

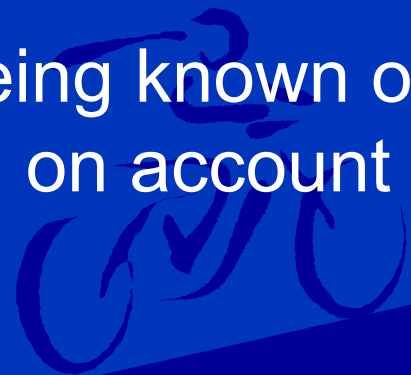
Defamation

Dr. Khakare Vikas

Asso. Prof.

Narayanrao Chavan Law College, Nanded, India

- This is also known as wrongs affecting reputation.
- Word 'reputation' is synonymous with 'fame'.
- 'reputation' is the beliefs or opinions that are generally held about someone or something.
- It is widespread belief that someone or something has a particular habit or characteristic.
- 'Fame' is the condition of being known or talked about by many people, esp. on account of notable achievements.

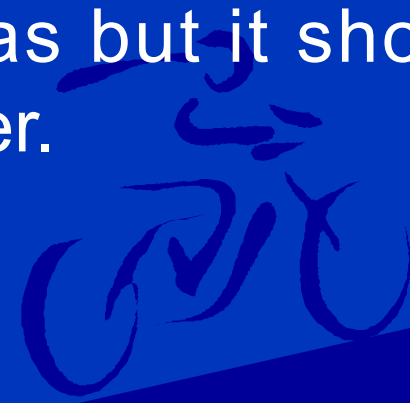


Definition

- Winfield, “Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of the society generally or which tends to make them hate or avoid that person”.
- Underhill, “Defamation is the publication of a false and defamatory statement concerning another without just cause or excuse, whereby he suffers injury to his reputation”.
- Salmond, “ Defamation consists in the publication of a false and defamatory statement concerning another without lawful justification”.

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- The constitution of India has provided fundamental right of freedom of speech and expression. But this right is not absolute and subject to certain limitations. A person may speak or express his ideas but it should not cause defamation of another.



Kinds of defamation

- **Following are two kinds of defamation.**
 - 1. Libel**
 - 2. Slander**



Libel

- Libel is publication of a false and defamatory statement in some permanent form tending to injure the reputation of another person without lawful justification or excuse.
- Examples- writing, printing, picture, effigy, online publication, cartoons, etc.



Slander

- Slander is false or defamatory, verbal or oral statement in some transitory form, tending to injure the reputation of another without lawful justification or excuse.
- Example- words uttered, comments, explanation, on radio, television etc.



libel

1. It is written defamation addressed to the eye.
2. It is in permanent form.
3. It is both civil and criminal wrong.
4. It is actionable per se.

slander

1. It is spoken defamation addressed to ear.
2. It is in transitory form.
3. It is civil wrong only.
4. It is not actionable per se unless there is special damage.

Distinction in India

- About libel and slander law is different in India. In English law, libel is under criminal law while slander is under civil law. In India, both are under criminal law and for both civil action is possible.



Essential elements for defamation

1. False statement.
2. Publication.
3. Published by defendant.
4. The statement must refer to plaintiff.
5. Defamatory statement.



1. False statement

- The statement must be false. It means which is not true.
- If the statement is not false or actual narration; it is not amounting to defamation.
- Here statement include written and oral statement.



2. Publication.

- Publication of the statement is necessary for defamation.
- 'Publication' is understood in technical sense in relation to the tort of defamation. It means the contents of the defamatory statement are conveyed to someone else other than the plaintiff.
- If defendant has communicated defamatory statement only to the plaintiff and to none else then, it shall not amount to defamation.
- If the defamatory letter is send to the plaintiff is likely to be read by somebody else, there is a publication.

3. Published by defendant.

- The statement must be published by the defendant.
- Where plaintiff himself publishes statement; no action lies.
- Where publishers are jointly and severally liable; all can be sued. For example – writer, editor and publisher of news paper.



4. The statement must refer to plaintiff

- “In an action for libel, the question is not who was meant but rather who was hit.”
- In an action for defamation, the statement alleged must refer to the plaintiff.
- It is not necessary to show that, the defendant intended to refer the plaintiff.



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- Plaintiff has to prove that the statement referred to him. It is immaterial that the defendant did not intend to defame the plaintiff. If the person to whom the statement was published could reasonably infer that the statement referred to the plaintiff then defendant is liable.
- In case of defamatory statement, intention or motive are immaterial. Good faith or ignorance of the defamatory statement is not defence. The burden of proof that the words are false does not lie on the plaintiff.

5. Defamatory statement.

- Only defamatory statement amounts to defamation.
- A statement is defamatory if it lowers down plaintiff in the estimation of right thinking persons of the society OR it is a statement which if known to a reasonable person shall cause him to be shun and avoided by the person in the society.

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- A statement is defamatory if it tends to injure reputation of a person.
- it is not necessary that such injury to reputation should be in the eyes of everyone; but it is sufficient if such injury is in the eyes of certain group of respectable persons.



Innuendo

- Sometimes defamation is not , in terms apparent or prima facie clear. It is often couched in subtle language.
- The words are not defamatory in its ordinary sense but due to circumstances it amount to defamatory. This is innuendo.
- It is a kind of remark, intimation or question which is disparaging or insinuation.
- Example – A tells B, that C is under treatment of Dr. D. If D is a well known psychiatrist, then C may plead by way of innuendo A has published to B that, C is insane and under treatment.

Remedy

- Under law of torts, for publication of a defamatory statement, plaintiff can file a suit for injunction and damages.

1. Injunction

plaintiff can claim injunction against the defendant for not publish such defamatory statement. Generally prohibitory injunction is claimed by the plaintiff.



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2. Damages

For publication of defamatory statement, plaintiff can claim damages. In cases for defamatory statement, there is presumption of damage or injury to reputation of the plaintiff. For this plaintiff may get nominal damages. To claim substantial damages, plaintiff must prove that, he sustained actual economical or otherwise injury.



Defences

- In the suit of defamation; defendant can use the following defences to avoid his liability.
 1. Justification or truth.
 2. Fair and bonafide comment.
 3. Privilege
 - absolute
 - qualified
 4. Apology



1. Justification or truth.

- The truth of defamatory words is complete defence.
- If the statement is true; the motive is irrelevant.
- Statement based on rumours is not sufficient.
- The truth must be proved by the defendant otherwise he will be liable.



2. Fair and bonafide comment

- This is another defence for an action of defamation. To avail this defence following conditions are essential.
 1. It must be a comment.
 2. The comment must be fair.
 3. The matter commented upon must be of public matter.



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1. It must be a comment.

Comment means, an expression of opinion on certain facts. It is different than mere statement of fact. It is essential that, the facts commented upon must be either known to the audience addressed.



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2. The comment must be fair.

Fair comment means, comments honestly believed to be true and not inspired by any malicious motive.

A comment based upon untrue fact, is not fair comment.



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3. The matter commented upon must be of public matter.

To treat a comment upon public matter, such matter must be-

a) in which the public in general have a legitimate interest, directly or indirectly, nationally or locally.

b) matters which are expressly or impliedly submitted to public criticism or attention.

Eg.- administration of Government, departments, public companies, courts, conduct of public men like ministers and officers, public institutions, public meetings, plays, books, artist etc.

3. Privilege

- Privilege means that a person stands in such a relation to the facts of the case that he is justified in saying or writing what would be defamatory. In this situation, right of defendant is more important than right of reputation of plaintiff.
- There are two types of privilege 'absolute' and 'qualified' privilege.



Absolute privilege

- A statement is absolutely privileged when no action lies for it; when it is false, defamatory and with express malice.
- Eg.
 - Parliamentary proceeding
 - Judicial proceeding
 - Military proceeding
 - State proceeding
 - Judicial report



Qualified' privilege

- A statement is said to be qualified privilege, when no action lies for it even though it is false and defamatory unless it is made with express malice.
- Eg/ communication made in the course of legal, social or moral duty,
- for self protection,
- for protection of common interest, and
- for public good



4. Apology

- This is a statutory defence in an action for libel contained in a public newspaper or periodical, wherein apology is published and accepted.
- For this defence, defendant must show absence of malice and gross negligence and such apology should be published at the earliest.



Thank you

