

“Defamation”

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ABSTRACT

Now-a-days, the debate on the legality of defamation is on a rise. In this paper we will explore the evolution of defamation in various legal systems and does a comparative study of the present defamation laws in various jurisdictions. The paper will also examine the laws of defamation in India and judicial intervention in this matter by analysing the cases of *M.J. Akbar vs Priya Ramani* and *M. Nedunchezhian vs The Bar Council of Tamil Nadu*. This paper will also give an insight into the debate between free speech and defamation. It is essential to examine and understand the concept of defamation in the light of the afore mentioned cases so that cloud of doubts shed away and provide a space for an informed consensus on the matter.

Key Words: Defamation, Section 499 of IPC, Indian Penal Code, Civil Wrong, Criminal Wrong.

INTRODUCTION

After life, a person cares his/her reputation the most. Defamation is the act of publishing an oral or written communication of a false statement which brings disrepute to an individual and usually constitute a civil offence or a criminal offence. Defamation has been in the spotlight throughout the world mainly because of the numerous cases of defamation filed by various political leaders against each other, mostly on frivolous grounds, to satisfy their political vendetta, followed by cross-defamation suits.

In India, defamation as a criminal offence is codified under section 499-502 of the Indian Penal Code, but defamation as a civil offence is uncodified and covered by the torts law. Section 499 of the IPC defines defamation and sections 500, 501 and 502 stipulates punishment to an individual found guilty under section 499.

RESEARCH OBJECTIVES

- i. To understand the history and theory of defamation.
- ii. To understand the definition, types and essential elements of defamation.
- iii. To examine the defamation laws in other jurisdictions
- iv. To examine the defamation laws in India.

REVIEW OF LITERATURE

A number of literatures by various scholars are available on the topic of defamation. This paper has been completed by going through the following research works and books available:

- **Black Law Dictionary:**

This source gives the definition to the term defamation. It also encompasses the definitions of various related terms and concepts given by various eminent jurists.

- **Law of Torts by Dr. Ashok Kumar Jain (2012 edition):**

The author of this book has provided a definition of defamation from the legal point of view and has explained defamation using various case laws in layman terms. The author has also explained the various laws of defamation and related case laws in India.

- **The History and Theory of the Law of Defamation. I by Van Vechten Veeder:**

The author of this article has provided an account of the history of the evolution of defamation in various jurisdictions.

- **(Bare Act) Indian Penal Code, 1860:**

It provides relevant sections related to the topic.

RESEARCH METHODOLOGY

This research paper was done with the help of the secondary sources available which means that it is based on the pre-existing information known as primary data. In secondary research, the primary data is properly analysed and integrated with various other data to produce a new data called the secondary data. Secondary/doctrinal research is widely used by researchers around the globe because it is less time consuming and convenient.

HISTORY OF THE LAW OF DEFAMATION

We don't need Shakespeare to emphasize the inestimable value of good name. Reputation is the result of the judgement which others formulate regarding one's character and that judgement is affected by the instrumentalities which reach the observer's mind. Hence, the law of defamation is forced to deal with all forms of communications, like spoken and written words, signs, symbols, photographs, caricatures etc., by which ideas are transmitted. Unfortunately, the English law of defamation is not the deliberate product of any period. It has grown by aggregation, by very little intervention by the legislation, and special and peculiar circumstances shaped its varying course. The result is that perhaps no other branch of law is as open to criticism for its doubts and difficulties, its meaningless and twisted anomalies. In a nutshell, it is absurd in theory and very often mischievous in practical operation.¹

In the early Middle Ages, reputation was protected in England by combined spiritual and secular authorities. However, after nationalization of justice by the King's judges, when the jurisdiction of defamation went to the King's court in the latter half of the sixteenth century, various political and social conditions combined to contract the actionable right, or remedy. The King's court only provided a limited remedy, the selection being based merely upon the character of the imputation, partly upon the consequences resulting therefrom. By the reason of its growth in this manner the early law of defamation predominantly consisted mere

¹ Vander, van Vechten, The History and the Theory of the Law of Defamation I, 3, Columbia Law. Rev., 546, 546-548 (1903)

exceptions to the freedom of speech. Now, in the early seventeenth century, when the potentialities of printing press dawned upon absolute monarchy, the situation was met by directly importing the Roman law, without regarding the Roman limitations, and certain additions adapted to the purpose in hand. This special provision for printed or written defamation, first adopted in criminal law, eventually also became a principle of civil judicature. In this way, a new form of actionable defamation was developed in law. The original common law doctrine of defamation, based upon the nature of the imputation, became stereotyped as the law of spoken defamation, or slander; the doctrine inherited from Roman law, through star Chamber, became the law of printed defamation or libel. Therefore, the English Law of Defamation was first limited by a process of selection and then confused by a formal distinction which was not only missing in other legal systems but also irrational in principle.

As in most primitive legal systems, in the early Roman Law, verbal injuries were considered to be criminal or quasi-criminal offences. The Romans had two sets of provisions which dealt with defamation; the severe provisions of *Libellous famosus* and the comparatively mild law of *injuria*. The first one applied to materials which were considered to be very dangerous because of their anonymous nature and extent of diffusion and the second provision applied to minor offences which consisted every form of direct and personal aggression involving insult or impertinence.

In later Roman jurisprudence, verbal injuries started being dealt in the edit under two heads, the first consisted the defamatory or the injurious statements made in the public and the other head included the statements made in private. In the first head, the truth of the statements could not be used as a defence against making such unnecessary and insulting statements in public, because the very essence of the offence in this case laid on the unwarrantable public proclamation which the man had before his fellow citizens. In the second head, truth of the statements was a complete defence because the essence of the offence in this case laid on imputation itself and the manner of publication. The law thus aimed to give ample scope for the discussion of personal character, disallowing infliction of unnecessary pain and insult.²

This panorama of development of defamation law in two different legal systems shows that the courts have adapted and updated their doctrines to meet the policies of the time and place.

DEFINITION & ELEMENTS OF DEFAMATION

As stated in the case of Dixon vs Holden (1869) 7 Eq. 488, “A man’s reputation is his property and, if possible, more valuable than other property”. If we try to break the statement, it simply implies that for a man, his reputation is the most important thing and if reputation is lost, he loses everything. A man loses face in the society and becomes the subject of social ridicule.

² Vander, van Vetchen, The History and the Theory of the Law of Defamation I, 3, Columbia Law. Rev., 546, 563-569 (1903)

As per Black's Law Dictionary, defamation means the offence of injuring a person's character, fame, or reputation by false and malicious statements. Thus, in simple words defamation can be defined as the act of injuring the reputation of a person by the publication of false statements, without any lawful justification, with the aim of bringing the person into disrepute. It is not only the injury to the person alone, but to each and every person who are so closely related to the person that the injury suffered by them as a direct bearing on the reputation of the man who alleges to have suffered an injury. It is important to note that a person can bring a suit of defamation against the writer or the publisher either as criminal proceeding or as a civil action for damages in torts for the suffered injury. Generally, defamation requires the publication to be without the consent of the injured person. The published matter(s) to be interpreted as per the common usage and the context in which the matter is published.

Libel and Slander

English law has divided the action for defamation into two categories- *Libel & Slander*. A libel is the publication of a false and defamatory matter, by a third person, in a permanent format without any lawful justification for example writing, printing, effigy etc. A slander, on the other hand, is the publication of a false and defamatory matter, by a third person, in a transient format without any legal justification, for example spoken words or gestures. The recoverable damages in libel and slander are different. Law suits involving libel undertake redress for all kinds of injuries called general-damages if they involve loss of reputation and called special damages if they involve specific economic loss. In a lawsuit of slander, one can only recover special damages. However, not all jurisdictions make such distinction.

Essentials of defamation

- The statement must be defamatory.
- The statement must refer to the plaintiff and must be understood by the right-thinking and reasonable persons that the statement is being referred to the plaintiff.
- The statement must be published, i.e., it must be communicated to someone other than the plaintiff himself.
- In case of slander, either there must be proof of special damage or the slander must come with the serious classes of cases in which it is actionable per se.

Burden of proof

The burden of proof in a suit of defamation is on the plaintiff. Thus, for pleading an innuendo, the plaintiff must highlight the special circumstances which made the words actionable and must set forth in his pleading the defamatory sense, he attributes to them.

When the defence to defamation is taken, the burden of proof is on the defendant. While making his arguments, the defendant must make clear his justifications he is seeking to put forward before the case and must state clearly the meaning(s) and the context which he seeks to justify. In a defence for fair comment, he must show that he has not misstated any fact. In a

defence of privilege, he must prove that the circumstances under which he has made the statement is privileged. If the defendant is able to prove his points, the burden to prove *malice in fact* will be upon the plaintiff.

Defences to an action for defamation

- **Justification or truth:**

In a civil action for defamation, truth of the published defamatory matter is a complete defence but in case of criminal action, truth of the published defamatory matter is not a defence.

- **Fair comment:**

Making a fair comment on matters involving public interest is a defence to an action for defamation.

Essentials for using the defence;

1. The statement must be an expression of opinion rather than assertion of fact,
2. The comment must be fair,
3. The matter commented upon must be of public interest.

- **Privilege:**

There are certain occasions when the law recognizes that the right of free speech outweighs the plaintiff's right to reputation, such occasions are treated as privileged and a defamatory statement is not actionable.

DEFAMATION LAW: COMPARATIVE STUDY

English Law

Until the enactment of the Defamation Act 2013, the Parliament of the United Kingdom had reformed the defamation laws in about every 50 years, with the acts of 1952 and 1996 being the most recent ones.

Under English Law, there was a distinction between *libel* and *slander*. Firstly, libel is punishable under criminal law but slander is not an offence. Secondly, *special damages* must be shown in cases of slander.³ In law of torts, slander is punishable but only in the following four exceptional cases in which special damages has to be proved;

1. Imputation of criminal offence punishable with imprisonment to the plaintiff.
2. Imputation of a contagious disease or infection to the plaintiff, which has prevented people from associating with the plaintiff. This exception was removed by section 14 of the Defamation Act of 2013.
3. Imputation that the plaintiff is dishonest or incompetent in regard to his profession. This exception was added by section 2 of the Defamation Act of 1952.
4. Imputation of unchastity or adultery to any woman or girl is actionable per se. This exception was added by the Slander of Woman Act, 1891.

³ Peel Edwin, Goudkamp James, Winfield and Jolowicz on tort 360 (19th Ed 2014)

Thus, in England slander is only a civil wrong. But it must be noted that civil action is more troublesome than criminal action.

New Zealand Law

In New Zealand, the civil law has assimilated libel and slander. Section 4 of the Defamation Act 1954 states that in any action for defamation, whether libel or slander, shall not be necessary to prove or allege any special circumstance. But, somewhat illogical, there is a distinction between libel and slander in criminal law.⁴ The Crimes Act 1961, defines criminal libel to be any matter published, without lawful justification or cause, whether such matter is expressed by words, written or printed, or legibly marked on any substance, or any substance, or by any matter signifying such matter otherwise than words and whether expressed directly or by insinuation or by irony.

The same act states that every person is guilty of criminal slander who without lawful justification uses words which are:

- Spoken, or reproduced from a recording, which can be heard by more than twelve people at a meeting to which the public has been invited or have access; or within the hearing of more than twelve people anywhere where the public have or permitted to have access; or
- Broadcast by means of television or radio. But it must be noted that neither radio nor television has been defined by the act.

Thus, in New Zealand the question, what words are defamatory, will be a subject of legal argument as long as the law of defamation continues.

Bangladeshi Law

Unlike other countries, defamation in Bangladesh is a criminal offence and not a civil offence. Also, there is no distinction between libel and slander in the criminal defamation law, provided the requirements under section 499 of the Penal Code of Bangladesh are satisfied.⁵

The conditions as under section 499 of the Penal Coder are:

- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.
- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

⁴ Davis, A.G., The Law of Defamation in New Zealand, 16 UTLJ. 37, 37-40 (1965)

⁵ Tahmidur Rahman,

<https://tahmidurrahman.com/defamation-law-in-bangladesh/#:~:text=According%20to%20the%20Section%20499,imputation%20will%20harm%2C%20the%20reputation>, (last visited Nov 20, 2021)

- An imputation in the form of an alternative or expressed ironically, may amount to defamation.
- No imputation is said to harm an individual's reputation directly or indirectly, in the estimation of others, lowers the intellectual or moral character of his cast, or lowers the credit of that individual, or causes it to believe that the person is in a loathsome state, or in some state which is generally considered to be disgraceful.

DEFAMATION LAWS IN INDIA

In India, defamation laws were first conceived by Lord Macaulay in 1837 in the first draft of the IPC. The main motive behind criminalizing the offence of defamation in British India was definitely to protect the interests of the British Raj. Consequently, section 499 of the IPC was enacted and has remained unchanged for the past 158 years.

In India, unlike English Law, there is no distinction between libel and slander. Both libel and slander are offensive criminally under section 499 of the IPC and a civil offence under tort law. However, it is the plaintiff who decides whether he wants to file a criminal suit for punishment or a civil suit for compensatory remedy.

Defamation as a tort

Under tort law, the focus is mainly on libel rather than slander. To prove a statement to be libellous, it must be shown that the statement is;

1. False.
2. Written.
3. Defamatory.
4. Published.⁶

An important aspect of defamation as a tort is that it is no wrong if the defamatory statement defames a deceased person because as per general rule, a person should be able to prove that the statements referred to him is defamatory. However, this does not imply that there can be no cause of action if a dead person is defamed- for example, a defamatory statement is impacting the reputation of a deceased person's heir, a suit for defamation would be maintainable. Also, it is important to be noted that the intent to defame is not necessary. In the case of *Morrison vs Ritchie & Co. (1902)* the defendants had published a statement by mistake that the plaintiff has given birth to twins whereas the plaintiff was married two months back.⁷ Even though the defendants were ignorant of this fact, they were held liable. But in the case of *Parvati vs Mannar (1884)* the court held that the mere hasty expression spoken in anger or vulgar abuse to which no hearer would attribute any set purpose to injure the character would not be actionable.⁸

⁶ Ratanlal & Dhirajlal, *The Law of Torts* 279, (Ed.26th, 2013)

⁷ *Morrison vs Ritchie & Co., (1902)* 4 Fraser 645

⁸ *Parvati vs Mannar, (1884)* ILR Mad. 175

Furthermore, if an action for defamation becomes successful, damages will be payable to the plaintiff. Also, if a person is apprehensive to be defamed in a publication, he/she can seek for an injunction to such a publication but, pre-publication injunctions are rarely granted.

Defamation as a crime

Section 499-502 of the IPC provides provisions for the protection of an individual's reputation. Under criminal suit for defamation, intention to defame is necessary. Publication should be made with a malice intent to defame an individual(s) or with the knowledge that such publication is likely to defame another. It must be noted that, under criminal law, it is an offence to defame a deceased person.

Section 499 of the IPC 1860, states that, "Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation will harm, the reputation of such person, is said except in the cases hereinafter expected, to defame that person.

Explanation 1: It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4: No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."⁹

Section 500 of the IPC stipulates punishment for an individual found liable under section 499 of IPC. Section 500 states that, "Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."¹⁰

The Criminal Procedure Code, which lays down the procedural aspects of the law, states that defamation is a non-cognizable and bailable offence. Individual(s) who are accused of the offence are generally not taken into custody without a warrant. Also, in most cases, an aggrieved person cannot immediately file a police complaint but would have to file a complaint before a magistrate. In civil defamation, while fact is considered to be a defence to defamation, in case of criminal defamation, truth is a defence, (assuming that it is demonstrably true) in a limited number of circumstances.

⁹ Indian Penal Code, 1860, s. 499, Acts of Parliament, 1860 (India)

¹⁰ Indian Penal Code, 1860, s. 500, Acts of Parliament, 1860 (India)

FREE SPEECH VS DEFAMATION

Defamation is the communication of a false statement that harms the reputation of another. When in written form it is often called ‘libel’. Defamation has always acted as a limit on both the freedom of speech as well as the freedom of the press. There is no such thing as a false opinion or idea – however, there can be a false fact, and these are not protected under the First Amendment. When these false facts harm the reputation of others, legal action can be taken against the speaker. Since the press reports on people and events constantly, claims of defamation are bound to occur by those who either have incorrect, negative, or unwanted facts reported about them. However, if there was no First Amendment protection for the press, the press might become too cautious – afraid to report controversial facts out of the fear of being sued by anyone who did not like the coverage. The Supreme Court has strived to balance the interests of a free press with the privacy and dignity of others. As a person becomes more well-known or takes official positions in the government, the Court has afforded them less protections. Traditionally, the press was only exempt from libel claims if it reported on a public figure or the government and met certain standards. The statements of fact had to be substantially true, and comments or opinions had to be fully justified by those true facts. Libel required that a defamatory statement had been made about a plaintiff and communicated to a third party. Additionally, the person committing the liable was “strictly liable” – they could be found guilty regardless of if they intended the libel or not.

In the case of *Subramanian Swamy v. Union of India*, a petition regarding the decriminalization of defamation was filed. The petition challenged the constitutional validity of Section 499 and 500 of the Indian Penal Code, 1860 as an unreasonable restriction on the freedom of speech and expression. The apex court held that criminal defamation under Section 499 and 500 did not violate Art. 19(1)(a) as it is a reasonable restriction under Art. 19(2). The term ‘defamation’ in Art. 19(2) includes both civil and criminal defamation. Section 499 and 500 IPC was held to be non-discriminatory and non-arbitrary and not violative of the right to equality guaranteed under Art. 14 of the Constitution. While in a democracy an individual has a right to criticize and dissent, but his right under Art. 19(1)(a) is not absolute and he cannot defame another person as that would offend the victim’s fundamental right to reputation which is an integral part of Art. 21 of the Constitution.

CASE LAWS

CASE 1:

M. Nedunchezhian vs. The Bar Council of Tamil Nadu¹¹

FACTS OF THE CASE:

In this case, the petitioner’s (M. Nedunchezhian) application for enrolment as an advocate was not entertained by the bar council. The petitioner, thus, filed a writ petition seeking the issue of a Writ of Mandamus to direct the Bar Council to enrol him.

¹¹ M. Nedunchezhian vs. The Bar Council of Tamil Nadu, (2015) SCC Online Mad 5573

The petitioner was a freelance reporter in a monthly magazine. He had subscribed to two chit groups of a non-banking finance company named Sriram Chits Tamil Nadu. Due to default in payment of instalments, the chit fund group initiated an arbitration proceeding before the Deputy Registrar of Chits. Apart from using the available statutory remedies, the petitioner wrote an article, criticising the non-banking organisation, in the magazine for which he was a freelance reporter. The non-banking finance corporation, perceived the article to be malicious propaganda causing extensive damage to their reputation and filed a private complaint under sections 499, 500 and 501 of the IPC, against the petitioner as well as the editor and the publisher of the magazine.

After tasting litigation in the first hand, the petitioner developed some interest in law and got himself enrolled in a law school in Bengaluru. On the basis of the degree, the petitioner applied for enrolment in the Bar Council via an application. In the application for enrolment, the petitioner had disclosed the pending criminal trial. The Bar Council did not pass his application citing the judgment of the apex court in the case of S.M. Ananthan. Murugan Vs. The Chairman, Bar Council of India, New Delhi. The petitioner then filed a writ petition but soon sought to withdraw it without reserving any liberty. Therefore, it was dismissed by the hon. Court by an order dated 17th July, 2014.

ISSUE(S) BEFORE THE COURT:

- Whether the present writ petition is maintainable, after the withdrawal of the first writ petition without reserving any liberty to the petitioner.
- Whether the petitioner's law degree valid or not for the purpose of enrolment.
- Whether the pending criminal compliant of defamation would make him incapable of getting enrolled in the Bar Council.

ARGUMENTS FROM THE PARTIES:

- **PETITIONER**

The petitioner, Mr. M. Nedunchezhian, contended that a person facing private complain for an alleged offence under section 499 of the IPC cannot be considered to be having a criminal background and thus does not make him ineligible for enrolment as an advocate in the Bar Council. He also added, that since he had joined the three-year law in the academic year of 2008-2009, Rule 28 of Schedule III of the Rules of Education, 2008, which deals with the age limit in law courses, would not apply.

- **RESPONDENT**

The respondents did not contend the second issue and agreed via an affidavit, that the petitioner's law degree is valid and cannot be disqualified on the basis of age factor.

JUDGEMENT:

The court, while discussing the first issue, cited the judgement of the Apex Court in the case of Daryao Vs, Sate of UP (AIR 1961 SC 1947) where the it was held that, when a petition is withdrawn by the party without liberty from the court to file a fresh petition on the same

subject matter, the petitioner is barred from filing a fresh petition or an appeal against such matter. Therefore, in the present case, the withdrawal of the previous petition, without reserving any liberty, would bar the petitioner from filing a fresh writ petition on the same cause of action. However, since the cause of action in the present writ petition is not same as that of the withdrawn petition, the court decided that the withdrawal of the first petition without reserving the liberty would not bar the petitioner from filing a fresh petition, at least in the present case.

The court, decided the second issue in favour of the petitioner since the respondent in their affidavit had agreed that the petitioner's law degree cannot be disqualified on the basis of age factor because the age limit rule came into force in the year 2009 and the petitioner had joined the course in the year 2008.

While discussing the third issue, the court cited declaration(s) by various International Organisations, where they have urged states to consider decriminalising defamation. It also observed that various developed and developing countries have repealed laws making defamation a criminal offence. The court after analysing the present laws in various countries, arrived at the conclusion that the trend all over the world is towards decriminalisation of defamation and thus, under such circumstance, it won't be possible for them to convince themselves that filing a private complaint of defamation against a person for writing article in a magazine, would amount to criminal case thus making the individual someone with a criminal background so as to dis-entitle him to enrol as an advocate. Therefore, the court allowed the writ petition and directed the respondent to process the application of the petitioner for enrolment, if he satisfies the all-other criteria required for enrolment.

CASE 2:

Mobashar Jawed Akbar Vs. Priya Ramani¹²

FACTS OF THE CASE:

The complainant Mr Mobashar Jawed Akbar, a journalist turned politician, filed a criminal defamation case against Priya Ramani, a journalist, who had accused the former of sexually harassing her. On October 12, 2017, an article titled *To the Harvey Weinsteins of the world* by Priya Ramani was published in The Vogue, where Ramani had shared her sexual harassment experience by her boss by mentioning him as predator. In October 2018, Ramani tweeted naming the complainant as the predator she had mentioned in her 2017 Vogue article, and this triggered the former to file the against the later. Ramani was accused by Akbar of irrevocably harming his exceptional reputation by propagating scandalous claims about him in print media via tweets and articles on online platforms.

¹² Indian kanoon, <https://indiankanoon.org/doc/52182353/>, (last visited Nov. 15, 2021)

ISSUE(S) BEFORE THE COURT:

- Whether tweets made by Priya Ramani defamatory or not?

CONTENTION FROM THE PARTIES:

- **COMPLAINANT**

The complainant, represented by Advocate Geeta Luthra, alleged that the accused made baseless and defamatory statements about him in order to smear his character. He further claimed that the accused's actions were motivated by a concealed interest. Priya, according to the complainant, published many articles and tweets on some of the most prominent sites, such as Vogue, Twitter, Livemint, and others, which negatively impacted his reputation in society. The complainant also claimed that the accused failed to meet his burden of proof in the case of the preponderance of the evidence. To be covered by an exception to Section 499 of the Indian Penal Code, which defines the notion of defamation, the accused must discharge the burden of establishing the existence of circumstances that would qualify the case for one of the defamation exceptions. The complainant also stated that the accused attempted to turn the entire matter around without fulfilling the burden of proof. Furthermore, contrary to the accused's claims, no such good intentions were present when the articles were published. As a result, the accused has presented the entire case incorrectly, and the key point in the case has been purposely obscured by the accused.

- **ACCUSED**

The accused, who was represented by Advocate Rebecca John, claimed that the entire process was conducted in good faith and in the public interest. The accused claimed that her case fell under Section 499 of the IPC's exceptions 1, 9, and 3. While recounting the incident that the accused was involved in, she said that the complainant harassed her in a hotel room 25 years ago while interviewing her. She was devastated, but due to ineffective redress processes, she was unable to reach the appropriate authorities until the MeToo movement gained traction. The accused cast doubt on the complainant's great reputation by pointing to his prior sexual misconduct. Furthermore, because of the complainant's position of authority, it became impossible for the victims to speak out against the crimes he perpetrated. The dread of losing one's employment, as well as the underlying stigma of society had a greater influence on the victims' minds, forcing them to stay under the shed for decades. The accused's whole defence was based on the fact that she did it for the public good and had no vested interest in the outcome, thus falling under the exceptions of Section 499 of the IPC.

JUDGEMENT:

After hearing and critically analysing the contention from both the parties, the Hon. District Court of Delhi acquitted Priya Ramani saying that the statements made by her against the complainant were not defamatory.

The court agreed with the accused's argument that the complainant does not have a good reputation. It was discovered that, no matter how well-respected some members of society are, they may certainly be nasty to their female counterparts. Furthermore, the court stated that it cannot be overlooked that a person in a position of power breeds impunity in the minds of abusers who expect no repercussions for their actions. The court observed that, the lack of a competent procedure, is the reason why women do not raise their voices against such crimes. Because there was no process in place to resolve the sexual harassment complaints when the occurrence occurred, the workplace was subjected to systematic abuse. Even if there were a plethora of appropriate redressal processes in place, the underlying social stigmas and prejudices that exist in society would deter people from seeking justice. The court acknowledged that women should be given more opportunity to express themselves about their issues in the topic on whatever forum of their choosing. The MeToo movement, in which women raised their voices on numerous online social platforms, was mentioned in the decision. The term "any platform" was construed by the court to cover both courts and media platforms.

The court went on to say that the freedom to speak out on any platform can be used at any moment, even decades later. The court, in an empathetic manner, noted that the victims are in significant distress as a result of society's stereotypical portrayal of women. Female counterparts' development is often hampered by the customary notion, which prevents them from expressing themselves. As a result, it is necessary to consider the current situation and expand the area of legal protection that is currently limited by the limitation period. The court stated that under Article 21 of the Indian Constitution, women's rights to life and dignity cannot be infringed upon on the basis of a criminal charge of defamation. The court defended the purity of women threatened by such acts of abusers by alluding to Indian mythology. As a result, the court saw the necessity to clear the way for them to exercise their rights without hindrance. The court added that criminal defamation should not be used as a weapon against women's rights.

SUGGESTIONS

Enacting a constitutional legislation is a better way to achieve the reforms in defamation. Defamation should be decriminalised, and civil defamation should be modified to make it more equitable and straightforward, avoiding *Strategic Lawsuits Against Public Participation* techniques. Because this is a new law, it would be foolish not to include the Internet and new media in establishing who can be sued for defamation and how. Limits on civil defamation should also be imposed. Not only must there be a considerable loss of credibility, but also the proof must also be substantial. The defendant must establish that the claimed comment harmed their reputation materially. Facts, belief, and logical inference can all be used as defences in defamation proceedings. Finally, courts should be able to impose exceptional fines against frivolous litigation that squander their time and money. To reduce the workload, courts should hear only significant defamation suits that haven't been settled amicably. One method to ensure this is to make the legal notices that complainants must file before initiating

a lawsuit mandatory. To avoid unwarranted accusations, these notices should also explain how the allegedly erroneous statement was made. Legal reforms can be supplemented with measures to remedy the resource imbalance, such as indemnification clauses in journalist contracts and a type of defamation insurance. Finally, change is essential because free speech is useless without the opportunity to offend others in a decent manner. If the freedom to genuinely criticise is not guaranteed, the wealthy and powerful will continue to silence voices raising critical concerns. Without those voices, the Indian state may be significantly transformed or threatened, leaving Indians in the dark.

CONCLUSION

Defamation is an act of damaging one's reputation by making a false declaration to a third party. It is an infringement of reputational interest. The rule of defamation is intended to protect the dignity of persons from malicious attack. Its primary impact in practise is to impede free expression and shield influential individuals from scrutiny. The rule of defamation aims to preserve individual integrity. The key challenge is how this goal can be reconciled with the conflicting demands of freedom of expression. In our society, as both of these interests are highly regarded, the former is perhaps the most precious characteristic of civilised human beings, while the latter is the very basis of a democratic society. Defamation law requires people who say or post misleading and malicious statements to be sued by individuals. The main concept behind balancing rights should be to exercise one's freedom of speech and expression in the eyes of the public without compromising the reputation of the person. In my opinion, this law also has some major drawbacks. In a country like India, defamation is 'luxury litigation' and hardly ever leads to any outcome. A Civil Action for damages would require a court cost proportionate to the damages requested as well as the fee of the counsel, but would not ever lead to facts of defamation justifying damages. On the one hand, the defendant falls back in good faith on the protection of facts and fair comment, and on the other hand, it is not easy for the plaintiff to prove loss of credibility justifying and quantifying damages. Defamation has been highly criticised and has come inches away from being held in violation of Article 19(1)(a) i.e., Freedom of speech and expression. Each time the Supreme Court has held it legitimate, it breathes correctly. Yet the very fact that it was questioned on the basis of constitutionality speaks volumes about how serious the trial courts are finding it. Critics argue that in a democracy, there is no need for any defamation laws. Criticism is the self-corrective measure of a democracy and a culture and for all individuals it should be welcomed and promoted.

BIBLIOGRAPHY

- Dr. R.K. Bangiya, Law of Torts, 25th Ed. 2020
- Peel Edwin, Goudkamp James, Winfield and Jolowicz, 19th Ed. 2014
- Henry Campbell Black, Black's Law Dictionary, 4th Ed. 1968
- Dr. Ashok Kumar Jain, Law of Torts, 5th Ed. 2012
- Ratanlal & Dhirajlal, The Law of Torts, 26th Ed. 2013