

Defamation laws: freedom of expression



**ASSIGN
BUSTER**

It is often claimed that defamation law has ‘ a chilling effect’ on freedom of expression. What is problematic with this claim? Defamation requires an alleged fact which is false and which harms the reputation of another person (Dent & Kenyon, 2004). The statement claims that the right to freedom of expression is restricted when people are less likely to express what they think. Defamation law can limit the ability to reporters to inform on issue of safety or other public interests that is serious and imminent, so it is often claimed that the chilling effect to freedom of speech may occur through legal sanction or social disapprobation. However, this claim is problematic because defamation law cannot restrict freedom of expression. This essay is going to argue whether defamation as a concept in society is a good thing and its limitations according to freedom of speech. The first part of the essay will provide the negative impact and limitation on freedom of expression through defamation law. Then it will move to the argument that defamation law cannot restrict freedom of expression and get evidence from Joel Feinberg in order to explain that defamation does not include a right to defame. Finally it will provide the example of South Korean defamation law in order to discuss the justification for freedom of expression.

Freedom of expression is designed to protect legitimate interests including reputation, so everyone should have a right to hold opinion without interference. The right includes freedom to seek, receive and use information (Dent, C. & Kenyon, 2004). Defamation is something that has being invented to protect people’s ability to stand up and face the world. It is the protection of reputation and the prevention of unjust allegations that lower the esteem in which people are held in society. Defamation laws necessarily represent

an interference with the right to freedom of expression. The illegitimacy of the use of defamation laws is to maintain public order or to protect public interests (Feinberg, 1990). The limitation on freedom of expression is whether it includes defamation and some kind of right to defame or not. People assume that freedom of expression might include a right to defame, but “ The chilling effect of defamation law on freedom of expression” means that people are less likely to say what they think. It also makes people more restrained. That is a negative impact. The threat of sanction effectively stops free expression, but such sanction cannot be justified, in light of the adequacy of non-criminal sanction in redressing any harm to individuals’ reputation (Feinberg, 1990, p. 234). Defamation law is abused by the powerful to limit criticism and to arrest public debate. This is problematic. However, people should show self-restraint and caution about what they say about other people.

According to Feinberg (1990), freedom of expression has never included a right to defame. He claims that Australian legislation is needed to justify defamation law truth and public interest. He talks about the moral concerns of defamation, and why people should care about defamation as an issue at all. He is concerned about whether or not truth is a sufficient argument for defaming another person (Feinberg, 1990). For example, people can harm somebody and still be speaking the truth. The truth and public interest is close to the Australian use of defamation. The court defense of qualified protection may come closer to general public interest coverage. (Dent & Kenyon, p. 10) People can harm somebody’s reputation, even by telling the truth. As Feinberg (1990) states, “ Having one’s interests violated is harm

that is distinct from the feeling that comes from knowing your interest have been harm”, this means that the action of defamation is different from what the individual may feel themselves about being defamed. There is no reason to assume that, but assume publish the idea about them regardless whether or not that the truth.

It is possible to defame someone with truth, truth can harm unjustly. Joel Feinberg considers the uncontroversial harm such as defamation (Feinberg, 1990, p. 256) Defamation law is protecting an interest and based on the legal term “ harm”, which is not necessary about the physical harm. It generally about harm to somebody’s interest. People have a human right to maintain their interest and free speech. However, it is problematic that there should be a crime of defamation. The conviction seems to be anomalous. People have a right with respect to the criminal law to say false and damaging things to others (Feinberg, 1990, p. 253). It is an independent legal right to defame. Feinberg (1990) also claims that “ there is no legal right to defame in our legal system, but rather a clear legal duty not to defame found only in the tort law branch of the system (p. 253)” There is legislation to protect people and maintain privacy.

Moreover, Feinberg (1990) suggests that we need an “ offense principle” that can act as a guide to public censure. According to Feinberg, the offense principle commits us to “ the view that when public conduct causes offense to someone”. (p. 26) Feinberg suggested many rules and factors that needs to be considered and taken into account in order to value whether the offense needs to be restricted (Feinberg, 1990). He claims that something can be truth, but not legally defame another person. People still can harm

others with the truth. Feinberg claims that a person can be “harmed” though not affected by the harm. Australia defamation law places considerable restraint on the media. “There are some undesirable outcomes about the law and the widespread misperception about the impact of media communication. Firstly, harm to reputation is consistently overrated, to the unjust advantage of the plaintiff.” (Article 19, 2000) This makes unnecessary and unintentional presumptions to silence harmless speech. Secondly, defamation law can perpetuate socially regressive and exclusionary attitudes (Baker, 2008). To determine the chilling effect of defamation law Baker has interviewed and surveyed journalists and editors to discuss the extent of the influence of defamation law on media content. His work has examined media products in order to consider the existence of any chilling effect. Baker finds a considerable chilling effect on the Australian media.

Media production practices in this relation differ between Australia and US legal systems. The American defamation law is broader than Australian law, it only covers truth. In the defamation law of America, truth is a complete defense which will reduce the defendant's liability (P. 254). The US Supreme Court has said that common law defenses relying on truth are insufficient to protect public debate, because the critic of official conduct to guarantee the truth of its factual assertions' inevitably leads to self-censorship. Truth remains a complete defense in the US (Dent & Kenyon, p. 3). However, it is hard to justify defamation even on the basic truth. There really is no right to defame. Some countries have a stronger defamation law on the internet.

For example, the defamation law of South Korea does not protect freedom of expression as a transcendent value. Its reputational interests are sensed in

<https://assignbuster.com/defamation-laws-freedom-of-expression/>

relation to the group to which they belong (Youm, 2004, p. 1). The Korean courts have balanced the right to free speech and free press against the right to protect everyone reputation differently. Defamation on the web has emerged as a pressing legal issue in Korea. According to the law of Korea, reputation is guaranteed as a constitutional right of individuals to protection from an abuse of freedom of expression (Youm, 2004, p. 7). Korean citizens can be arrested and detained for publishing articles on the internet or gossip site. They are arrested for distributing false information and are accused of ‘impeding public interest’ under the law of Korea. Restriction on freedom of expression have been imposed not only on journalists, it also restricts people expressing their opinion on the internet (Youm, 2004, p. 11).

But defamation law is problematic in Korea because the punishment of internet libel does not provide any defenses for libel through internet communication similar to what the criminal code recognizes in publication of truthful defamation for the public interest (Youm, 2004, p. 4). Defamation laws may fail to attack an appropriate balance between freedom of expression and reputation for a number of reasons. People just want to express their feelings, and bring in a public interest. However it is problematic that defamation laws are justified at all. Similar with the laws in some other countries, Korean law prohibits unjustifiable defamation. If some people just want to express their feelings on Facebook, it is hard to justify. Justification or proof of truth has been recognized as an absolute defense against a claim of defamation. Proof of truth is either always or almost always a full defense. The defense of truth is qualified (Youm, 2004, p. 9).

In conclusion, the above illustrated the chilling effect of defamation law. The chilling effect of defamation law on freedom of expression is that people are less likely to say what they think. It also makes people show restrained and caution. I think that defamation is something that is immoral, but I do not think it should be illegal. Defamation is supposed to protect reputation from unfair attack. Defamation is a fundamental of protection of people's ability to stand up and face the world. It is objectionable is to obstruct free speech and protect powerful people from investigation (Dent, C. & Kenyon, 2004). It is possible to defame someone with truth. Truth can still harm unjustly. However, we cannot make the distinction between what is representation and action, because there is a distinction between the act and the rest of the world. People can assault somebody by causing others to form an adverse opinion of a person or cause panic with words. People can do a lot of harm with words. The harm principle is a restriction on other people's actions.