

## UNDERSTANDING THE LAW OF DEFAMATION

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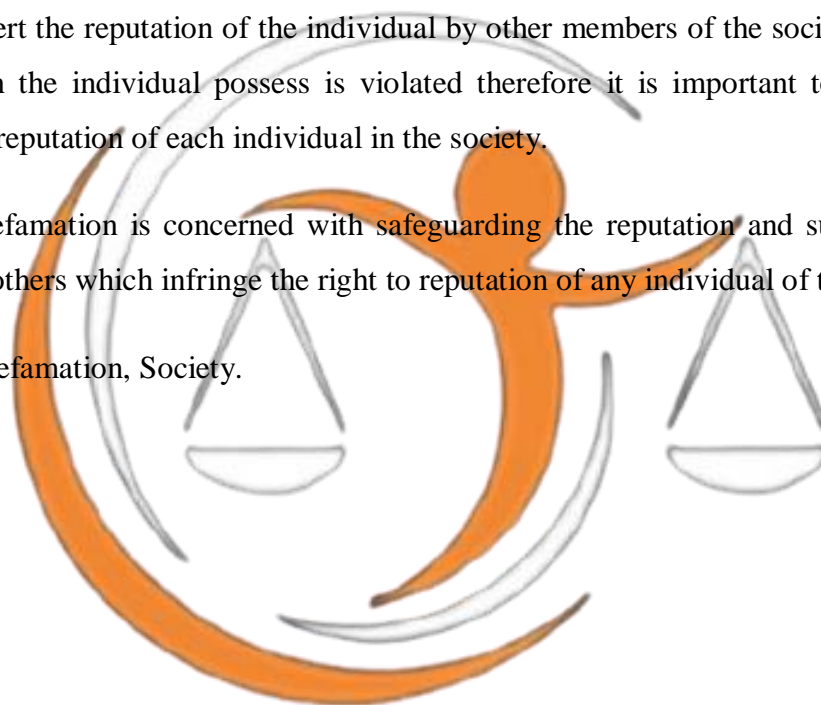
### ABSTRACT

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It is the right of each individual in the society to possess a flawless reputation and prestigious name which shall be recognized by the society where the individual resides. Such reputation is based on the thoughts and opinions of what other person talks about such individual. Therefore to have a dignified reputation in the society, it is essential that other members of the society must have heard good things about the individual but in case of a statement made falsely to dissert the reputation of the individual by other members of the society, the dignity and reputation the individual possess is violated therefore it is important to preserve and safeguard the reputation of each individual in the society.

The law of defamation is concerned with safeguarding the reputation and such remarks or comments of others which infringe the right to reputation of any individual of the society.

**Keywords:** Defamation, Society.



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## INTRODUCTION

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It is a commonly acknowledged principle of every decent and morally well-established society that every member of such society has his/her own respect and dignity among people of the society and such reputation shall be encouraged and protected. The dignity of an individual shall not be withdrawn under any circumstances by any means.

The law of defamation is a direct and intentional violation of the reputation of a person either by words or signs or any publication. A defamatory statement is a statement concerning any person which exposes him 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 trade. [1]

Recorded initially in 1275–1325 by Middle English as '*defamen*', by Anglo-French as '*defamer*' or directly by Medieval Latin as '*defamare*', which means 'to spread the news of, slander'. [2] Defamation is the publication of a statement that tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person. [3] According to Black's Law Dictionary, defamation refers to 'The taking from one's reputation. Offense of injuring a person's character, fame, or reputation by false and malicious statements' [4]

The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit [5]. The test of the defamatory nature of a statement is its tendency to excite the plaintiff by the adverse opinions or feelings of other persons. The statement is judged by the standard of opinion, which prevails among ordinary, right-thinking members of society, reasonable people of time and place, and not the opinion which prevailed in another time, or another country or among a special class or abnormally constituted people. Hence the test is an objective one and it is no defense to say that the statement was not intended to be defamatory, or uttered by way of a joke [6].

The term defamation in English common law consists of both libel and slander, libel is defamation in permanent written form i.e. publication in newspaper or letter, etc. slander on the other hands mean demotion by words or gesture and is said to be a temporary form of defamation. However in Indian entendre, there is no distinction between libel and slander and furthermore, Indian legislation is more into civil and criminal types of defamation.

There is a marked difference between criminal liability for defamation under the English Law and under the Indian Law, arising no doubt from the fact that the English Criminal Law when dealing with defamation had mainly to consider whether the defamation was such as would result in a breach of the peace or the question whether the person who claimed punishment for defamation was a person aggrieved by the statements made. [7]

In recent years the concept of defamation has come into the limelight and in some instances is termed as suppression of fundamental rights of freedom of speech and expression [Article 19 (1) (a)] of the Constitution of India.

The manuscript in hand aims at a better understanding of defamation with the help of case laws and other esteemed articles, journals and legislation.

### **HISTORICAL BACKGROUND**

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Since time antediluvian, the acts of defaming other people due to malevolence have been taking place. The history of defamation can be traced back to the *Kautilya's Arthshastra* where the author has defined the penalties for individuals of different classes of society in Chapter XVIII of Book III.[8]

The origins of common law doctrine of defamation which is based upon the nature of the imputation became stereotyped however the doctrine has been inherited by Common law from Roman law.[9]

The law on defamation in India was first drafted by Lord Macaulay in the year 1837 and was eventually codified in Act no. 45 of 1860 and was very similar to the law of defamation of English law. [10]

The Contemporary times' law of India is based on the model of British statutes and enactments and similarly, the law of defamation which is bestowed in Chapter XXI and which stretches from Section 499-502 of India Penal Code, 1860 is also of British origin.

## ESSENTIALS OF DEFAMATION

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Essential ingredients of defamation are: [11]

1. The making or publishing of an imputation concerning any person: the said attribution must with made with malice intention of harming the reputation of other person or by having mens rea that such imputation will harm the reputation of an individual,
2. Such imputation must have been made:

(A) By words either spoken or intended to be read: the defamation must be conveyed or caused by words which shall be heard by someone or read by some third person,

(B) By signs: such signs must be of such a nature that they offend the reputation of the plaintiff and such signs other than the plaintiff, must be seen by some third person as well,

(c) Or by visible representation: depiction in any form, made with the intention to defame and such depiction is defamatory or offensive in nature to such a extend that it causes derogation of the reputation of some person,

1. Such imputation must have been made with the intention of harming, or knowing, or having reason to believe, that it will harm the reputation of the person concerning, whom it is made: it is vital to understand that intention plays a significant role in constituting the offense of defamation and no defamation shall occur if the alleged wrongful acts were not committed without necessary mens rea.

## DEFENSES TO DEFAMATION

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In Indian entendre, defamation is both, a civil as well as a criminal offense, the remedies for civil defamation is covered by the law of torts and for criminal defamation, the definition of Defamation is given in Section 499 of I.P.C. while the punishment of 2 years or fine or both is reserved in Section 500 of I.P.C.

With every wrong there are certain defenses available to the accused, such defenses are pleaded by the accused in court of law to protect themselves from the punitive laws.

The law concerning defamation is to be referred by Section 499 of I.P.C. and the multiple exceptions reserved in the said section for No. 1 to 10 define the circumstances where the act of the accused which is alleged to be defamatory shall not amount to defamation.[12] If such defenses which are defined as 'Exceptions' under Section 499 of I.P.C. are pleaded by the accused during the course of trial of the case, then the court shall consider whether the case in hand falls within the ambit of such exceptions.[13]

The defenses for defamation: [14]

1. Justification of truth: truth is an absolute defense to a defamation lawsuit [15] and the defense is also commonly known as "justification". The entire edifice of our justice system rests on the principle of truth. A truth spoken for the public good can never be called defamatory in nature. [16] The burden to prove that the alleged imputation was based on the statement which was true in nature and such statement shall be justified. No action shall lie against the defendant if he/she proves that the alleged defamatory statement was true in nature.

Fair comment: the defense of fair comment is only available under the civil law of defamation and the same does not fall within the ambits of any exception mentioned in Section 499 of Indian Penal Code however Exceptions No. 2, 3, 5, 6, and 9 of Section 499 Indian Penal Code provide defense of fair comment in civil law of defamation. Such fair comment even if not true in nature but conveyed in good faith or public interest shall not attract criminal prosecution.[17]The term Innuendo falls within the ambit of fair comment where the comment is not directly referred to the plaintiff and the statement has secondary defamatory meaning or indirect hidden defamatory meaning. It is the duty of the plaintiff to unearth the defamatory part in a statement.

1. Absolute privilege: The defense of privilege outlaws a lawsuit for defamation. The legal jurisprudence recognizes protection to defamatory matters in the public interest and welfare of society.

A statement is privileged absolutely when it is of such a nature that no legal proceeding shall lie against it irrespective of how false or defamatory it is and even if it is made maliciously. Such privilege includes administration of justice, parliamentary proceedings, advising the state in affairs of state. Such defense is also available in respect of any defamatory statement

made in the course of a judicial proceeding by any judge, jurymen, party, witness, or advocate. [18]

1. Qualified Privilege: a privilege is 'qualified' when no lawsuit lies against it even if it is false and defamatory until and unless the plaintiff establishes malice in the defamatory statement. Such privilege is given in regard that, a person must speak freely without any fear of charges of defamation.

The person charged with defamation must prove that he used the privilege honestly, honestly believing the truth of what he said, or in other words having reasonable grounds for making the statement; and the onus of establishing that lies upon him.[19]

1. Consent: Consent of the person who is alleged to have been defamed is always an absolute defense in the matter of defamation claim.[20] Consent acts as an absolute defense in international tort. It refers to the actual permit or willingness for the conduct to occur and manifests this willingness.[21]
2. Apology: an apology acts as a defense for the written type of defamation which is usually caused by newspapers and other publications but the defense of apology also adheres to many other conditions but it is vital to observe that even if the plaintiff accepts an apology and withdraws the criminal complaint filed by him, he can still sue the defendant in a civil suit.[22]

## LEGAL ASPECTS

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In the Subramanian Swami case [23] the constitutional validity of Section 499 and 500, Section 199(2) of Code of Criminal Procedure were challenged on the grounds that it violates the fundamental rights reserved in Article 19(2) of The Constitution of India however the court did not rule in the favor of the petitioner by upholding the constitutional validity of Section 499 and 500 of I.P.C. and Section 199(2) of Code of Criminal Procedure, 1973.

Honorable Supreme Court of India in R. Rajagopal and others v. State of Tamil Nadu and ors. [24] (In other words) held that the right to privacy falls within the ambit of right to life and personal guarantee by the virtue of Article 21 of the Constitution of India. A citizen has the right to safeguard his privacy, of his family, marriage, procreation, motherhood, etc. and



no one can publish anything concerning the above matters without the consent of the person and if he does so, he would be violating the right to privacy of the person and shall be liable for action for damages however if the person voluntary thrusts himself into such controversy by any means then the position may be different and no suit for defamation arises.

Subramanian Swami Case [25] also highlighted the rights of the family members and close relatives to file a case of defamation, if the defamation is of such a nature that it would have caused imputation to the deceased in the same way as if he is living, the imputation is hurtful to the family members and other close relatives.

In the case of Hari Shankar v. Kailash Narayan, it was held that Article 19 of the Constitution of India gives no license to a publisher to indulge in publishing defamatory matters. Article 19 of the Constitution does not give a right to publish defamatory publication under the guise of freedom of free speech and expression.[26]

In the case of Umar Abid Khan and Ors v. Vincy Gonsalves (in other words), it was held that every individual has a right to preserve his reputation which is understood as personal property and a right against the world. The court must therefore draw a balance between freedom of speech and safeguarding the reputation of an individual. [27]

## CONCLUSION

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The law of defamation aims at safeguarding the reputation of an individual in society. The right to have a reputation is one of the most essential legal and fundamental privileges a person enjoys in India.

It is important to understand the laws of defamation in order to prevent the liability which arises from causing defamation and in order to prevent such liability it is to be understood that how far the law of defamation does has its jurisdiction and what falls within the ambit of freedom of speech and expression.

The law of defamation provides a legal mechanism which a person opts for, when his right to have dignity and reputation is violated by any other person with wrongful intentions and therefore it is necessary to impose punitive measures on such person who not only infringe

the reputation of an individual but also the peace in the society by stripping off the reputation of a dignified person of the society.

Defamation is used as a weapon by certain individuals to obtain injunctions or to merely injuring the reputation of other persons however the problem is how far does defamation have its jurisdictions and how much does it suppress rights of speech and expression. The answer to such question was answered in Subramanian swami case where while upholding the constitutional validity of defamation laws the court held that defamation and freedom of speech and expression do not violate each other.





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