CHAPTER 4

The concept of Defamation : Libel and Slander

MANY DEFINITIONS of defamation have been attempted. Broadly speaking, defamation may be defined as a false and damaging statement.[1] The simplest and the best definition of defamation is that given by Justice Cave,[2] who has defined it as a "false statement about a man to his discredit."

The principal ingredients of the tort of defamation are as follows :

(*i*) Defamation as a tort consists in the publication of a statement (concerning the plaintiff) to a third person, exposing the plaintiff to hatred, ridicule or contempt or which causes him to be shunned or avoided or which has a tendency to injure him in his office, profession or calling.[3]

(*ii*) For the tort of defamation, what matters is the harm caused to the plaintiff and not the intention of the defendant. Hence, it is immaterial that the defendant had no intention to defame the plaintiff. It is enough that the statement refers to the plaintiff.

(*iii*) The statement must be published by the defendant to a third person. Publication only to the plaintiff when no third person could have heard the statement or read it, is not enough.

(iv) The statement must be false. A true statement cannot attract civil liability.

These points can be usefully elaborated.

(*i*) A statement is defamatory if its tendency is to excite against the plaintiff the adverse opinions or feelings of others. To say that a woman was raped or that a person was impotent or illegitimate is defamatory. It is not necessary that the moral or intellectual character of the plaintiff should be disparaged.

Reputation may be harmed expressly or indirectly by a statement which, taken along with certain special circumstances becomes defamatory. Such indirect statements fall under "innuendo". Thus, to say that "A was married to C today" may not be defamatory as a rule, but it would be defamatory if A has been already married to B, because then the statement would mean

1. *Paras Dass, son of Jugal Kishore* v. *Shri Paras Dass*, (1969) Delhi L.T. 241; *M.C. Verghese* v. *T.J. Poonan*, (1969) 1 S.C.C. 37.
2. *Scott* v. *Sampson*, 8 Q.B.D. 491 (1882).
3. *Neville* v. *Fine Art and General Insurance*, [1897] A.C. 68, 72.

that A has committed bigamy.

(*ii*) The motive or intention of the defendant is immaterial. The test is, whether right-thinking members of the community would understand the statement in a defamatory sense.[4]

The defendant may even be unaware of the plaintiff's existence.[5] Thus, a novelist writing about one "Artemus Jones" was held liable in tort for giving (in the novel) a defamatory description of that character. He used the name merely as a fictitious character, but there was, in reality, a living man with that very name and he could sue the novelist. [This part of the law has been reformed by statute in the United Kingdom but not in India].

(*iii*) Publication to a third person may be oral or in writing. It makes no difference in India whether the publication is in a transient or in a permanent form. Publication on radio or television, or in film or or gramophone record, can also be defamatory. Even gestures could be defamatory.

The *repetition* of defamatory matter is considered a new publication. Hence a newspaper cannot (after publishing a defamatory statement) take the defence that it is merely repeating what was communicated to it or re-publishing what was already published.[6] But the publication must be to a person other than the plaintiff.

(*iv*) In the law of torts, it is a defence that the statement alleged to be defamatory was true.[7] No civil action lies for publishing a true statement, because the theory is that a plaintiff cannot claim to have a better reputation than what he deserves. It is not necessary to further prove public benefit for attracting civil liability.

In an Allahabad case,[8] the words that were alleged to be defamatory, were :

> The witness should be asked how much debt he has incurred and whether he pays income-tax, he has amassed wealth by sucking the blood of the poor; witnesses like him are obtainable in abundance for Rs. 10 or Rs. 20; he should be asked how many times he appeared as a witness on being paid Rs. 1-8-0; he indulges in blackmarketing all over the world and now

4. *Sim* v. *Stretch*, (1936) 2 All E.R. 1237, 1240 (H.L.).
5. *Hulton* v. *Jones*, [1910] A.C. 20, 23.
6. *Cassidy* v. *Daily Mirror*, (1929) 2 K B. 331; *Cadam* v. *Beaverbrook Newspaper*, (1959) 1 All E.R. 453.
7. See discussion relating to Justification, *infra*.
8. *Purshottam Lal* v. *Prem Shankar*, A.I.R. 1966 All. 377.

he has come over here to suck the blood of a poor bank employee[9].

The portion relating to amassing the wealth "by sucking the blood" was held not to be defamatory. The rest of the statement was held to be defamatory.

It is libellous to make the imputation that a man is unfit for his profession or calling owing to want of ability of learning. In a Bombay case, [10] the court held that to say about a person in respect of his profession or calling that he is unfit or incompetent for the profession is defamatory. A statement made against a lawyer that certain persons had engaged him and reposed their confidence in him but he, after accepting the brief, betrayed their confidence and let his clients down, is highly libellous.[11]

A company or a corporation carrying on a trade has a trading character, and it may, therefore, sue for any words which reflect upon it in the way of its property or trade or business.[12]

Likewise a corporation is liable to an action for libel published by its servants or agents, whenever such publication comes within the scope of the general duties of such servants or agents, or whenever the corporation has expressly authorized or directed such publication.[13]

The mere use of abusive and insulting language is not sufficient to justify a claim for damages.[14]

In regard to the general concept of defamation, the most important topic that requires discussion is the supposed distinction between libel and slander. The distinction is well-embedded in English law and has survived in that country, notwithstanding the strong criticism thereof that one meets with from time to time. Most High Courts in India have refused to follow the English law on this point, as not suitable for Indian conditions. Some High Courts have, however, recognised this distinction.[15] A discussion of the distinction is, therefore, of some practical importance in India also.

---

9. *Id.* at 379.
10. *Mitha Rustomji* v. *Nusserwanji Nowroji*, A.I.R. 1941. Bom. 278.
11. *Raghunath Singh* v. *Mukandi Lal*, A.I.R. 1936 All. 780, 784.
12. *Union Benefit Guarantee Co.* v. *Thakorlal*, A.I.R. 1936 Bom. 114, 119. *South Heton Coal Co. Ltd.* v. *North-Eastern News Association Ltd.*, (1894) 1 Q.B. 133, *D & L Caterers Ltd.* v. *D'Agou*, (1945) K.B 364.
13 *Latimer* v. *Western Morning News Co.*, 25 L.T. 44; *Ahrath* v. *North Eastern Rly. Co.*, 11 A.C. 247, 253 (1886); *Bradshaw* v. *Waterlow & Sons Ltd.*, (1915) 3 K.B. 527; *Tiruveriamuthu Pillai* v. *Municipal Council*, A.I.R. 1961 Mad. 230.
14. *Girish Chandra Mitter* v. *Jatadhari*, 3 C.W.N. 551 (1898-99); *Bhoomi Money* v. *Notobar Biswas*, 5 C.W.N. 659 (1900-01); but see, *Suraj Narain* v. *Sita Ram*, A.I.R. 1939 All. 461: 37 A.L.J. 394 (1939).
15. See Appendix dealing with Indian case law on slander. See, in particular : *Hirabai* v. *Dinshaw*, I.L.R. 51 Bom. 167 (1927) : A I .R. 1927 Bom. 22; *Girdhari Lal* v. *Panjab Singh*, A.I.R. 1933 Lah. 727.

At common law, libel is actionable *per se*, while slander is actionable only on proof of special damage (except in certain special cases).[16] Many persons in the United Kingdom had felt that this distinction was artificial and illogical. The rationale underlying the distinction was that libel is something permanent (and damage may, therefore, be presumed), while slander is transitory and addressed to a small number and there should, therefore, be proof of special damage if it is to be actionable. However, with the development of modern means of communication like radio and television, whereunder an oral assertion could be spread out to a great number of persons while a written word might be limited to a few readers, the illogicality of the distinction becomes more acute. The Porter Committee did notice the illogicality of the distinction.[17] However, the majority of its members[18] were unable to recommend abolition of this doctrine. Two members of the committee[19] were in favour of the assimilation of the law of slander with that of libel, but in view of the opinion of the majority, no recommendation for the general assimilation of slander with libel was made by the Porter Committee.[20] However, as regards defamatory statements transmitted over the radio, the Porter Committee recommended that such statements should be deemed to be published "in writing" by the persons responsible for the broadcasting; this was to apply to television also.[21] Certain other changes were also recommended regarding the slander of a person in the way of his office, profession of trade.[22] Thus, while not disturbing the theoretical continuance of the distinction between libel and slander, the Porter Committee recommended some modifications therein. These recommendations have, in substance, been carried out, in section 1 of the Defamation Act, 1952 (broadcast statements) and sections 2 and 3 thereof (particular types of a slander).

In English law, libel is actionable *per se* without proof of special damage, while slander, in order to be actionable, must be accompanied by special damage, except in the following cases :

(1) When the words alleged to be slanderous charge the plaintiff with the commission of a crime punishable with imprisonment;

(2) when the words in question charge him with a contagious disease tending to exclude him from society;

(3) when the words in question impute unchastity or immorality to a woman or girls;

16. See *infra*.
17. See *Porter Committee Report*, paras 38 and 39.
18. *Id.* at para 40 and footnote thereto.
19. The two members who favoured assimilation were Richard O'Sullivan, K.C. and Professor E.C.S. Wade. Sullivan was editor of *Gatley on Libel and Slander*.
20. *Supra* note 17. Summary of Recommendations (No. 2) See also p. *infra* p. 16.
21. *Id.* at paras 42 and 43.
22. *Id.* at paras 44-49 and Summary of Recommendations No. 2 (*b*).

(4) when the words are spoken of a person in the way of his profession, calling or trade and impute to him misconduct in or unfitness for that profession, calling or trade; and

(5) an imputation calculated to disparage[23] a person in any office, profession, calling, trade or business, whether or not the words fall within the fourth category listed above. This is by virtue of a statutory provision.

In England, abolition of this distinction was proposed as early as 1843, by a committee appointed by the House of Lords. In the Porter Committee, which reported after the Second World War, while the majority recommended no change in this regard, two dissenting members favoured abolition of the distinction.[24] These were Richard O'Sullivan and E.C.S. Wade.[25] Later, in 1975, the Faulks Committee also recommended abolition of the distinction.[26] However, the law on this point has not yet been reformed in the United Kingdom.

In Australia, the distinction between libel and slander has been abolished in several states.[27]

The distinction has also been abolished in several provinces of Canada, including Alberta, Manitoba, North Brunswick and Prince Edward Island.[28] It may also be stated[29] that in Canada, the Uniform Defamation Act, 1944 does not recognise the distinction. Section 2 of the Act defines "defamation" as meaning libel or slander and section 3 of the same Act provides : "An action lies for defamation, and in an action for defamation where defamation is proved, damage shall be presumed."[30]

Eminent Judges in England have also criticised the distinction. In a case reported in 1864, Cockburn, C.J., and Crompton and Blackburn, JJ., regarded the distinction as unsatisfactory.[31] In an earlier English case, Campbell, L.C., had expressed the same view.[32] In India, in a Madras case, Turner, C.J., criticised the distinction and refused to apply it.[33] However, there is some uncer-

23. S. 2 of the Defamation Act, 1952.
24. See *supra* p. 15.
25. *Supra* note 17, paragraphs 44-45 and Summary of Recommendations, No. 2(*b*).
26. *Faulks Committee, Report*, Cmd. 5909, para 91 (1975).
27. See Fleming, *Torts* 488 (1961); New South Wales Defamation Act, 1958 (ss. 7-8); Queensland Defamation Law, 1889 (s.6); Tasmania Defamation Act, 1957 (s.9); A.C.T. Defamation Act, 1901 (s.3).
28. Fleming, *ibid*, footnote 38.
29. Uniform Defamation Act, 1944 (Canada), see s.2.
30. See Wright, *Torts* 712 (1954).
31. *Roberts* v. *Roberts*, 33 L.J.R.Q.B. 249 (1864).
32. *Lynch* v. *Knight*, 9 H.L.C. 577, 574 : 11 E.R. 854.
33. *Parvathi* v. *Mannar*, I.L.R. 8 Mad. 175 (1864).

tainty as to the position in India, since there are Bombay, Calcutta and Lahore rulings which hold, suggest or assume that the dictinction applies in India also.[34] The law on the subject should, therefore, be settled. The distinction should go, and its abolition in India should be achieved by specific statutory provisions to avoid all controversy. It needs to be provided that slander is also actionable without special damage.

In India, one special reason for clarifying the law as to the actionability of slander without special damage is the provision contained in the law of limitation.[35] In the earlier Indian Limitation Act, 1908, article 25, dealing with slander, was as follows :—

25 "for compensation for slander.	One year	When the words are spoken, or if the words are not actionable in themselves, *when the special damage complained of results.*"

In contrast, article 24 of that Act did not contemplate special damage for the actionability of libel. In the present Limitation Act, 1963 (36 of 1963), also article 76 [which is on the same lines as article 25 of the Act of 1908] contemplates *special damage* as an essential requisite for the actionability of slander. In contrast, article 75 of the Limitation Act does not require special damage for libel to be actionable.

However, most courts in India do not recognise this distinction and the majority view of Indian High Courts[36] needs to be codified in the interests of clarity and certainty of the law.

In the light of what is stated above, there should be enacted a specific statutory provision which will ensure that slander becomes actionable without special damage.

If the suggestion to assimilate libel and slander so as to obviate the need for special damage in any case of slander is accepted, it will, of course, be necessary to amend the relevant articles of the Limitation Act also.[37]

A possible amendment of the law to assimilate slander and libel could be on the following lines :—

"Words spoken and published shall not require special damage to render them actionable."

---

34. Case law in India on the subject shows the uncertainty. (See Appendix).
35. In the Law Commission's *Report on the Limitation Act, 1908* (3rd *Report*, p. 83, Schedule, article 1 and discussion at p. 44, para 116), suits founded on contract or on tort are all put together under one starting point, namely, the date on which the cause of action arises.
36. Case law on the subject in India is summarised in Appendix.
37. Articles 75-76, Limitation Act, 1863, see *supra*, p. 14.