

# DEFAMATION

1. “Every man has right to have his reputation preserved inviolate”-  
**Blackstones.**
- 2 . **Blackstones** -This right of reputation is acknowledged as an inherent personal right of every person as part of the right of personal security.
3. **Winfield**- “Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking member of the society generally.”
4. **Salmond**- “Defamation is the publication of a false and defamatory statement concerning another person without lawful justification”
5. **Bhagwat Gita**-” For a man of honour, defamation is worse than death.”

6. It is a right in rem- a right good against all the world.
7. It is an injury to the reputation of a person.
8. A man's reputation is his property, more valuable than other property.
9. It is both criminal offence as well as civil wrong.
10. S-499 IPC- "Defamation is the wrong done by a person to another's reputation by words, signs or visible representation."
11. Type of Defamation- (a) LIBEL and (b) SLANDER

## **Synopsis-**

Definition and Differences between Slander and Libel

Essentials of Defamation

Defences of defamation

Remedies of defamation

## Distinction between Libel and Slander-

1. Libel is a **publication** of a false and defamatory statement tending to injure the reputation of another person without any lawful justification or excuse. Slander is a false and defamatory statement by **spoken words or gesture** tending to injure the reputation of another.
2. Libel is written defamation addressed to eye as well to ear. Slander is spoken addressed to ear only.
3. Libel is in some permanent form(written or printed). Slander is in a transient form ( spoken or gesture).
4. Libel is both civil and criminal offence and slander is only civil wrong. In English law slander is no offence. In India both are offence.

5. A slander may be uttered in the heat of the moment and under sudden provocation. But Libel is not so.
6. A Libel conduces to a breach of peace but a slander does not.
7. Libel is actionable per se (without any proof). Slander Except in certain following cases special damage is required.
  - (a) Imputation of criminal offence to the plaintiff
  - (b) Imputation of a contagious or infectious disease to the plaintiff.
  - (c) Imputation that the person is incompetent, dishonest or unfit in regards to the office, profession, trade, business carried on by him.
  - (d) Imputation of unchastity / adultery to any girl/women

# Essentials of Defamation

1. The statement must be defamatory
2. The said statement must refer to the plaintiff
3. The statement must be published.

## **Defamatory statement**

- Statement which tends to injure the reputation of plaintiff.
- Imputation which expose one to disgrace and humiliation.
- Such statement may be-
  - Oral
  - In writing
  - Printed
  - Picture
  - By some conduct

Cases-DP Choudhury v. Manjulata AIR 1997 Raj-Running away in the name of night classes-published in Dainik Novjyoti of Jodhpur-Held defamation and Rs. One lakh awarded as damages.

Morrison v. Rithhie & Co(1902) – birth of twins-held defamation.

**Ramjethmalani v. Subramaniam Swami AIR 2006 Del 300.-**

Defamatory- Rs 5 lakh awarded.

**Cassidy v. Daily Mirror Newspaper Ltd (1929) KB 331-Mr. and Mrs.**

Corrigan and Miss X- held defamation.

## **The Innuendo**

Sometimes the statement may prima facie be innocent but because of some latent or secondary meaning it may be considered to be defamatory.

➤ In natural and ordinary meaning it is not defamatory.

➤ Plaintiff must prove if he wants to bring an action.

1. The of latent and secondary meaning and

2. Evidence of defamation.

➤ Cases-

Morrison v. Rithhie & Co(1902) – birth of twins-held defamation.

Cassidy v. Daily Mirror Newspaper Ltd (1929) KB 331

Tolley v. JS Fry (1931)AC 333-Golf champion- held Innuendo.

Capital and Counties bank v. Henty & Sons(1882) AC 741.-Circular of not receiving of cheques of the above bank- held no Innuendo

## 2. Statement must refer to the plaintiff

To get succeed the plaintiff has to prove.

### **Cases-**

**Hulton Co. v. Jones (1990) AC 20**-Publication of a fictional article on morals in Sunday Chronicle in the name of a person Artemus Jones, a churchwarden at Pekham - a barrister of same name bought an action-held libel.

**Newstead v. London Express Newspaper Ltd (1939) All ER 391**- Publication of an article that plaintiff had been convicted of bigamy- this was true but action was bought by another person of same name- held libel

**Eastwood V. Homes (1858)**- “All lawyers are thieves.”-No libel till not pointing to a particular lawyer.

**Dhirendra Nath Sen V. RK Bhadra AIR 1970 Cal 216**-defamation of a spiritual head of a community – an editorial in newspaper – an individual of that community does not have a right of action.

### **3. The Statement must be published**

Publication means making the defamatory matters known to some person other than the person defamed.

➤ Communication to the plaintiff himself is not enough because it is injury to reputation.

➤ Cases-

**Pullman v. Hill (1891) QB 524**-Dictating a letter to one's typist is enough publication.

**Theaker v. Richardson (1962) All ER 299**- If defamatory letter sent to the plaintiff is likely to read by someone else, there is publication.

Example- post card, Telegram, Facebook-?, Web sites-?

**Mahendra ram v. harnandan prasad AIR 1958 Pat 445**-  
Defamatory Letter in Urdu- read by third person- held no libel.



# Defences of Defamation

1. Justification of Truth
2. Fair comment
3. Privileged
  - (a) Absolute and
  - (b) Qualified privileged

## Justification of Truth

Radheshyam Tewari v. Eknath AIR 1985 Bom- Defamation of BDO- defendant held liable as he could not prove.

Salenadandasi v. Gajjala Malla Reddy AIR 2009(NOC) AP- Rape of a harijan lady by an advocate-held defamation.

- When one portion of statement is true and another is untrue- No provision in India.

## Fair Comment-

Making fair comment on matters of public good is a defence (damnum sine injuria). And it should not be based on **Malice**

### **Essential of this defence**

1. It must be a comment-expression of Opinion
2. The comment must be fair
3. It must be of public good

## Privilege

Folkard- Privilege means a person stands in such relation to the facts of the case that he is justified in saying or writing what would be slanderous or libelous.

- Defamatory statements are not actionable if privileged.
- It is of two type.
  1. Absolute Privilege and
  2. Qualified Privilege

## **Absolute Privilege**

No action lies for the defamatory statement even though the statement is false or has been made maliciously.

### **Occasions of Absolute Privilege**

1. Parliamentary proceedings –Art 105(2)
2. Judicial proceedings
3. Military and naval Proceedings
4. State proceedings

### **Underlying Objects**

1. The common convenience and welfare of society or the general interest of society
2. Give way to freedom of speech

## Qualified Privilege

If a communication is privileged then statement made without malice is protected.

### ➤ **Essentials**

1. The statement was made on a privileged occasion- i.e. in discharge of duty.
2. The statement was made without any Malice.

➤ **Radheshyam Tiwary v. Eknath AIR 1985 Bom 424- BDO case**

➤ **RK Karajia v. Thackersay AIR 1970 Bom 424- Tax evasion case- editor held liable.**

➤ **The Parliament Proceedings( Protection of Publication) Act 1977 – gives such privileges.**

➤ **This defence can be refuted by the plaintiff unlike AP.**

## Distinguish between Absolute and Qualified Privilege

# REMEDIES FOR DEFAMATION

1. A Criminal prosecution and
2. A civil suit for damages

## **Under civil suit**

(a) Damages-Compensatory damages

(b) Injunction-s-38 and 39 of the specific relief Act 1963