

According a libel  
must be to some



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According to Tomlins Law Dictionary, 'defamation' means "The taking from another's reputation; a false publication calculated to bring one in disrepute. Defamation is when a person speaks scandalous words of others, whereby they are injured in their reputation". Defamation is an intentional false communication, either published or publicly spoken, that injures another's reputation or good name, holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community; may be criminal as well as civil and it includes both libel and slander. As given in Black's Law Dictionary, "Defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, hatred, ridicule or obloquy". Defamatory words are the words which injure the reputation of any one, which make people think worse of him, are defamatory. Defamatory words, if they be merely spoken, amount to slander.

But if they be written, printed, or otherwise permanently recorded, they constitute a libel. A libel must be to some extent permanent not transient, as are spoken words. According to Section 499 IPC, "whoever by words, either spoken or intended to be read, or by signs or by visible representation, makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said to defame that person." The term 'imputation' used in Section 499 means, "accusation, which is made to injure the reputation of another". The imputation should be made with an intention or knowledge to defame. The word 'publication' in the above definition

means “ bringing/causing the defamatory matter to the notice of others i. e., other than the accused and the injured.

” The words ‘ Visible representation’ will include every possible form of defamation which ingenuity can devise. For instance, a statue, a caricature, and effigy, chalk marks on a wall, signs or pictures may constitute a libel. Reputation means credit, honour, character, good name.

Reputation is a sort of right to enjoy the good opinion of others and is as capable of growth, and has as real in existence, as an arm or leg. It is a personal right and an injury to reputation (as by a definition) is a personal injury. The term ‘ reputation’ means what is generally said or believed about a person’s or thing’s character.

The two terms ‘ character’ and ‘ reputation’ are prone to be confused ‘ Character’ in the context, would mean fortitude or moral constitution; or strength of a person. It has no relevance with the belief or opinion of others in respect to a person. Therefore character is what a person ‘ actually is’, while ‘ reputation’ is what neighbours and others say ‘ what he is’. The man may have, in fact, a good character and suffer from bad reputation or vice versa. In short ‘ reputation’ is what is reputed about, that is to say, common knowledge or general opinion in respect to a person. It is the estimation in which a person is held by others and not the opinion, which he himself may have about himself. It may be said that ‘ reputation’ is a composite hearsay, being the community’s opinion which implies the definite and final formation of belief by the community. A man’s opinion of himself cannot be called his reputation.

In Section 499, the expression 'harm' means harm to the reputation of the aggrieved party. It is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended to harm, or knew, or had reason to believe that the imputation made by him would harm the reputation of the complainant. Thus by 'harm' is meant imputation on a man's character made and expressed to others so as to lower him in their estimation. The provisions of Section 499 aim at the protection of the reputation of persons. The definition of the offence contains three important elements, namely, (i) the person, (ii) his reputation and the harm to the reputation of the person with necessary mens rea.

If the imputation is defamatory per se, necessary mens rea will be presumed. No resultant harm may be proved if the expression itself is defamatory per se. The maker of the statement must know that it will harm the reputation of one concerning whom the same is made. Section 499 embodying the law of defamation requires three essentials: 1. Making or publishing any imputation concerning any person; 2. That imputation must have been made by : a) Words, either spoken or intended to be read; or b) Signs; c) Visible representation; 3. Such imputation must be with the intention of harming or with knowledge that it will harm the reputation of the person concerning whom it is made. Where a defamatory statement is published, it is not only the publisher but also the maker, who becomes responsible and it is in that context that the word 'makes' is used in section 499.

It is of the essence that in order to constitute the offence of defamation, it must be communicated to a third person because what is intended by the imputation is to arouse the hostility of others. Section 499 has four Explanations as stated below: Explanation 1 refers to defamation in respect of a deceased person. It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living or it defames the family members of the deceased, the action is maintainable. Explanation 2 relates to a company or an association of persons as such. A company or corporation can sue for defamation if it affects its reputation or business. Explanation 3 deals with innuendo. Where the statement does not refer to the complainant directly, the doctrine of innuendo may be pressed into service for the purpose of showing that the complainant was the real target of the attack. 'Innuendo' means 'indirect reference i.

e., saying something ironically. In other words, a statement by itself is no defamation.

But, because of the existence of some latent and secondary meaning, it becomes defamatory. He must bring forward additional facts showing how the words are related to him in a manner which is defamatory. A true innuendo is an innuendo by which the plaintiff alleges a special defamatory meaning of the words distinct from their ordinary meaning and arising by virtue of extrinsic facts or matters known to the recipients. Explanation 4 deals with fallen reputation. If a person has no reputation at all, he cannot be defamed. Section 499, IPC provides the following ten Exceptions to the accused to get exemption from the Criminal Liability (Defence to

defamation) 1. Imputation of truth for public good: If a person proves that the defamatory statement made by him is true and it is published for the public good, it is no offence. 2.

Public conduct of public servant: If a public servant, in discharge of his duty, communicates to the higher authority, about the conduct of his subordinate, he is not subject to defamatory suit or proceedings. 3. Conduct of any person touching any public question: It is no defamation to express in good faith, any opinion respecting the conduct of any person or touching any public question. 4. Publication of report of proceedings of Court. It is no defamation and the accused is not liable.

5. Expression of opinion as to the decision of a court or conduct of a witness: If a person in good faith, in the interest of justice expresses his opinion on the decision of court or conduct of a witness, it is no offence. 6. Merits of public performance: It is no defamation to express in good faith, opinion respecting the merits of any performance. 7. Censure passed in good faith by person having lawful authority: It is not defamation to pass in good faith any censure on the conduct of that another in matters to which such lawful authority relates. 8. Accusation preferred in good faith to authorised person: It is not defamation to prefer in good faith such accusation.

9. Imputation in protection of other's interest: It is no defamation, to make an imputation, if it is made in good faith in protection of other's interest or for the public good, 10. Conveyance of caution for public good: It is no defamation to convey a caution in good faith to one person against another,

provided it is intended for the good of the person to whom it is conveyed or for the public good.

Punishment for Defamation: Section 500 provides punishment for defamation. It is simple imprisonment, which may extend to two years or with fine or with both imprisonment and fine. Sections 501 and 502 provide similar punishment for printing of defamatory matter and sale of printed substance containing defamatory matter respectively. The offences under Section 502, in case of public servant is non-cognizable, bailable, compoundable with permission of the court before which any prosecution of such offence is pending and triable by Court of Session and in any other case, non- cognizable, bailable, compoundable, and triable by Magistrate of the first class. In *Jawaharlal Darda v. Mannoharrao Ganpatrao*, [AIR 1998 SC 2117] the accused published a news item in the news paper ' Dainik Lokmath'. The news item in the instant case was that when a question regarding mis-appropriation of Government funds was put to the Minister concerned, he had replied that a preliminary enquiry was made by the Government and it disclosed that some misappropriation had taken place. When questioned further about the names of persons involved, he (the Minister) had disclosed the name of five persons including that of the complainant.

The complainant filed a complaint alleging that he had been defamed and pleaded that the accused be punished under Sections 499, 500, 501 and 502 read with Section 34, IPC. The accused contended that the publication (against the complainant) was true and was made for the public good. The Trial Court admitting the contention of the accused quashed the complaint.

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On appeal, the Supreme Court observed that “ what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary inquiry made by the Government.

If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant.” It was held that as the news item was published for the complainant, therefore, no offence against the accused was made out. In *State of Maharashtra v. Anna Hazare [1998]* the complainant lodged a complaint alleging that the accused committed offence under Sections 499, 500, 501 and 502 by maligning his reputation when Anna Hazare, a reputed social worker alleged that the complainant - Minister of Maharashtra state was involved in bribery.

The Munsif Magistrate sentenced the accused to undergo two months imprisonment as there was no evidence of minister’s involvement in bribery. There was an uproar in public throughout the country. Later the Maharashtra Government released Anna Hazare in the interest of public. In *Radhanath Rath v.*

*Birja Prasad Ray [1992 CrLJ 938]*, the respondent published certain defamatory matter against the complainant and later the respondent published his ‘ apology’ and ‘ regrets’ for such publication in the next issue, and informed the complainant it was published without his knowledge, and he had no ill will against the complainant. The complainant filed the suit under Sections 500, 501 and 502. The Court opined that when the



respondent expressed apology and regrets in his subsequent issue, as soon as it came to his notice, and expressed that it was published without his knowledge and without any ill-will towards the complainant, the respondent could not be held liable for the defamation under Sections 500, 501, 502, IPC. In *Viswanath v. Shambunath* [1995 CrLJ 277 All], the complainant, a member of the community, filed defamation suit against the accused alleging that the accused published certain defamatory words against their caste. The Court dismissed the complaint holding that a complaint by a member of the community which was defamed in general, not maintainable. The complainant was not personally hurt and hence dismissed the case.