp, Winfield & Jolowicz on Tort 360 (Sweet & Maxwell, 19 edn., 2014)
5 The Constitution of United States, Amendment 1
law may apply to what is considered as Pakistan only since inception. Pakistan Penal Code of 1860 -502 (same as I.P.C. of 1860) contains definitions, interpretations, exceptions, and penalties related to libel laws. It is worth noting that Pakistan attaches great importance to "religious defamation." Sections 295, 295A, 295B, and 295C criminalize religious Defamation (blasphemy), punishable by two years imprisonment and the death penalty. The country's decision is based on the fundamental freedom of speech stipulated in Article 19 of the Pakistan Constitution. As in India, this is only subject to "reasonable restrictions." Court decision:

"In the wrong of Defamation, the law presumes malice in the sense of wrongful Act done intentionally by publishing a defamatory matter, but there is a lawful excuse for the publication of such matters as in the ordinary case of a privileged communication or of fair comments upon a matter of public interest, the onus is upon the plaintiff to establish the fact of malice to maintain the action. It means that malice must be proved as a fact irrespective of the mere inference arising from the defamatory character of the publication. When the plaintiff fails to prove malice by compelling evidence, he can be non suited on this ground. The burden of proving express malice both by extrinsic and intrinsic evidence lies on the plaintiff to show that some indirect or improper motive actuated the publications."

LITERATURE REVIEW

★ 'DEFAMATION LAWS AND JUDICIAL INTERVENTION: A CRITICAL STUDY' written by Shivi
This Article examines the concept of Defamation and an analysis of the laws on Defamation. Recent legal developments have brought to the surface the debate on Defamation; the central topic is the decriminalization of Defamation. Therefore the paper examines the defamation debate with a particular reference to Shreya Singhal's case because of Subramanian Swamy vs. Union of India. A critical study of judgment and an analysis of the related issues associated with the defamation discussion have been carried out.

★ 'CRITICAL ANALYSIS OF EVOLUTION AND LEGALITY OF DEFAMATION IN INDIA' written by Yusra Khatoon and Avinash Ray
In this paper, researchers have analyzed critically using certain jurisdictions. However, cautions should be taken in the final Court when dealing with the cases. Following Article 19(1)(a), Defamation is not only criminalized post-constitutionally but pre-constitutionally by the Indian Penal Code and Constitution. Article 21 also refers to personal freedom as we interpret it in the broader sense.

★ 'NEWSPAPER LIBEL: AN INTRODUCTION; WITH SPECIAL

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9 Yusra Khatoon and Avinash Ray, CRITICAL ANALYSIS OF EVOLUTION AND LEGALITY OF DEFAMATION IN INDIA, MyLawman Socio Legal Review, P-10, June 17, 2021
EMPHASIS ON INDIAN CASE LAW' written by Nayan Banerjee
The researcher answered a few fundamental questions regarding newspaper libel and its position on Indian case law. Concerning the case law, the researcher analyzed the definitions of Defamation, Defamation, and elements, defenses, and libel remedies.10

★'DEFAMATION: ITS CIVIL AND CRIMINAL LIABILITY' paper deals with Defamation in context to Civil and Criminal liability. The researcher tried to compare English Law and Indian laws regarding Defamation, types of Defamation, exceptions stated under sec 499 Indian Penal Code, and respective remedies.11

★'DEFAMATION: IN INDIAN CONTEXT' written by Sujata Dahiya
“In our society of democracy, our Constitution gives us various fundamental rights, which are the essential components of our life and all the development in all spheres of life, the right to freedom of speech and expression (Article 19(1)(a) and the right to life, article 21). Alongside these rights, certain restrictions are also imposed by Law in the form of section 499-502 of I.P.C. & Article 19(2) of the Constitution of India to preserve peace and security in the country.

The Community can prove detrimental to all limited rights, and section 499 of the Indian Penal Code has put the freedom of speech and speech reasonable restrictions not to violate it.”12

★'LAW OF DEFAMATION IN INDIA' written by Harish Kumar
One of the fundamental rights for a person to enjoy is the right to keep his reputation intact. In India, the offender can act against the person who attacked his reputation if a person's reputation is attacked in any way. The defendant is accused of Defamation of someone is not something new and personal, especially in India. In some ways or another, the violation under section 499-500 IPC is not the same, but in certain respects, it is identical.13

RESEARCH OBJECTIVES
* To understand more about Defamation in both civil and criminal aspect
* To analyze the case laws and scholarly kinds of literature on the topic of Defamation in India
* To know the effect of Defamation by newspaper libel
* To compare the laws of different countries

RESEARCH QUESTIONS
* What is the historical background of the Defamation?
* What are the different laws in Defamation?
* What is the difference between civil and criminal Defamation?
* What is civil Defamation?
* What is newspaper libel, and how Art.19 is related to it?

**LAW OF DEFAMATION IN INDIA**

**Criminal Law**
Defamation is damage to one's reputation. Defamation is a civil and criminal act. Anyone who has been harmed by making statements that may damage his reputation can initiate criminal proceedings under the Indian Penal Code of 1860 and civil proceedings. According to the "Unlawful Crimes Act," if a criminal suit is withdrawn, no one will prevent you from filing a civil lawsuit unless amicable settlement is prohibited. In 502 I.P.C Defamation of the State, collective Defamation is established in Article (124-A), (Article 153), (Section 295-A) (about offending religious feelings by insulting or attempting to insult). Simply proving that a statement is true is enough to avoid liability, but any information is confirmed in criminal Law, but it also serves the common good.

“It is not Defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the author's character so far as his character appears in such version, and no further.”

This broad definition allows four interpretations and ten exceptions. If someone is convicted of Defamation under I.P.C. Section 499, Section 500 provides a penalty, simple imprisonment or fine of up to two years, or section 199 Cr P.C., which defines legal procedures. Noting that the crime is unknown and released on bail, so the defendant is usually not detained without a court order, so the victim cannot simply report it to the police, but in most cases, you "defend" at this point "The truth." However, "the truth" is usually regarded as a defense of Defamation as a civil crime. The only criminal truth is the defense of criminal prosecution. Defamation (of course, provided that) is only in limited circumstances. Even if her allegations are true, g is still found guilty of Defamation by I.P.C.

**Civil Law**

“As you know, English Law divides Defamation into two parts (i) libel (ii) slander. In English Law, Libel is an offense & slander is not an offense but is categorized as the offense in a situation of proof of some damages. But in India, Libel & slander both are considered actionable per se (without proof of damages).”

✓ **Libel:** “A libel is a publication of a false and defamatory statement tending to injure the reputation of another person without lawful justification or excuse. The information must be expressed in some permanent form, e.g., writing, printing, pictures, statue, waxwork effigy, etc.”

Libel is categorized into four types:

* False
In favor of the complainant, the falsity of the charge is presumed. It is not the complainant's burden of proving that the words are false. The plaintiff's usual accusation, however, is fraudulent and malicious in his complaint. Negative here means that there was no reason, no excuse for the publication.

* In writing
The defamatory statements may be in writing or printing or conveyed in caricatures or any other similar representation, e.g., a scandalous picture.

*Defamatory*

Any word will be deemed defamatory, which:
1. Expose the plaintiff to hatred, contempt, ridicule, or, obloquy; or
2. Tend to injure him in his profession or trade; or
3. Cause him to be shunned or avoided by his neighbors.

The defamatory statement consists of an article with a headline, the photograph must be taken together, and the entire article, including the headline and the photographer, must consider whether it is defamatory for the complainant in its natural and usual meaning, ascribed to it by ordinary men.

*Publication*

Publication in its legal sense is to communicate Defamation to a person other than the written person. If the statement is sent directly, it is not published, as you cannot post a man's Defamation for yourself.

✓ **Slander:** "A slander is a false and defamatory statement as spoken words or gestures tending to injure the reputation of others."

"Where a document containing a defamatory statement is published by being read ours to the third person, or where the publication of the defamatory information is to a clerk to whom it is dictated, the communication, in either case, amounts to slander and not to Libel."

**NEWSPAPER LIBEL AND ART. 19 OF INDIAN CONSTITUTION**

Newspapers have no special rights or privileges, nor do they have special requests to make unfair comments or explain a person's character or occupation. The scope of criticism of one reporter is no broader than that of other reporters. In addition, a reporter has a great responsibility to protect himself from lies because his statements are published more frequently than personal statements, and he is likely to be a non-professional person. The Law recognizes the right to express opinions on issues of public interest, and journalists must publicly review their facts. Whenever a newspaper makes a statement in public interest issues, it must abide by the rules of "responsible journalism," such as Lord Nichols's ten conditions. In this sense, Reynolds is a significant cause of slandering modern newspapers. This is also known as "Renault Defence." Reynolds' defense was further developed in the Jameel v. Wall Street Journal and Siga v. Harper's rulings. Some argued that Reynolds's security "is designed to communicate with the public and grant them more than traditional norms allow." "Great privilege". "The historical significance of these decisions will be explained later in this section.

Investigative journalism will not enjoy any special rights or protections in the future. Therefore, any accusation or statement suggesting that a person is guilty is the result of his duty." The investigation does not allow the newspaper to claim the protection of qualified privileges (this protection will be developed in the context of India in the future). It is also a "newspaper rule," that is, the newspaper does not need to disclose the
source of its information when answering questions. India used this rule in Nishi Prem v. Javed Akhtar. But it should be noted that newspapers must reveal that in addition to questioning their source of information, each defendant is responsible for the damage caused. Therefore, publishers, editors, typeset, and owners can individually or jointly assume responsibility in these cases. In addition, the owner is liable for any defamation that appears in the newspaper column, even without his knowledge, in his absence, or even in violation of whose order. In addition, every sale of a defamatory newspaper seems to be a publication jointly held by the distributor and the customer; however, if it can be proved that the defendant is not aware of the Defamation, the defendant can be exempted from responsibility; his ignorance is not due to For his negligence, he has no reason to believe that the newspaper may contain Defamation, but the principle only applies to defendants who play a minor role in the distribution of the newspaper. Therefore, it only covers people interested in mechanically distributing newspapers, such as B. newspaper sellers. Finally, when the testimony was broadcast during the trial and commented in the newspaper, the testimony proved to be false; fair opinions can be used in subsequent defamation proceedings.

→Article 19(1)(a) Freedom of speech and Expression

As we know, the freedom of speech and expression in our preamble and Article 19(1)(a) of the Constitution gives us, because all our opinions and ideas can be expressed. Freedom of speech and expression is essential in our democratic country. Patanjali Sastri J. right observed that in Ramesh Tapper v. the State of Madras

"Freedom of speech of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible.”

Article 19(1)(a) Means that any citizen shall be entitled, but also under Article 19(2), to freedom of expression to safeguard state safety, decency, mortality and prevent civil/criminal Defamation, to freedom of expression. An absolute right of individuals cannot be guaranteed in any modern State because, without any limitation, this right proves to be harmful to society as a whole, it would ruin people without any social control, yet all these limitations have to be reasonable.

CONCLUSION

Freedom of speech is the best defense against a poorly governed government. As Nobel laureate Amartya Sen pointed out, a democracy without press freedom can endure hunger. Unless old facts are challenged, science cannot develop. The right to recognize freedom of speech is almost absolute. As stated in the Constituent Assembly, exceptions should be rare, with "reasonable before restriction" added. In unstable countries, speech that incites violence will be different from that in stable democracies. Politicians must face severe and imminent threats, and anyone who adopts a fact-based view should not be arrested. The cooling effect is related to how overly broad and strict laws inhibit language. The nature and procedures of defamation law are tyranny against ordinary people. Still, the Court held that the existence of the Law is sufficient to show that it has no deterrent
effect. It is easier to criticize than to deal with the nature of the problem. Of course, healthy criticism will encourage creativity and growth. Nowadays, it is easier to be critical than to understand the situation in depth. It cannot be ignored that the judiciary is doing everything possible to ensure a harmonious structure for these matters. As citizens, we also have a responsibility. It's time to rethink. The right to maintain the integrity of a person's reputation is one of the most fundamental human rights. In India, when a person's reputation is attacked in any form, the victim can file a lawsuit against the person who shot his reputation. The defendant was charged with Defamation. Defamation is not new in India, nor is it directed at individuals, but most countries recognize it. English Law is not the same, but in some respects, it is the same. The current Law is governed by Sections 499-500 of the Indian Penal Code of 1860. In 1971, the Law Commission published a report proposing some minor changes to the wording of sections 499, 500, 501, and 502 of the bill. Now that the changes have been made, there is no more. Currently, a person guilty of Defamation can only be sentenced to a maximum of two years in prison.

REFERENCES

2. Salmond on the Law of Torts
5. The Constitution of United States, Amendment I
9. Indian Penal Code, 1860, s. 499
14. CRITICAL ANALYSIS OF EVOLUTION AND LEGALITY OF DEFAMATION IN INDIA, MyLawman Socio-Legal Review, p-10
15. NEWSPAPER LIBEL: AN INTRODUCTION; WITH SPECIAL
EMPHASIS ON INDIAN CASE LAW,
https://ssrn.com/abstract=1968152

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