

SUMMARY

Of Papers of Judicial Officers on

DEFAMATION: ITS CIVIL AND CRIMINAL LIABILITY

Introduction:

1. Every man is entitled to have his reputation. Jurist Blackstones has added to this proposition and indited that “**Every man is entitled to have his reputation preserved inviolate**”. A man's reputation is his property. Depending upon perception of that man, reputation is more valuable to him than any other property. Reputation is the state of being held in high esteem and honor or the general estimation that the public has for a person. Reputation depends on opinion, and opinion is the main basis of communication of thoughts and information amongst humans. In simpler words, reputation is nothing but enjoyment of good opinion on the part of others. So, the right to have reputation involves right to have reputation inviolate or intact.

Defamation and its definition:

2. The word defamation is driven from Latin word ‘*Diffamare*’. Semantics or Etymology of the Latin word ‘*Diffamare*’ provides that it means ‘*Spreading evil report about someone*’. Thus, defamation is nothing but causing damage to reputation of another. Thus the question of defamation is primarily linked up with one’s reputation. But the concept is nowhere defined in books of laws. Though many definitions have been attempted to circumscribe this word ‘defamation’, none has been found exhaustive.
3. The cause of action for defamation has been recognized from the very beginning of our civilization. People have been resorting to mutual fights to smoothen out the wrong done to their reputation. But, the concept of defamation has evolved much earlier. Referring to research¹, right to have one’s reputation preserved intact has long been recognized in India. During dynasty of *Chandra Gupta Maurya*, a famous treatise has come into existence. It is known as ***Kautilya’s Arthshastra***. In said book, the author has dealt with defamation, in Chapter XVIII of Book III [79th Chapter since beginning]. The author first defines defamation. He then proceeds to classify the offence

¹ indited in ‘**The Law of Defamation and Malicious Prosecution**’ By *Adv. V. Mitter*, thoroughly revised by *Adv. M. L. Chandak*, Sixth Edition (1974)

according to gravity of the statement, the person defaming, the person defamed and then apportioned the punishment. **Kautilya's Arthshastra** is concerned with governmental duties toward the citizens. It is not the same thing as the *Smritis* and *Shastras*, which deal with all the branches of law. So, we do not find any mention of civil rights of the person defamed. It may, however, as well be that the ancients refused to put a price on one's reputation or honour as a doctrine too sordid [morally degraded] for acceptance.

4. Defamation is defined by **Parke B.** in ***Parmiter v. Coupland*** as '*A publication, without justification or lawful excuse, which is calculated to injure the reputation of another, by exposing him to hatred, contempt or ridicule*'
5. The definition of defamation, so recommended by the **Faulks Committee in England** in 1975 is : '*Defamation shall consist of the publication to a third party of matter which in all the circumstances would be likely to affect a person adversely in the estimation of reasonable people generally*'.
6. As per **Salmond**, it can be defined as '*the wrong of defamation lies in the publication of a false and defamatory statement about another person without lawful justification*'. According to another thinker, **Underhills**, '*a statement becomes defamation if it is made about another without just cause or excuse, whereby he suffers injury to his reputation and not to his self-esteem*'. **Underhills** considers defamatory statement as '*one which imputes conduct or qualities tending to disparage or degrade any person, or to expose him to contempt, ridicule or public hatred or to prejudice him in the way of his office, profession or trade*'.
7. Famous authors **Blackburn and George** defined defamation as '*the tort of publishing a statement which tends to bring a person into hatred, contempt or ridicule or to lower his reputation in the eyes of right thinking members of society generally*'. Another definition of defamation can be traced in name of **Winfield**. He defines the concept as "*defamation is the publication of statement which tends to lower a person in the estimation of right thinking members of society, generally, or which tends to make them shun and avoid*

that person". To quote **Mr. Odger** from introduction of his book on **Defamation**, "*No man may disparage or destroy the reputation of another. Every man has a right to have his good name maintained unimpaired. This right is a jus in rem, a right absolute and good against all the world. Words which produce, in any given case, appreciable injury to the reputation of another are called defamatory, and defamatory words if false are actionable.*"

8. It is conventional to say that defamation includes a statement concerning any person, which exposes him to hatred, ridicule or contempt. However, defamation can be best defined, if it considered from the point of view of the right, which the defamatory statement is alleged to infringe. In one English case, ***Scot versus Sampson***,² Justice Cave has defined defamation in simplest way. He has defined it as '*a false statement about a man to his discredit*'. This definition is smaller yet it encompasses everything about the concept.
9. Defamation is civil as well as criminal wrong. Likewise the codified criminal law on the subject, the civil law of defamation is not codified. The criminal law on the topic is contained in sectioned 499 to 502 of Indian Penal Code, 1860. However, defamation as a Civil Wrong is covered under Law of Torts. It is purely based on precedential developments, i.e. through decisions pronounced by Courts. Rules and principles of liability that are applied by our courts are mostly those borrowed from common law.

Defamation in English Law and unde Indian Constitution:

10. In English Common Law, reputation is the most clearly protected and is remedied almost exclusively in civil law by an award of damages after trial by a jury. However, the Law of Defamation like many other branches of tort law aims at balancing the interests of the parties concerned. These are the rights that a person has to his reputation *vis-a-vis* the right to freedom of speech. The Law of Defamation provides defenses to the wrong such as truth and privilege, protecting right of freedom of speech.

² (1882) 9 QBD 491.

11. Defamation is a ground on which a constitutional limitation on right of freedom of the expression, as mentioned Article 19(2) could be legally imposed. Thus the expression 'defamation' has been given constitutional status. This word includes expressions like libel and slander covering many other species of libel, such as obscene libels, seditious libels and blasphemous libels and so on. **The law of defamation does not infringe the right of freedom of speech guaranteed by article 19(1) (a). It is saved by Article 19(2).** It is so saved, as it was included as one of the specific purposes for which a reasonable restriction can be imposed. The law relating to the tort of defamation, from the point of view of distribution of legislative power, would fall under 'Actionable wrongs' mentioned in Entry 8 of the Concurrent List in the Seventh Schedule to the Constitution of India. Criminal law also falls under the Concurrent List.

12. In 1918 Full Bench of Honourable Allahabad High Court has held that there is no Statute in India dealing with civil liability for defamation. In said case of ***Purushottam Lal Sayal v. Prem Shankar***,³ it is observed that-

"The Court has therefore to apply the rules of equity, justice and good conscience. The person defame can file a suit for damages. The publication of defamatory statement may be restrained by injunction either under section 38 or 39 of the Specific Relief Act, 1963. The plaintiff in a defamation suit must quote the precise words uttered by the defamer to enable the Court to decide whether they are capable of a defamatory meaning."

13. A useful reference can also be made to case of ***Miss Kamalini Manmade versus Union of India***⁴. Honourable Bombay High Court has ruled in this case that,

"...Having regard to the aforesaid discussion of the several authorities, it is clear to me that the English Common law rule pertaining to absolute privilege enjoyed by Judges, advocates, attorneys, witnesses and parties in regard to words spoken or uttered during the course of a judicial proceeding is applicable in India, at any rate, in relation to civil suits filed for damages for libel or slander."

³ All India Reporter 1966 Allahabad 377

⁴ (1967) 69 Bombay Law Reporter 512=1967 Maharashtra Law Journal 823.

14. So we have to follow the principles of English Common law in this context, relying upon observations in the aforesaid precedent. Moreover, the types of defamation are also necessary to be studied.

Types of defamation:

15. Defamation may be committed in two ways viz., (i) speech, or (ii) by writing and its equivalent modes. The English common law describes the former as '**SLANDER**' and the latter as '**LIBEL**'. The former is a spoken defamation while the latter a written defamation which may assume various forms, like physical symbols, statues, effigies, picture, caricature, wax model, etc. To slander also various forms have been attributed. It may be committed by representations or in other manners which are treated as equivalent to speech, like shake of the head, nod, winking, hissing, and many others. Though under the common law of England distinction is made between the two in various aspects, but, in India no such distinction has been made.
16. The libelous statement must be in a printed form, e.g. writing, printing, pictures, cartoons, statue, waxwork effigy etc. Lopes J., in Monson V. Tussauds points out that libels need not always be in writing. It may be conveyed in some other permanent form as a statue, a caricature, an effigy, chalk mark on a wall, sign or pictures. In the same case, the defendants, who kept a wax works exhibition, had exhibited a wax model of the plaintiff with a gun, in a room adjoining the '*Chamber of Horrors*' (a room in the basement, in which the wax models of notorious criminals were kept). The plaintiff has been tried for murder in Scotland and released on a verdict of 'Not proven' and a representation of the scene of the alleged murder was displayed in the chamber of horrors. The Court of Appeal held that the exhibition was libel.
17. But, Slander is a false and defamatory statement by spoken words or gestures tending to injure the reputation of another. Apart from differences in form, the libel differs from slander in its procedure, remedy and seriousness. In common law, a libel is a criminal offence as well as a civil wrong. But slander is a civil

wrong only; though the words may happen to come within the criminal law as being blasphemous, seditious, or obscene or as being a solicitation to commit a crime or being a contempt of court. Under Indian Penal Code both libel and slander are criminal offences.

Distinction between Libel and Slander:

18. Slander may be the result of a sudden provocation uttered in the heat of the moment, while the libel implies grater deliberation and raises a suggestion of malice. Libel is likely to cause more harm to the person defamed than slander. Because there is a strong tendency everywhere on the part of most people to believe anything they see in print. In general slander is actionable only on proof of special damage, but in exceptional cases slander is actionable per se or without proof of special damage. Words which are not defamatory in their ordinary sense may, nevertheless, convey a defamatory meaning owing to the circumstances in which they are spoken. Such words are actionable if it is proved that would be understood as defamatory by the persons to whom they were published.
19. The distinction amongst these two kinds can be expressed better in upcoming tubular format.

No.	LIBEL	SLANDER
1.	Libel is defamation in some permanent form e.g. a written or printed form.	Slander defamation in transient form e.g. spoken words or gestures.
2.	At Common Law, a libel is a Criminal offence as well as Civil wrong. Under Indian Law both libel and slander are criminal offences.	At Common Law, a slander is a Civil Wrong only.
3.	A libel is by itself an infringement of a right and no actual damage need to be proved in order to sustain an action in the Court of Law.	At Common Law, a slander is actionable only when special damage can be proved to have been its natural consequences or when it conveys certain imputation.
4.	A libel conduces to a breach of peace.	A slander does not conduce to a breach of peace. However, Indian legal

		system does not recognize this distinction.
5.	Libel shows a greater deliberation and raises a suggestion of malice.	Slander may be uttering or words in the heat of moments and under a sudden provocation.
6.	The actual publisher of libel may be an innocent person and therefore not liable.	In every case of publication of slander, the publisher acts consciously and voluntarily, and must necessarily guilty.

Essentials of Defamation:

20. An obvious question arises about essentials of defamation under Indian Law. Because, whenever defamation is agitated before any Civil Court, the proof has to travel around certain essentials. Therefore, it becomes necessary to try to enlist those essentials or requisites constituting defamation as civil wrong. There are in general four essentials of the tort of defamation, namely-
- a. *There must be a defamatory statement.*
 - b. *The defamatory statement must be understood by right thinking or reasonable minded persons as referring to the plaintiff.*
 - c. *There must be publication of the defamatory statement, that is to say, it must be communicated to some person other than the plaintiff himself.*
 - d. *In case of slander either there must be proof of special damages or the slander must come within the serious classes of cases in which it is actionable per se.*

Test of defamatory statement; Rules and Principles:

21. There are certain established rules to determine whether statement is defamatory or not. The first rule is that the whole of the statement complained of must be read and not only a part or parts of it. The second is that words are to be taken in the sense of their natural and ordinary meaning. The Court must have regard to what the words would convey to the ordinary man. The test to be applied for the determination of the question whether a statement is defamatory is the answer to the question, '***would the words tend to lower the plaintiff in the estimation of right-thinking members of society?***'

22. **Salmond** has stated in *The law of Torts*,⁵ as “*The test of defamatory nature of a statement is its tendency of excite against the plaintiff the adverse opinions or feeling of other persons. The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct.*” Whether defamation consists of libel or slander; the following requisites [which are common to both] have to be necessarily proved by the plaintiff.
- a. *The words or the act must be defamatory,*
 - b. *They must have reference to the plaintiff.*
 - c. *They must have been published.*
 - d. *They must have been published maliciously.*
 - e. *There can be no offence of defamation unless the defamatory statement is published or communicated to a third party, that is to a party other than the person defamed.*
23. The test is the opinion of society as a whole. Standard opinion is that which prevails amongst ordinary reasonable people of the time of place. If it is proved that the statement in question tends to lower the plaintiff's reputation with a particular section of society, then the question that falls for determination is whether reasonable men would endorse that particular opinion, if their attention were directed to the matter. The test of the defamatory nature of a statement being its tendering to excite against the plaintiff the adverse opinions or feelings of other persons, a typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct, such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty.
24. Similarly, a statement may be defamatory if it tends to bring the plaintiff into ridicule or contempt even though there is no suggestion of any form of misconduct. An action will therefore, lie for any statement or any visible representation made having a tendency to reflect adversely upon a person's reputation personal, professional or commercial, i.e., if it reflects upon the

⁵ 13th Ed., P. 355,

- fitness or capacity of the plaintiff in his profession or trade or in any other undertaking assumed by him. So also, it is defamatory to mention the plaintiff's name without his consent in connection with inferior goods, literary or other production.
25. Publication is equally important essential. As a best example of its essentiality, a landmark judgment of Honourable Supreme Court must be referred to. In case of ***R. Rajagopal versus State of Tamil Nadu***⁶, [famously known as the ***Auto Shankar Case***]. A Tamil sensational Weekly '*Nakheeran*' had proposed to publish autobiography of a condemned prisoner, by name Auto Shankar. He was convicted in six cases of murder and was sentenced to death penalty. His Advocate had delivered the autobiography to the news weekly, for publication as a serial. As it contained a narration about nexus between criminals and authorities, especially between the prisoner and several IAS, IPS and other officers, the newspaper decided to commence publication and announced that in advance. It was alleged that the police authorities extracted some letters from prisoner applying third degree methods, addressed to top authorities in the government requesting stoppage of publication of the autobiography. The Inspector General of Prisons in a letter to the editor, asked to stop the publication as the prisoner denied that he had written any such autobiography. The IG termed it as a false autobiography. The Editor sought a direction from the Court to prevent the interference in the freedom of the editor to choose the contents of his newspaper as per his discretion. The Division Bench consisting of *Honourable Justice B. P. Jeevan Reddy and Honourable Justice Subhas C. Sen* agreed with the petitioners and held that the newspaper had every right to publish the autobiography of Auto Shankar.
26. Honourable Supreme Court said that the newspaper could publish the life story so far as it appears from the public records even without the consent or authority. But if they go beyond the public record and publish, they may be

⁶ All India Reporter 1995 Supreme Court 264

invading the privacy and causing defamation of the officials named in the publication. However, Honourable Supreme Court said that even if the apprehensions of the officials were true about the defamatory contents, they could not impose any prior restraint on the publication, though they had right to take to legal proceedings for defamation after publication. It has been ruled that the Government has no authority to impose a prior restraint on publishing an autobiography, because that is going to be defamatory or violating right to privacy. The Honourable Supreme Court in this case held that-

- i. *The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.*
- ii. *The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.*
- iii. *There is yet another exception to the rule in (1) above - Indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a*

reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

- iv. So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.*
- v. Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.*
- vi. There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media".*

27. However, in paragraph 28 of the said decision, the Honourable Supreme Court has observed as follows:

"28. In all this discussion, we may clarify, we have not gone into the impact of Article 19(1)(a) and clause(2) thereof on Sections 499 read with 500 of the Indian Penal Code. That may have to await a proper case."

28. Very recently in **Subramanian Swamy Vs. Union Of India, Ministry of Law and others**⁷, Honourable Supreme Court has accepted to adjudicate this contentious issue and accordingly on 30/10/2014 Honuorable Supreme Court admitted the petition on following issues:

- a) whether provisions of sec.499 & 500 of PIC travel beyond the restrictions clause enshrined under Article19(2) of the Constitution & whether it constricts the freedom of speech*
- b) The very purpose of Article 19(2) in view of said provisions,*

⁷ Writ Petition (Criminal) No. 184 of 2014

- c) *Public opinion, public perception and public criticism, if scuttled or fettered or bound by launching criminal prosecution, it would affect the growth of a healthy and matured democracy.*
 - d) *The concept of sanction, which is enshrined under Section 199(2) of the Code of Criminal Procedure,*
 - e) *Supremacy over the larger public interest over the individual interest, f) Liberty and free speech that pertains to the realm of criticism of government actions cannot be gagged.*
29. Thus, the impact of Art. 19(1)(a) and clause(2) thereof under the constitution of India on section 499 to section 502 of the Indian Penal Code, 1860, would be decided in the said matter. **Decision of this case is awaited.**

Defamatory statement must refer to plaintiff:

30. In an action for defamation the plaintiff must show that the defamatory statement refers to him. It is not necessary for this purpose that the plaintiff should have been described by his own name. It is sufficient if he is described by the initial letters of his name, or even by a fictitious name, provided he can satisfy the Court that he was the person referred to. It is immaterial whether the defendant intended the defamatory statement to apply to the plaintiff, or knew of the plaintiff's existence, if the statement might reasonably be understood by those who knew the plaintiff to refer him. The reason is that a man publishing a libel does so at his own risk. Although when a statement on the face of it is not defamatory, a subsequent statement cannot be relied upon to show that it was defamatory. But when the statement is defamatory and the only question is as to the identity of the person intended to be defamed, a subsequent statement by the same party may be referred to. When the statement does not expressly refer to the plaintiff, extrinsic evidence is admissible to show that persons knowing the plaintiff understood the statement to relate to plaintiff.

Innuendo:

31. Where the statement does not refer to plaintiff directly, the doctrine of *innuendo* may be pressed into service. Words are prima facie defamatory when

their natural, obvious and primary sense is defamatory. Words prima facie innocent are not actionable unless their secondary or latent meaning is proved by the plaintiff. Where the words alleged to be defamatory do not appear to be such on their face, the plaintiff must make out the circumstances which made them actionable, and he must set forth in his pleading the defamatory sense he attributes to them. Such explanatory statement is called an **innuendo**. Thus innuendo means the words which are not defamatory in their ordinary sense, but may nevertheless convey a defamatory meaning owing to the circumstances. Mere interpretation of statement is not sufficient to allege an Innuendo. But it must be supported by extrinsic facts or matters. E.g. **A** says to **B** that **C** is *MANTHARA* (who was wicked servant in the house of Lord Ram, who caused Ramayan). It is innuendo.

- 32. So, it must be shown as to how complainant/plaintiff was the real target of said attack. A true innuendo is an innuendo by which plaintiff alleges a special defamatory meaning of words distinct from their ordinary meaning and arising by virtue of extrinsic facts or matters known to the recipients⁸.** Applying this principle, Honourable Supreme Court has laid down that an innuendo cannot be established by an evidence showing inferences of two kinds. The evidence of additional facts must be capable of showing that the words were applicable to plaintiff and the plaintiff alone. In this context useful reference can be made to case of *Manmohan Kalia versus Yash*⁹.

Defences:

- 33.** With the proof of publication of defamatory material, plaintiff must be deemed to have established his case unless the defendant pleads either of defences open to him. Following are the defences available in an action of civil liability in the case of defamation-
- a. Defence of justification of truth:** The truth of a defamatory words is pleaded with a complete defence in Civil proceedings and for that reason

⁸ Indited by Clerk & Lindsell in their book 'TORTS' [14th Edition]

⁹ (1984) 3 Supreme Court Cases 499.

even though the words were published spite to be and maliciously. A publication based on verifiable facts can extinguish liability for defamation. It negatives the charge of malice and it shows that plaintiff is not entitled to recover damages too.

- b. Defence of fair comment:** A fair and bona fide comment on a matter of public interest is not libel. For the purposes of the defence of fair comment on a matter of public interest such matters must be (a) in which the public in general have a legitimate interest, directly or indirectly, nationally or locally, e.g. matters connected with national and local government, public services and institutions and (b) matters which are at public theatres and performances of theatrical artists offered for public entertainment but not including the private lives of public performers. In a recent case of ***Kokan Unnati Mitramandal and Others versus Bennett Coleman & Company Limited and Others***,¹⁰ Honourable Bombay High Court while dismissing suit for defamation filed by plaintiff has held that “*defendants have shown and proved the truthfulness of the statements and fair comment made by them in public interest. The defamation of the plaintiffs alleged by them is, therefore, amply justified.*”
- c. Defence of absolute privilege:** 'Privilege' means a person stands in such relations to the fact of the case that he is justified in saying or writing what would be slander or libel by anyone else. The general principle under laying the defence of privilege is the common convenience and welfare of society or the general interest of society. Privileges can be absolute or qualified. **Absolute Privilege;** a statement is said to have absolute privilege when no action lies whether against Judges, Counsel, Jury, Witnesses or Parties, for words spoken in the ordinary course of any proceedings before any Court or Tribunal recognized by law. It is manifest that the administration of justice would be paralyzed if those who were engaged in it were liable to actions of

¹⁰ 2012 (2) Maharashtra Law Journal 338

libel or slander upon the imputation that they had acted maliciously and not bonafide. Thus, all witnesses or parties speaking with reference to the matter before the Court have privilege for their evidence, whether oral or in writing, relevant or irrelevant, malicious or not. The privilege extends not only to words spoken but also to documents properly used and regularly prepared for in the proceedings. **Qualified Privilege;** a statement is said to have a qualified privilege when no action lies for it even though it is false and defamatory, unless the plaintiff proves express malice. There are occasions and circumstances when speaking ill of a person or uttering or writing words defamatory is not regarded as defamatory in law and for the reason that public interest demand it. It is regarded sometimes right and in the interest of the public that a person should plainly state what he honestly believes about a certain person and speak out his mind fully and freely about him. Such occasions are regarded as privileged and even when the statement is admitted or proved to be erroneous; its publication will be excused on that ground.

- d. Consent:** Where the defendant has communicated or published certain material with the consent of plaintiff or plaintiff himself has invited the defendant to repeat the defamatory words, the defendant can plead this defence of consent. If a person telephones a newspaper with false information about himself, he would not be able to sue in defamation when the newspaper publishes it.
- e. Apology:** Apology is available as a defence in actions for libel against newspapers and another periodical publication, if the newspaper inserts a sufficient apology and adheres to certain other conditions. When there is an apology and an acceptance thereof, the defendant can resist plaintiff's suit for reimbursement for defamation. Nevertheless, there has been no similar legislation in India. In past judgments it is been held that even if the plaintiff accepted an apology and withdraw a criminal prosecution for defamation he

can still sue the defendant in a civil suit. In case of *L. D. Jaikwal versus State of Uttar Pradesh*¹¹, Honourable Supreme Court has commented on apology and observed that,

“We are sorry to say we cannot subscribe to the ‘slap-say sorry-and forget’ school of thought in administration of contempt jurisprudence. Saying sorry does not make the slapper poorer, nor does the cheek which has taken the slap smart less upon the said hypocritical word being uttered through the very lips which not long ago slandered a judicial officer without the slightest compunction.... Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. It is one thing to say sorry, and it is another to feel sorry.

Newspaper libel:

34. Newspapers are subject to the same rules as other critics. They have no special right or privilege. In spite of the latitude allowed to them, they have no special right to make unfair comments, or to make imputations upon a person's character, or imputations upon or in respect of a person's profession or calling. If a libel appears in a newspaper, the proprietor, the editor, the printer, and the publisher are liable to be sued either separately or together. **Press and Registration of Books Act, 1867**, [PRB Act] defines ‘Editor’ as the person who has control over selection of material, which is to be published. Further, there is presumption under section 7 of the PRB Act. The presumption is regarding awareness of contents of newspaper and it can be raised only against the Editor whose name appears on the copy of said newspaper. It cannot be raised against other Editors like the News Editor or Resident Editor whose names do not appear in the declaration printed on the copy of said newspaper. In case of *Gambhirsinh R. Dekare versus Falgunibhai Chimanbhai Patel and others*¹², Honourable Supreme Court has ruled down that the Editor whose name is published in said newspaper [in view of section 7 of PRB Act] is liable for civil and criminal liability, if published matter is defamatory.

¹¹ 1984 Criminal Law Journal 993.

¹² 2013 Criminal Law Journal 1757 SC.

Damages and costs:

35. Damages are of two kinds, general and special. General damages are such as the law will presume to be the natural and probable consequences of the defendant's words or conduct. They arise by inference of law and need not, therefore be proved by evidence. Special damages, on the other hand, are such as the law will not infer from the nature of the words themselves; they must, therefore, be specially claimed on the pleadings and evidence of them must be given at the trial. In India, if words have been proved to be defamatory of the plaintiff, general damages will always be presumed since all defamatory words are actionable *per se*. Whether special damage has also been suffered, that will remain a matter of proof, and if so proved, the plaintiff will be entitled to recover on that score along with general damages. The Court may come to the conclusion that although the action was well founded, the damages claimed were excessive or that it was extremely difficult for the plaintiff to have valued his claim at a particular figure. The damages are to be determined and quantified, depending upon various factors and circumstances. These factors cannot be found in any book or literal work.
36. But, this issue is addressed in case of ***Mr. Umar Abid Khan and others versus Vincy Gonsalves alias Vincent Gonsalves and others.***¹³ In paragraph 35 of the precedent, defamation and freedom of speech is distinguished in words as-
- “Every person has a legal right to preserve his reputation inviolate. In law, it has been accepted as personal property and it is just in rem a right good against all the world. A man’s reputation is property and degree of suffering occasioned by the loss of reputation as compared to that occasioned by loss of property, is greater. **The Court therefore must draw a balance between freedom of speech and protecting the reputation of an individual.**”*
37. Further, Honourable Panaji Bench of Honourable Bombay High Court has ruled down in aforesaid precedent [Umar’s case] in paragraph 15 and 16 thereof that-

¹³ 2010 (1) All Maharashtra Reporter 74

The plaintiff in defamation action is entitled to recover as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused.

38. Then, numbers of factors are enlisted to determine amount of damages, which is to be awarded. Those factors are (i) the gravity of allegation, (ii) the size and influence of the circulation, (iii) the effect of publication, (iv) the extent and nature of claimant's reputation and (v) the behavior of defendant and claimant plaintiff. These factors lend us upper hand to decide the perfect amount of damages and costs.

Defamation as an offence:

39. The criminal law on the topic is contained in sections 499 to 502 of Indian Penal Code, 1860. Punishment and sentence about the offence of defamation is provided under section 500 of IPC. But, section 499 talks about ten exceptions about what can't be termed defamation;

First Exception: Imputation of truth which public good requires to be made or published:

40. It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception: Public conduct of public servants:

41. It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct.

Example: In the case of *Kartar Singh v. State*¹⁴ it was observed that public men should not be thin skinned with respect to comments made against them in discharge of their official functions. So, this exception is always raised in such kind of cases.

¹⁴ AIR 1956 SC 541

Third Exception: Conduct of any person touching any public question:

42. It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Example: Where the death of a married woman gave rise to much suspicion and rumours and the public was keen to know as to whether her husband and some others including some family members were involved in it or not, and a news item to this effect was published in the newspaper of the accused which brought the appellant within the area of suspicion, it was held that the whole matter having become a public question in the town, the accused was entitled to the benefit of the third exception.

Fourth Exception: Publication of reports of proceedings of Courts:

43. It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Example: A correspondent of a newspaper made available material for publication to the editor of a newspaper, including a complaint made by a complainant against a person, the complainant in the aforesaid case, under sections 500 and 504 of the Code along with the allegations contained therein. These were published in the newspaper. On a complaint made by the complainant in the present case, it was held that there was no liability for defamation since exception 4 is available to the accused persons. The Court made it clear that this exception is also applicable to complaints or pleadings made by the concerned parties to a dispute besides being applicable to the judgments or order of the courts.

Fifth Exception: Merits of case decided in Court or conduct of witnesses and others concerned:

44. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in

any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception: Merits of public performance:

45. It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Seventh Exception: Censure passed in good faith by person having lawful authority over another:

46. It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with mat other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Example: Any confidential report about a public servant by his superior is protected by exceptions 2 and 7 of section 499. So an adverse entry with respect to the ability, integrity and suitability of an officer by his superior can be made without fear. If the subordinate officer has any grievance about the same, he is always entitled get the same cancelled or get adverse remarks expunged from his confidential report.

Eighth Exception: Accusation preferred in good faith to authorised person:

47. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception: Imputation made in good faith by person for protection of his or other's interests:

48. It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

It has been held that the person alleging in good faith must establish the fact that before making any allegations he had made an inquiry and necessary reasons and facts given by him must indicate that he had acted with due care and attention and that he was satisfied about the truth of the allegation. Five important considerations must be kept in mind while establishing good faith and bona fides.

- a.* the circumstances under which the letter was written or the words were uttered;
- b.* whether there was any malice;
- c.* whether the appellant made any inquiry before he made the allegations;
- d.* whether there are reasons to accept the version that he acted with care and caution; and
- e.* whether there is preponderance of probability that the appellant acted in good faith.

Tenth Exception: Caution intended for good of person to whom conveyed or for public good:

49. It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good. Chapter XXI, Section 500, 501, and 502 of the IPC deals with the punishment for defamation.

Defamation – intention and malice; how far considerable:

50. Malice is the intentional commission of a wrongful act, absent justification, with the intent to cause harm to others. The term does not necessarily imply personal hatred, a spiteful or malignant disposition or ill feelings of any nature. But rather, it focuses on the mental state which is in reckless disregard of the law in general and of the legal rights of others. Malice is essential for criminal defamation. Malice is present if the acts were done in the knowledge that the statement is invalid and with knowledge that it would cause or be likely to cause injury. Malice would also exist if the acts were done with reckless

indifference or deliberate blindness to that invalidity and that likely injury. Law punishes those who are reckless in their act and by their recklessness cause harm or injury to another. Malice is presumed to exist, in law, when there is intention to bring disrepute or knowledge that the matter in question could bring disrepute to a person. Thus, to escape the charge of defamation one must show that there was no malice on his part.

Locus – standi for defamation cases:

51. No court shall take cognizance of the offence except upon a complaint made by the person aggrieved as provided in section 199 of the Code of Criminal Procedure. This is so because the words “person aggrieved” does not mean “person defamed”. The words “person aggrieved” has a wider connotation than the words “person defamed”. Section 499 of the IPC provides that any person whose reputation has been damaged (or was intended to be damaged) by the material in question can sue for defamation. ‘Any person’ refers to a single individual, an association or collection of persons or a company.
52. In a case between **Maulik Kotak -Vs- State of Maharashtra**,¹⁵ it is held by Honourable Bombay High Court that complaint for defamation is to be lodged by person aggrieved and the person defamed and not by any other person, by substituting the aggrieved person, who was not defamed.

Conclusion:

53. To conclude, quotation of renowned author ***William Shakespeare*** is the best choice. The quotation sums up defamation and its requisite perception. In his famous work ‘***Othello***’¹⁶ he has written that

“He that filches from me my good name, Robs me of that, which not enriches him, and makes me poor indeed.”
54. So, defamation shall be looked at with different viewpoint, different attitude and with differentiable skill to find meanings of words.

THANK YOU

¹⁵2014 Criminal Law Journal 4235 (BOMBAY)

¹⁶ 1604-5, Scene 3.