



Judicial aspect of Defamation Laws in India

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Abstract

Famous jurist John Austin said that “Law is a command of sovereign which is backed by the sanction”². John Austin was the supporter of imperative theory of law which provides that every law needs to be protected by a sanction that is called punishment. In this regard, judiciary plays an important role in protecting the rights of people by implementing the laws strictly through punishing the wrong doers. Judiciary has two main functions to discharge, one is to interpret the law and another is to punish the persons who infringe the rights of others. As far as defamation law is concerned, judiciary has played vital role in protecting the law by declaring the law as constitutional along with protecting the fundamental rights of reputation and right to speech of the people. Right to reputation and freedom of speech are two fundamental rights granted by the constitution of India but both the rights seem to be in conflict with each other. The judiciary has played its role by interpreting the law of defamation and balancing both the rights. Through its various judgments the apex court explained the constitutional validity of defamation laws and protected the right to reputation of people as well as the State.

Key Words: Reputation, Fundamental Rights, Judiciary, Defamation, Implementation.

Introduction

India is the largest democratic country and secured to its citizens various fundamental rights in the longest book i.e. the Constitution of India. Right to reputation has also being granted as a fundamental right though not expressly but the apex court observed that right to reputation and live with dignity is a fundamental right under article 21 of the Constitution.³ The Constitution provides the right to move the Supreme Court for the enforcement of fundamental right by appropriate proceedings.⁴ Therefore specific power as well as duty has been given to the judiciary for the protection of fundamental rights and the judiciary has performed its duty very well

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² John Austin (Analytical school) (V. D. Mahajan, Jurisprudence, 5th edition, 2017) Pg. No. 499

³ Maneka Gandhi vs. Union of India, 1978, SC

⁴ Article 2 of the Constitution of India.

by pronouncing various judgments in this regard such as judgment holding the constitutional validity of defamation laws, protecting the right to reputation and dignity of its citizens etc. Defamation is injuring the reputation of other person by giving any statement either spoken or written. Defamation is committed by giving any statement which is not true regarding other person to injure his reputation. A definition of the term defamation has been given in Indian Penal Code.

1. What is Defamation?

The term “Defamation” has been defined under section 499 of Indian Penal Code. It is important to mention here that before the enactment of criminal law i.e. Indian Penal Code in the year 1860, there was neither any specific definition of the term nor defamation was an offence. Defamation was only a civil wrong and part of law of torts punishable with compensation only. The term “Defamation” has been defined in criminal law as under,

“Whoever makes or publishes any imputation concerning any person by words or by signs or visible representation, with an intention to harm the reputation of such person is said to defame that person”.

2. Types of defamation laws in India

There are two types of defamation in India. These are civil defamation and criminal defamation. Law relating to civil defamation has been given under law of torts where as specific provision has been given in criminal law relating to criminal defamation. Both types of law relating to defamation have been discussed as under:

2.1. Civil law of defamation

Defamation is a civil wrong under the law of torts. Before the enactment of criminal law, only law of torts was there in India which was not codified. Law of torts was based on the concept of sociality which provides that every person has some rights which should be respected by others and if other person infringes those rights, he should be punished. Right to reputation is an inherent personal right of every person and a men’s reputation is his property perhaps more valuable than the property.⁵ Therefore whenever there is an injury to the reputation of a person, he may institute civil proceeding for the damages. There are two types of civil defamation: these are libel and slander. It is important to mention here that there is no such distinction under criminal defamation law.

Libel

Libel is the defamatory statement which is subjected to eyes, i.e. which is in permanent form. When the statement is in writing or made in permanent form, that defamation is called libel. Writing, printing, pictures, statue are some examples of libel. Libel is both a civil wrong as well as c crime but slender is always a civil wrong.

⁵ Dixon vs Holden (1869) 7 Eq. 488 (Law of Torts By Prof. S. P. Singh, Page No. 251)

Slander

Slander is the defamatory statement which is subjected to ears, i.e. which is not permanent. When defamation is made by signs or by word or gestures, that defamation is called slander. Oral speech, gestures etc are the examples of slander.

Following are the essentials of defamation as a civil wrong.

1. There must a statement
2. The statement must be defamatory
3. The statement must refer to the victim
4. The statement must has been published i.e. the statement has been communicated.

2.2. Civil Defamation and judicial approach

While protecting the civil rights of the people, the judiciary has performed its duty wisely. In the case of civil defamation, the judiciary has pronounced various important judgments.

In the case of *D. P. Chaudhary vs. Manjulata*⁶, the respondent filed a civil suit for compensation for causing defamation of the respondent. In the instant case, a local daily published a statement that the respondent ran away with a boy on the pretext of attending night classes. Respondent was the student of B.A. and was of the age of 17 years. The statement was found to be false. The court awarded compensation to the respondent and the decision of trial court was upheld by the high court.

In the case of *Mahendra Ram vs. Harnandan Prasad*⁷ the court extended the scope of wrong of defamation caused by letters. In this case the appellant wrote to the respondent some letters in urdu language which the respondent did not know. Therefore the letters were to be read over to the respondent by a translator. The letters contained defamatory matters concerning the respondent. The respondent initiated civil proceeding against the appellant. The court held that the act of appellant is defamatory to the respondent and awarded compensation to the respondent. The decision of the trial court was upheld by the high court also.

In an important case of *S. N. M. Abidi vs. Profulla Kumar Mohanta*⁸, in a weekly, a news article was published alleging the misuse of man and muscle power by the former chief minister i.e. the respondent. The allegations were found to be false and the court awarded compensation to the victim for defamation.

However, the court in the case of *T. J. Ponnen vs. M. C. Verghese*⁹ held that the communication between husband and wife regarding any third person is not defamation. in the instant case, the appellant wrote various letters to his wife (daughter of the respondent) containing defamatory matter about his father in law i.e. the

⁶ AIR, 1997, Raj. 170 (Law of Torts By Prof. S. P. Singh, Page No. 255)

⁷ AIR, 1958, Patna High Court

⁸ AIR, 201, Guj. 75 DB , (Law of Torts By Prof. S. P. Singh, Page No. 255)

⁹ AIR, 1970 SC, 1876 SCR, (Law of Torts By Prof. S. P. Singh, Page No. 260)

respondent. The wife passed on all the letters to her father. The respondent initiated civil suit for defamation against the appellant. Hon'ble Supreme Court held that communication between husband and wife are protected as privileged communication as per section 122 of Indian Evidence Act. Therefore, as per law, it was not defamation because there was no publication of the statement. The wife i.e. the daughter of the respondent herself passed the letters to her father, therefore there was no defamation.

3. Criminal law of defamation

The term "Defamation" has been specifically defined under criminal law i.e. Indian Penal Code. As far as types of criminal defamation are concerned, there are two types of criminal defamation; these are defamation of person and defamation of the State. Provisions relating to defamation of person have been given under section 499¹⁰ and 500¹¹ of Indian Penal Code whereas provisions relating to defamation of State have been given under section 124-A¹² and section 153-B¹³ of Indian Penal Code.

3.1. Defamation of person

Section 499 provides the definition of the term "Defamation" as under:

"Whoever by words either spoken or written or by signs or visible representation, makes or publishes any imputation relating to any person with the intention to harm or knowledge that the imputation will harm the reputation of such person, is said to defame that person."

The term has been provided with some explanations which are as under:

Explanation 1: Defamation of deceased person

First explanation provides the provision of defamation of deceased person. According to the provision, a dead person can be equally defamed as a living person. The explanation provides that "It may amount to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and hurtful to the feelings of his family members and relatives".

Explanation 2: Defamation of a company

Second explanation provides for the defamation of a company or association. The explanation provides that "It may amount to defamation to make an imputation regarding an association or a company or regarding the persons of such company or association collectively".

¹⁰ Definition of the "Defamation", (Indian Penal Code)

¹¹ Punishment of Defamation,(Indian Penal Code)

¹² Sedition, (Indian Penal Code)

¹³ Imputation prejudicial to national integration, (Indian Penal Code)

Explanation 3: Third explanation provides that “An imputation in the form of alternative or expressed ironically may amount to defamation”.

Explanation 4: When imputation is not defamation

Explanation fourth provides when the imputation i.e. the statement shall not be defamation. The explanation provides that “No imputation will be harmful to the reputation of a person unless the imputation lowers the intellectual character of that person either directly or indirectly in the estimation of others, or lowers the character of that person in respect of his caste or credits.

In this way, definition of criminal defamation has been given to protect the reputation and dignity of the person. Nobody can make any statement which is harmful to the reputation of other. However, some exceptions have also been attached to the definition of criminal defamation. The exceptions have been provided to secure the right to speech of a person if the statement given by him is true or necessary for public good or relating to the proceedings of the court etc. following are the exceptions to criminal defamation.

1. The imputation which is true and the public good requires it to be made.
2. Imputation regarding the public conduct of public servant
3. The imputation is regarding the conduct of any person touching any public question.
4. Publication of reports of proceedings of courts.
5. Merits of the case decided in court or conduct of witnesses and others concerned.
6. In good faith, expressing the merits of any performance which is submitted to the judgment of the public.
7. Censure passed in good faith by person having lawful authority over another.
8. Accusation preferred in good faith to authorized person
9. Imputation made in good faith by person for protection of his or other's interest.
10. Caution intended for good of person to whom conveyed or for public good.

3.2. Criminal Defamation and judicial approach

While talking about the rights granted by the Constitution, role of judiciary can not be overlooked. The judiciary has always protected the rights of citizens including the right to reputation.

In the case of *Kanwal Lal vs State of Punjab*¹⁴, the apex court protected the reputation of a woman. In this case, the appellant made a defamatory statement before the Panchayat Officer in a letter imputing her to be a prostitute. The respondent filed a complaint under section 499 and 500 of Indian Penal Code. The appellant

¹⁴ AIR, 1963 (1317) SCR (K. D. Gaur, Text book on Indian Penal Code, 7th edition, reprint in 2016) Pg. 1094

contended that the statement is true as per his knowledge and he should be given protection under exception eight and nine of section 499 of Indian Penal Code. However, his contention was not accepted from the trial court up to the apex court.

In an important and famous case of *Ram Jethmalani vs Subramanian Swamy*¹⁵, the High Court protected the right to reputation of the plaintiff. In this case allegation were made by the defendant against the plaintiff that plaintiff was having two wives and receiving money from a banned organization i.e. LTTE (liberation tiger of tamil ellm). After the assassination of Rajiv Gandhi, the defendant made allegation against Chief Minister of Tamil Nadu Ms. Jay Lalitha that she had prior information of the attack. The plaintiff was the senior counsel on behalf of Ms. Jay Lalitha. During the examination, the defendant made allegations against the plaintiff also that the plaintiff has two wives and he is also receiving money from the same organization i.e. LTTE, however, he refused to disclosed the source of information. The plaintiff filed separate suit defamation. The defendant claimed that the statement is true but he allegedly could not prove the statement as true. The High Court held the statement prima facie defamatory and awarded compensation in favour of the plaintiff.

In the matter of *Arun Jaitley vs Arvind Kejriwal*¹⁶, the High Court closed the suit of defamation filed by Union Minister Arun Jaitley. In this case Arvind Kejriwal Chief Minister of Delhi levied accusation of corruption against BJP leader and Union Minister Arun Jaitley when he held the post of president, Delhi District Cricket Association from 2000 to 2013. The plaintiff denied the allegations and filed a civil suit of defamation and claimed Rs. 10 Crore as compensation. The plaintiff filed second defamation civil suit after allegedly abused by the counsel of the defendant Ram Jethmalani in the open court. However, both suits were settled by the High Court after apology of AAP chief Kejriwal. The court allowed the settlement application of both the leaders and decreed the suit with Rs. 1 Crore as cost of the suit in favour of the plaintiff. The apex court observed that the statement was neither before the person having lawful authority over the person about whom such statement was made nor the statement was necessary for protecting the interest of the person making it. The apex court convicted the appellant for defaming the woman.

In an another important case of *Dogar Singh and Another vs Shobha Gupta and Another*¹⁷, the High Court convicted the appellant for defaming a woman as well as a school principal. In this case, a complaint was filed by the Principal of Punjab Public School, village Pugwara, against the appellants alleging that they made defamatory statement in their compliant which they submitted to Kaputhala Deputy Commissioner. In their complaint, the appellant/complainant stated that the building of the school is unsafe for the students. The students are undisciplined because the school is not for education but the meeting spot of boys and girls i.e. students of two sexes and the Principal is paying any attention towards the behavior and character of the

¹⁵ AIR, 2006, Delhi High Court

¹⁶ 2018, Delhi High Court (<https://www.thehindubusinessline.com>)

¹⁷ 1998, Cr.L.J., 1541 (P & H) (Prof. S.N. Misra, Indian Penal Code, 21st edition,, 2018) Pg. No. 982

students. Enquiry was made in the allegations but the allegations were found to be false. Consequently, the respondent filed criminal complaint against the appellant for defaming her as well as the school. The appellant took the defence of exception third of section 499 i.e. opinion expressed in good faith respecting the conduct of any person touching any public question. However, the defence of the appellants was not accepted and held guilty of defamation by the trial court as well as the appellate court.

Together with protecting the right to reputation, the judiciary has also protected the right to speech while observing regarding any published material that the text should not be read in isolation and complete text should be taken in to consideration for deciding whether the publication is defamatory or not. In the case of *M. P. Narayana Pillai and another vs. M. P. Chacko and another*¹⁸, the Kerala High Court played its important role while balancing the two fundamental rights i.e. right to reputation and right to speech. In this case an article was published about the “Syrian Christians Community” in two parts. The first part was complimentary to the community while the second part highlighted their poor condition and unemployment of the people of that community due to which many women have opted to become nuns and the people of that community have to send their girls to abroad for earning money. Other aspects of their life have also been highlighted in the second part of the article. A complaint was filed by the respondent alleging that the publication was defamatory. The applicant filed the application under section 482 of Code of Criminal Procedure to quash the FIR. The Hon’ble High Court observed that firstly whole the publication should be taken in to consideration for deciding whether any publication is defamatory or not, the article as a whole did not contain any defamatory matter as alleged by the respondent. Moreover if the publication contained any such defamatory matter, the respondent/complainant had no cause of action because the complaint could be filed by the family members of the women who are highlighted in the article. The High court quashed the FIR against the applicant.

*Shreya Singhal vs Union of India*¹⁹ is an important case in the series of cases relating to defamation. This case is related to defamation through internet and computer. In this case, the constitutional validity of section 66-A²⁰ of Information Technology Act, 2000 was challenged. The section was added in the act via amendment act, 2009. Constitutional validity of the section 66-A was challenged on the ground that it infringes the fundamental right to speech as provide under article 19 (1) (a) of the constitution. It was contended that causing annoyance, inconvenience, insult, injury etc. are not covered as any of the grounds which may be deemed as reasonable as provided under article 19 (2) of the constitution. The apex court protected the right to speech and declared the section as unconstitutional.

3.3. Defamation of State

Reputation and dignity of State is equally important as that of a person. The provision relating to defamation of the State has been given under section 124-A and section 153-B of Indian Penal Code. However, both the

¹⁸ 1986, Kerala High Court

¹⁹ AIR, 2015, SC (1523) (K. D. Gaur, Text book on Indian Penal Code, 7th edition, reprint in 2016) Pg. 1074

²⁰ Section 66-A, Punishment for sending offensive messages through communication services.

provisions were not there in the code when the code was drafted. The provision has been inserted by the amendment of 1898. Section 124-A provides for the defamation of State as “Whoever brings or attempts to bring in to hatred or excites or attempts to excite disaffection towards the Government of India, either by words, spoken or written, or by signs or visible representation is said to have committed sedition and shall be punished. Another provision regarding defamation of the State is section 153-B which provides the punishment for making imputation or assertion which is prejudicial to the national integration.

Conclusion

As stated by Prof. S. P. Singh in his book that reputation of a person is more valuable than the property. The value of property can be estimated but the value of reputation and esteem of any person can never be estimated. However, the legislature tried to protect the reputation of every person by making the defamation a civil wrong as well as a crime. The remedy in the form of compensation has been insured for civil defamation. The amount of compensation to be awarded does not depend upon the earning of the person. It depends upon the injury caused to the reputation and esteem of the person. The judiciary through its various judgments fulfilled its duty of protecting the reputation of persons and awarded compensation exemplary or otherwise. The relation of the offence of defamation and controversies was always there but judiciary addressed all the questions and set aside the controversies ever arise. Judiciary has played its role of guardian of fundamental rights and most important amongst them is the right to reputation i.e. right to live with dignity which has always been protected by the judiciary.

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