LIBEL LAWS IN INDIA

Krishan S. Nehra
American-British Law Division
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Libel as a crime

Harm to the reputation of a person may be regarded as a civil wrong in which case the person whose reputation is harmed may sue for a tortious claim in damages, or it may be a criminal offense in which case, upon prosecution and conviction, the defendant is also liable for punishment.

In criminal law, a person's reputation is considered as important as bodily safety, freedom and property. An imputation which, by itself, harms the reputation of any person is per se defamatory and if it is made by the accused intending to harm or knowing or having reason to believe that harm to the reputation will be caused to any person, he would be guilty of an offense unless he can show that he comes within any of the exceptions to the provision.\(^1\) The essence of the offense of defamation consists in the tendency to cause mental pain which is felt by a person who knows himself to be the object of unfavorable sentiments. The two essential ingredients of the offense are:

1. The making or publication of any imputation against any person.

2. Such imputation should have been made or published with the intention of harming or with the knowledge or with reasons to believe that the imputation will harm the reputation of such person.\(^2\)

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1 The Indian Penal Code, No. 45, of 1860, § 499 (copy enclosed).

Libel as a civil wrong

Defamation, as a civil wrong, may be a libel or slander. The term "libel" is used for a defamation in writing, and "slander" for the spoken defamation. Libel is a tort. Tort law in India is based on the British law of torts and, often, British decisions are cited to persuade the court. In essence, a libel is a written publication of a false and defamatory statement tending to injure the reputation of another person without lawful justification. A slander is a false and defamatory verbal statement tending to injure the reputation of another.

The difference between libel and slander is that libel is actionable per se without proof of actual damage, while, in the case of slander, proof of actual damage sustained is necessary for an award. For an action based on the tort of libel, it must be shown that the words complained of are: (1) false, (2) in writing, (3) defamatory, and (4) published.

The burden of proof that the words are false does not lie upon the plaintiff. They are presumed to be false until proven to be true. It is, however, necessary for the plaintiff to allege that the imputation is false and malicious. It is then assumed that the defendant acted maliciously.

The defamatory statement may be written or in print, or may be conveyed in the form of caricatures or any other similar representation. Defamation, through the agency of mechanically reproduced pictures and words, constitutes a libel.

Any words will be defamatory which:

(a) expose the plaintiff to hatred, contempt, ridicule or obloquy, or
(b) tend to injure him in his profession or trade, or
(c) cause him to be shunned or avoided by his neighbors.
The test is whether the words would tend to lower the plaintiff in the estimation of right-thinking members of society generally.\footnote{Sim v. Stretch, [1936] 2 All E.R. 1237.} The test to be applied by a judge in deciding whether or not words were capable of a defamatory meaning is whether a reasonable jury would be justified in finding that the words complained of were defamatory. It is also essential that the defamatory statement refers to the plaintiff, even if his name is not necessarily given in the statement. It is not necessary that all the world should understand the libel; it is sufficient if those who know the plaintiff can make out that he is the person referred to.

Moreover, in order to constitute publication, the defamatory statement or matter must be communicated to a person other than the person defamed. Sending the statement directly to the person about whom it is written, does not constitute publication of it. The publication must be without just cause or excuse, or on an "unprivelege occasion."

Prepared by Krishan S. Nehra
Senior Legal Specialist
American-British Law Division
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