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## **LECTURE-42**

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## **[II] Defamation: Section 499 to 502 of IPC**

Defamation is a procedure for check and balance on the Right to freedom of speech and expression (Article 19). It is a procedure to ensure that nobody harms the reputation of any person or tend to create a wrong opinion of the person who is defamed, in the eyes of the public.

To make you understand what it really is, suppose there are two party members, Meera and Subodh standing for election. Subodh says, “Meera is a corrupt person, I have seen her taking bribes in the past, so do not give her vote”. This statement is untrue and harms the reputation of Meera, as no one in the public will give the vote to a corrupt person. This will directly hamper Meera’s winning in the election.

To prevent this, provisions regarding Defamation are available in Section 499 to Section 502 of the Indian Penal Code. In this article, we will understand them in detail.

### **Analysis of the offence of Defamation**

Section 499 of the Indian Penal Code talks about defamation. So, what is defamation?

Any person who by spoken or written words, signs or visible gestures creates or publishes any imputation on any person with an intention to harm the reputation of that person. The person making such imputation should have the knowledge or a reason to believe that such imputation will ruin the reputation of the person.

However, there are many exceptions included in this Section. We will discuss them in the approaching topic.

### **Reputation**

To sue any person it is necessary to establish that real damage or harm has occurred to the reputation of the person. Only speaking or writing the words, picturing or gesturing does not amount to defamation until the reputation of the person has been harmed.

Harm to reputation is the only negative consequence that can arise from the act of defamation.

It could prove harmful to your professional career as well. For example, if someone pointing out to a shopkeeper says that you should not buy groceries from him as he sells low-grade things at a high rate. In

this case, if the statement is found to be untrue then the reputation of the shopkeeper is being harmed as this will lead to the shortage of customers coming to his shop.

## **Publication**

For a person to be sued for defamation, it is required that the publication of the words he spoke or wrote must have happened. What does it mean?

It means that damage to the reputation of the person happens when the defamatory words have reached to any third person. Publication means that the third person has read, heard or seen the written, spoken, gestured or pictured defamatory words.

**If it has not happened then there is no ground to sue for defamation.** The distinction between English Law and Indian Law

An act of defamation can occur in two forms, libel and slander.

Libel- it is a kind of defamation that is present in some permanent form such as in writing, printed or a picture.

Slander- it is a kind of defamation that is present in an unwritten form such as spoken words, gestures or representation made with hands.

In English law, there is a distinction made between both of the forms under the categories of criminal defamation and civil defamation.

Under criminal law, only libel is an offense and not slander. Whereas in civil law, libel is an offense just like in criminal law but the change here is that slander is also an offense when provided with proof.

In Indian law, both slander and libel are recognized as criminal offenses under Section 499 of IPC. Whereas, in the law of torts libel is actionable per se and slander is actionable. It means in the case of slander there has to be proof of the act of defamation.

D.P. Choudhary v. Kumari Manjulata

In this case, it was published in a newspaper that Manjulata, a 17-year-old girl belonging to a well-known family, eloped with a boy who lived closeby. After this, her reputation got tainted and she suffered a lot of disgrace, as this news was completely false and was published with irresponsibility.

Later on, the Court, in this case, ruled out the Rs. 10000, should be provided to the defendant as it amounted to defamation.

### **Forms of Publication**

There are various forms of publication in which the act of defamation can take place, let's look at them.

#### Direct communication to the Defamed

If any defamation is made directly to the defamed and is not heard by anybody else, then it is not defamation. It is necessary that any third party hears it through which the reputation of the defamed goes down.

#### Publication by Repetition

There is a limited period to sue for defamation. It is maintainable till one year since the act of defamation took place. For a single publication, an action for libel can arise but for repetitive or multiple publications, the action can arise every time the libel is published.

The Limitation Act, 1968 makes the limitation period of the libel on the internet to 1 year. After every publication on the internet, this period will get renewed.

#### Khawar Butt vs Asif Nazir Mir

This case was decided in the year 2013. The Delhi High Court, in this case, ruled out to set aside the multiple publication rule on the internet and to follow only the single publication rule.

#### Printed Matters: Liability of editor and others

Section 501 of the Indian Penal Code talks about the printing of defamatory things.

It says that any person who prints or engraves such a matter which he knows or has reason to believe that such matter is of defamatory nature and hence, will lower down the reputation of the person and bring ridicule and disgrace to his/her character.

This Section checks for the printed defamatory matters and provides the provision for the punishment to the person who printed it. The punishment of a maximum of two years in jail or fine or both is provided under this Section.

Now, let's understand what is the provision for the people who further sells the defamatory printed content.

Section 502 of the Indian Penal Code says that any person who sells or offers to sell any printed content that he knows or has reason to believe that it contains defamatory matter will be punished.

The punishment will either be imprisonment which can be extended to a term of two years or could be fine. In some instances, both can be imposed.

Therefore, through both of these Sections, the printing or engraving, selling or offering to sell, such a matter which contains some defamatory content, is a crime and is punishable.

#### Imputations concerning 'Any Person'

In Section 499 of the Indian Penal Code the 'imputation concerning any person', is mentioned. Imputation in general terms means accusation or claim that someone has done something wrong.

As far as the term 'concerning any person' is concerned, this means that defamation should be clear enough to point out the person to whom the defamation is intended to be made and if it is published to others then the third person is also able to clearly understand who is defamed by the publication.

#### Intention to Injure

There has to be a knowledge or reason to believe that the act will certainly cause the defamation of the character of the person. It implies the mens rea of the person, that is the person should have the intention to harm the reputation of the other person.

To win a defamation lawsuit, the defendant should prove that he had honest intentions and no malice, and it was just an honest mistake.

#### **Analysis of provisions of Sections 499 and 500, IPC**

The provisions regarding defamation are provided in Section 499 to 502. Section 501 and Section 502 has already been explained earlier in this article. Now, let's understand the provisions contained in Section 499 and Section 500.

Section 499 provides the definition of defamation and all the cases and exceptions of the act of defamation. This is a lengthy Section with explanations and in total 10 exceptions included in it.

Section 500 provides for punishment for the act of defamation.

### Explanation 1: Defamation of the Dead

In case, a person defames another person who has passed away or is already dead, by any means that is written, spoken, by gestures or pictures. then, it will be an act of defamation, this act would have harmed the reputation of the person if he would have been still alive, or in case it harms the reputation of the family or close relatives of the deceased.

### Explanation 2: Defamation of a Company or a Collection of Persons

If an act is intended to cause harm to a company or association or a group of people, then it will amount to defamation. This means under it companies or associations can slap a defamation suit against an individual.

Priya Parameshwaran Pillai v. Union of India and Ors.

In this case, Priya, a Greenpeace activist, wrote in her blog that the environment is degraded by the power project which was set up by the Essar group. After which a suit of defamation was filed by the Essar group.

Priya, in her argument, contended that the private companies should not be given the right to file a defamation suit against an individual. But her contention was set aside by the Court, not allowing any more questions and contentions to be added further.

This particular case has its roots in the previous Subramaniam Swamy v. Union of India case. Let us discuss that now.

Subramaniam Swamy v. Union of India

In the year 2014, Dr. Subramaniam Swamy alleged corruption charges on Ms. Jaylathitha. After which Ms. Jaylathitha framed defamation charges on Dr. Subramaniam Swamy. He in return challenged the constitutional validity of Section 499 and Section 500 of the India Penal Code.

The court, in this case, upheld the constitutional validity of the offense of criminal defamation.

And ruled out that Section 499 and Section 500 of the India Penal Code, impose reasonable restrictions on the right to freedom of speech and expression.

### Explanation 3: Defamation by Innuendo

Well, to be able to understand it we must first understand what innuendo in general terms means.

Innuendo is a clever way to speak negative sentences in a very sarcastic way, which may appear to be positive at the surface of it.

Under Section 499, defaming of any person by innuendo is a form of criminal defamation.

### **Illustration**

- A says to B, pointing out to C, 'C is a very even-handed person, I have not seen him making any discrimination against G.

This is discrimination as A intended to point at C has a discriminatory person and that he has discriminated in the case of G.

- B asks A, 'do you think someone discriminated?'

A in return pointed at C and said, 'well you know, who can'.

This is discrimination as it was said in a sarcastic way while pointing at C.

Explanation 4: What is Harming Reputation?

Defamation is an act by which a person's reputation is harmed, but what is harming reputation?

According to explanation 4 given in Section 499, the reputation of a person is harmed when the act injures the moral or intellectual character of the person or lowers his credit. It also hampers the reputation if the act lowers down the person's character in the respect of his cast or his calling.

The act of defamation which let the others believe that the body of any particular person is in a detestable condition.

All of these acts are considered to harm the reputation of the person and comes under the offense of criminal defamation.

Exceptions provided in Section 499

As mentioned earlier, there are ten exceptions in this Section.

We will now have a look at them one by one.



### First Exception: Truth for Public Good

This exception provides that if any information which is true and for the good of the public at large, then that is not covered under the act of defamation.

Things to be noted here is, first, the information should compulsorily be true. Second, the information should be of a kind that it benefits the public.

Also, it is compulsory to publish that information.

### Second Exception: Fair Criticism of Public Servants

This exception provides that if an act in which the public servant is criticized for discharging any of his public functions or and the act of criticizing his conduct and character when it appears to be wrong and not otherwise. Then, such an act will not amount to defamation.

#### **Illustration**

If Ramesh mentions that the particular officer Z is very bad at his job, then this is not defamation under the following exception.

#### *The element of Good Faith-Importance*

It is to be noted that any such comment made or views expressed must be made in good faith. That is, if it is made out of malice or in bad faith, it will be considered as an act of defamation.

#### *The Opinion must be Fair and Honest*

Any opinion made criticizing the conduct, character or discharge of any functions of a public servant must be fair and honest. Otherwise, it will be considered as an offense of defamation.

### Third Exception: Fair comment on public conduct of public men other than public servants

If any person expresses his/her views and opinion on the conduct of any other person who discharges any kind of public functions, he will not be liable for the act of defamation.

The condition in regards to this is that such views and opinions should be made in good faith and with honesty. If it is made otherwise then the act will fall under the offense of defamation.

#### **Illustration**

If there is a meeting taking place which requires the support of the public or if Z applies for a petition against some action or doing of the government.

Rights of the Press: Summary of principles governing Rights of Press and Media

No direct freedom is given concerning the media law, but Article 19 which gives the right to freedom of speech and expression per se provides this freedom to the media. The press is the watchdog of the public, that is why it is necessary to make certain that a positive impact is formed by the public after receiving any news and no negative opinion arises.

The owner, editor, and publisher, all of them in the line, are responsible if any news which defames anyone is published to any third person.

Defaming again here means the news which lowers someone's reputation or character.

Google India Pvt Ltd. v. Visakha Industries

In this case, an article was published with a caption 'Poisoning the system: Hindustan Times'. In this article, the names of many famous politicians were mentioned which had nothing to do with the Visakha Industries.

The case ruled out that all of it does not amount to defamation. It should be noted that there is a difference of publication on the internet and publications in print media.

Fourth Exception: Report of proceedings of Courts of justice

If any proceedings of the court or the result of any case given by the court are published then that will not amount to defamation.

The conditions pertaining to this are such that publication should be true and apt.

Fifth Exception: Comment on Cases

If any person publishes any information regarding the merits of the case or in regard to the conduct of any person who was a witness, in that case, it will not be defamation.

It is important to note, the element of good faith is requisite here.

### **Illustration**

If A says that B seemed to lie on the witness stand.

Here, this condition will fall under the ambit of this exception.

But if A says that B was lying on the stand, as I know him as a man who can lie.

Here, this will fall out of the exception and will amount to defamation. Why? Because he is applying his knowledge which is not included in the court proceedings.

**Sixth Exception: Literary criticism**

If any person in good faith expresses his opinion in regards to the performance or character of the author, which the author has submitted to the judgment of the public or viewers, then it does not amount to defamation.

To explain this, the author must have by acts or expressly submitted her/his performance to the judgment of the public. If that is not the case, the act will amount to defamation.

**Some examples:**

1. An author of a book who publishes it submits it to the judgment of the public.
2. An actor who does a film submits it to the public to give its judgments.
3. A performer, who performs on the stage in front of the viewers submits it to the judgment of the public.

The thing to be noted is that any opinion which is made should be in consideration of the performance.

**Illustration**

X says 'Y must be a man with the wrong mindset'. This will fall under the exception.

But if X says, 'no wonder his book is indecent, for I know him as a man who is indecent himself'. This will not fall under this exception and amount to defamation.

**Seventh Exception: Censure by One in Authority**

If any person passes censure on the conduct of any other person, then it will not amount to defamation, provided that the person applying censure should have the lawful authority or any authority arising out of a valid contract, over the person on whose matters the censure is applied.

**Illustration**

- Any employee being censured by the employer in good faith.
- In good faith, any teacher censures the conduct of a student in front of any other student.

#### Eighth Exception: Complaint to Authority

If any person who has lawful authority over the other person, accuses him then it will not amount to defamation.

#### **Illustration**

If A in good faith prefers any accusation regarding X to a judge.

If a warden in good faith accuses a hosteller C to the dean of the college.

#### Kanwal Lal v. the State of Punjab

In this case, it was noted that the defense to fall under exception 8, the publication must be made before the authority of law. The District Panchayat Officer or the Panchayat had no such lawful authority in regards to the provisions of the Punjab Gram Panchayat Act, 1952, in which the Panchayats only had the jurisdiction.

#### Ninth Exception: Imputation for Protection of Interests

If any accusations or imputations are made on another person in order to protect the interests of oneself, then it is not defamation.

#### **Illustration**

An employee D, who has been told to make a monthly report on the conduct of the employee of that sector, writes about the bad conduct of one employee Z then, he will fall under this exception.

#### Tenth Exception: Caution in Good Faith

If any caution is made for the good of that person or for the good of the public then it will not amount to defamation.

### **On the Scope of Sections 499 and 500, IPC**

Distinction between Libel of Court and Contempt of Court

This refers to the defamation of the Judge personally and the Contempt of Court. When the judge is personally defamed by any person then he can sue the person on his own personal capacity and not as a judge of the court.

On the other hand, Contempt of Court is the act that hampers the administration of justice and causes disrespect of the court. The Supreme Court and the High Court have the power to punish for contempt of itself under Article 129 and Article 215 of the Constitution, respectively.

In Perspective Publications v. the State of Maharashtra, it was noted that there has to be a distinction made between the libel and Contempt of Court. A test has to be taken to determine what the act constitutes, a disrespect of the judge or the hampering of the due process of the administration of law.

Whether accurate and true report of Assembly Proceedings published in newspapers would amount to Defamation

In Exception 4, it has been mentioned that true and accurate proceedings of the court will not fall under the ambit of defamation in reference to that, let's look at a case.

In Dr. Suresh Chandra Banerjee v. Punit Goala, it was ruled out that, the reports of the proceedings of the Parliament do not fall under the exception 4.

It was discriminatory on the part of the law. Later on, it was changed when Article 361A was introduced by the 44th Amendment Act, in the year 1978.

Under the Parliamentary Proceedings Act which came in the year 1977, protection by law has been given to the publication in newspapers or broadcasts by wireless telegraphy of substantially true reports of any proceedings of either House of Parliament. Further, it is provided that it should be made in good faith.

The publication can take place with the authority given by both Houses of the Parliament under Article 105(2) and by the State Legislature under Article 194(2).

Who should in a newspaper be prosecuted for making Defamatory Imputations?

In the case of the newspaper, generally, people will think that only the editor will be held responsible for publishing defamatory matter but the fact is that the owner, author, editor, or distributor, all can be held liable for the act of defamation. It should be noted that vicarious liability will arise which will make the proprietor of the newspaper liable to pay damages arising out of it.

In the case of Narayan Singh v. Rajmal, the editor of the newspaper was absent and the defamatory matter was published by the sub-editor. The court ruled out that the editor was not responsible as he was absent with no bad intentions.

In the case, Mohammed Koya v. Muthukoya, it was ruled out that the Press and Registration of Books Act, 1867, only recognizes the editor as the legal entity and no one else, in the matter concerning the publishing of matter in a newspaper.

It was further clarified in another case of K.M. Mathew v. K.A. Abraham & Ors, the publisher of a book was charged with the offense of defamation. He moved to the High Court contending that under Section 7 of the Press and Registration of Books Act, 1867, only the editor can be held liable and not the chief editor of the newspaper. The High Court rejected his plea, then he further, sought plea to the Supreme Court that also rejected it.

The rationale of the court was that there can arise a presumption against the editor that he is responsible because he checks and selects the material which is to be published. But this is a matter which can be rebutted and under Section 7 of the Press and Registration of Books Act, the same presumption can also arise for someone else which has to be proved.

#### Defamation of Wife by Husband

Law considers husband and wife as one and the private communication between them is privileged, according to Section 122 of the Indian Evidence Act, 1872.

In the case of T.J. Ponnen v. M.C Verghese, the husband wrote a letter to his wife containing defamatory matter. The court held that this was under Section 122 of the Indian Evidence Act 1872.

#### Conclusion

It is said that the rights of one person end where the rights of another person start to apply.

It means that the Constitution of India has given the citizens certain rights and they should use them in limit so that they should not hamper the rights of others. There is a limit to the right of freedom of speech and expression which is regulated by the provisions of defamation.

#### MCQs-

**i. Which sections of Macaulay's IPC relate to the law on criminal defamation?**

- a. 65, 67, 69
- b. 499 and 500
- c. 512, 515, 516
- d. 123 and 124

**ii. X threatens to publish a defamatory libel concerning Y unless Y gives you money. He thus induces Y to give him money. Here X has committed the offense of...**

a. Defamation

b. Mischief

c. Criminal intimidation

d. Extortion

**iii. A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under painful complaint, but not intending to cause Z's death, and intending, in good faith, for Z's benefit, performs the operation with Z's consent.**

A. A is guilty of culpable homicide

B. A deliberately caused the Z's death

C. A is not guilty of any offence

D. None of them

**iv. Concealing with intent to facilitate a design to wage war is dealt under-**

A. Section 120 of IPC

B. Section 121 of IPC

C. Section 122 of IPC

D. Section 123 of IPC