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**MEDIA SLANDER IN REFERENCE TO THE OLD AND THE NEW-
SPECIAL REFERENCE TO THE PROVISIONS OF THE BHARATIYA
NYAYA SANHITA IN COMPARISON WITH THE INDIAN PENAL
CODE AND A NOTE ON MEDIA TRIALS**

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Abstract

In the present era of social media, where fame and reputation have become altogether an important asset forming a major source of wealth and power, protection of such asset has become all the more important. In such times, it becomes imperative to study the laws which govern the statutory protection given to an individual and the framework of defamatory laws which provide such protection. This article purports to give an insight on the provisions of defamation as given under the Indian Penal Code and the Bharatiya Nyaya Sanhita, whereby, the offense of defamation is defined, along with situations which provide the exceptions to such offense. Aside from an analysis of the provision, this article will also talk about the evolution of defamation laws and how the present framework came into existence. All in all, this article will be an account on the concept of defamation and its inner-relation with media trials, and how these two concepts form a major aspect in the decided Golden Triangle of Fundamental rights. Of these, Article 21 deals with the most fundamental topics in relation to any human civilization i.e. the right to life. In the eyes of the Indian legal system, an individual's life comprises of not just a physical trait of survival but also a right to lead their lives with dignity. Defamation is the breach of an individual's right to dignity. Article 19 covers laws about a person's liberties, which also include the right to privacy. Defamation is also a grave violation of an individual's privacy, wherein an imputation may disclose

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information about a person's private affairs which no individual would want to be made public.

Defamation in the general sense, is the offense of spreading such rumors or any false information about an individual that may affect his social life. Although the law defines this term in more comprehensively, this definition usually suffices as the most generic explanation. This article purports to analyse the legal definition of the term 'Defamation' and the provisions related to it, dissecting the provisions in such way so as to better understand the legal viewpoint on the concept of defamation. This article will also provide a further explanation of the concept in view of media trials and how such undertakings by the media can defame an individual in any case.

Furthermore, this article also purports to study the evolution of defamation provisions in law and how it has come to become more comprehensive in the contemporary legal system. Defamation, in the legal viewpoint, has evolved in recent times to become more inclusive in nature over time, comprising of a better inclusion of the different platforms from where sharing and transmission of such defamatory information may take place. This shall include any precedential provisions in regard to media trials.

Aside from the evolution of the legal provisions, the viewpoint of the Courts in the procedural context, is also an important part of the holistic analysis of the concept. To understand the Courts' views, we must better understand the landmark precedents about defamation and how these precedents have shaped the current viewpoints of the Courts. This chapter will hold the most weightage in regard to media trial. Considering that laws do not explicitly define media trials, such a concept can only be studied through case laws and precedents.

At last, this article seeks to provide an analytical piece of literature, which not only comprises of information from trusted sources but also give its own input in regard to the concerned topic. Not only will such analysis prove to be useful in future research work but also serve as a comprehensive explanation of defamation to any newbie law enthusiast. Moreover, this part of article will also hold a special place for suggestions and recommendations where defamation can be avoided and how the judiciary can provide further fortifications for an individual's reputation.

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Media trials hold relevance in not only damaging the reputation of undertrials but also by derailing the procedure of the courts to provide justice. This article will devote a separate chapter discussing the same.

Provisions related to Defamation

The Indian Penal code (IPC) and the Bharatiya Nyaya Sanhita (BNS) both define defamation in nearly the same manner. Although, the BNS is a revised version of the criminal laws which is set to replace the IPC on July 1, 2024, the wordings explaining defamation have remained the same. The only change brought about in the provision of defamation is the overall layout of the provision. Wherein Section 499 of the IPC provides exception to the offense of defamation, Provision 354 of the BNS provides those exceptions as explanations to the provision. Section 499 of the IPC and provision 354 of the BNS run as follows...

“Whoever, by words either spoken or intended to be read, or by signs or by visible representations, 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, except in the cases hereinafter excepted, to defame that person.”

According to this definition, defamation is defined as any imputation, made or published by any words, signs or by visible representations with the intention or knowledge to harm the reputation of the defamed person. This definition basically recognises some elements needed to constitute defamation. These elements are as follows-

- a) **“...Words, signs or visible representations...”**- This provision provides that any kind of expression, be it any words, signs or visual representations which can impute the reputation of an individual, is considered defamatory.
- b) **“...Makes or publishes any imputation...”**- Under this provision, not just making any imputation, but also spreading such imputation to a third person, can be considered defamatory under this section.
- c) **“...Intending to harm, or knowing or having reason to believe such imputation will harm the reputation of such person...”**- The greatest factor to constitute any criminal offense is to have an intention to do so. For the scope of this offense, any imputation done with an intention to harm the reputation of an individual or with the knowledge that such imputation may tarnish the said individual’s reputation.

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- d) “...Except in the cases hereinafter excepted...”- Defamation has some exceptions which form as part of Section 499 of the IPC. These same exceptions are provided even under Provision 354 of the BNS.

Reputation

Reputation is an important element in the offense of defamation. To understand defamation better, it must be understood what the different of elements of this offense are. Reputation is the determining factor where the gravity of the offense of defamation is determined. A person with a notable public presence will obviously have a greater damage to their reputation than someone who is just a member of the general public. In the same way, a rape victim is surely going to be a greater victim of defamation if her details are made public than any other person whose reputation is simply imputed due to malice. As it may be seen, reputation holds different weightages in different contexts and for differs from case to case. Thus, determining the weightage of an individual's reputation makes up an important part in determining the onus of damage in any defamation case. For the purposes of this section, even a dead person is said to have a reputation. Other than that, even corporations or groups of people are considered to have reputations the same as any individual. In other words, any statement made out of malice about any person, corporation or community, which is untrue and made with the intention to degrade the image of such person, corporation or community in the eyes of a third person is said to be liable under defamation under Indian law.³

Publication

Publication of any defamatory material is considered the actus reus in the offense of defamation. Where a statement is made to a third person about a specific individual which may impute the character of such individual, such statement is considered publication under this provision. Such publication may be made through any medium of transmission, such as through words, written or oral, any digital medium or through any visible representation. One of the explanations to this provision also provides for any defamatory statement made through an innuendo. Meaning, defamation may not always be an explicit

³Shubhangi Upmanya, Defamation Laws in India, *Blog IPLeaders*, January 24, 2020, <https://blog.ipleaders.in/defamation-section-499-to-502-of-ipc/>

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statement against someone's reputation. Even any implied statement that may degrade a person's reputation is seen to hold the same implication under Indian law.

Libel and Slander

English law, traditionally recognizes defamation as two different types- Libel and Slander. Libel is a form of defamation where such imputation is in a medium of temporary form mostly in a written format, such as newspapers, pamphlets, etc. Slander on the other, involves a more permanent form of medium that can be accessed even after the imputation has been made once. Slander may include a statement made on live television or in the form of any engraving.⁴

Historically, under English law, libel and slander consist as different types of defamation. However, Indian defamation laws, even though inspired by English law, do not make such demarcation between libel and slander. Rather, Indian laws differentiate between criminal and civil defamation. Although the essentials of both these types are completely same, the difference lies in the penalising method. Whereas in criminal defamation the offender can be imprisoned along with being penalised with a fine, civil defamation takes place where the offender is penalised with damages or compensation which is to be paid to the victim of such defamation.

Exceptions to defamation

Defamation, under the Indian laws, provides for ten exceptions where, even though such an imputation is made which may tarnish an individual's image, such an imputation is not considered to be defamatory in nature. The following are the ten exceptions provided to defamation under Indian laws.

- 1) **Any fact which is true and said to be disclosed in good faith of the public-** The greatest defense to defamation is the truth. If the imputation so made is proved to be true in nature against the defamed individual, is a defense against defamation. However, it should also be seen that such disclosure of a truth should be made in

⁴Dr. Christy Bieber, "Libel vs. Slander: What's the Difference?", *Forbes Advisor*, May 10, 2024, <https://www.forbes.com/advisor/legal/personal-injury/libel-vs-slander/#:~:text=Slender%20is%20defamation%20that%20occurs,libel%20is%20easier%20to%20prove.>

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public interest and not as a way of fulfilling a personal vendetta. Whether an imputation, no matter how true, is made in public interest, is a matter of fact.

- 2) **Any opinion on the conduct of a public servant in carrying out his duties and his character, so far as his character remains the central part of the opinion and nothing further-** Any honest opinion made in regard to the conduct of a public officer's character in carrying out his duties is not considered to be defamation. However, it should be ensured that such opinion is in good faith and fair to the public officer.
- 3) **Any opinion in regards to any individual's conduct related to a public question-** Where a person is engaged in any conduct which is lies in a public setting, such as a witness giving a testimony in a court proceeding or an individual participating in a cleanliness drive, an opinion as to his conduct in regard of his service in public interest is not defamation if it is made in good faith and fair to such individual indulged in such public duty.
- 4) **Publication of a true report of a Court proceeding-** Publication of any defamatory material makes a person liable under Section 499 of the IPC, wherein, such material has been transmitted to a third person. In case of publication of any detail discussed in any court proceeding, it is not considered to be defamation if such report is said to be true. For the purpose of this exception, any open court enquiry, undertaken by any magistrate.
- 5) **Any opinion on merits of any case decided by a court-** Any opinion made in good faith in regards to the merits of any decision given by a Court in any case, civil or criminal, is not considered to be defamation.
- 6) **Any opinion on any performance, art, or literature submitted to the judgment of the public-** Where any piece of art or literature, or any performance is submitted by an author to the judgment of the public, any opinion made in good faith in relation to such art, literature, or performance is not considered defamation. Such submission by the author may be express or implied by his conduct.
- 7) **An act of censure by any superior authority made in regard to an inferior individual in good faith-** Acts of censure by any superior in good faith as against other inferiors who are of the same level as the specified individual are exceptions to defamation. Where a parent may censure his child in front of other children in good

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faith or a teacher censure one of his/her students in front of other students, are not considered defamation under this provision

- 8) **An accusation made in good faith against an individual to a superior authority in respect to the subject matter of such accusation-** Where an accusation is made in good faith against an individual to any superior authority looking over the subject-matter of such accusation, such accusation is seen as an exception to the offense of defamation. For example, a person making an accusation against another in front of a magistrate, or a person making an accusation of another person to the police, etc.
- 9) **Any caution or imputation made in good faith to protect the person to whom such caution or imputation is made-** Exceptions 9 and 10 talk about cautions or imputations made in good faith for the interest of the person to whom such imputation or caution is made, or for the protection of some other person, or for the public good. For example, A makes an imputation about B to C, to protect C from such imputation of B.

As it may be seen, there are 10 exceptions given under Section 499 of the IPC and Provision 354 of the BNS. One of the differences between the BNS and the IPC lies in the presentation of the provisions. While IPC emboldens on the exceptions, giving a title to each exception, and then proceeding to explain such exception, the BNS does not partake such efforts and simply gives the exceptions in the form of their explanations. Moreover, defamation under the IPC is covered under Sections 499-502. However, BNS clubbed all these provisions under Provision 354 itself, similar to what has been done for many other offenses. Both BNS and IPC provide the punishment for defamation as simple imprisonment for a period of two years, fine, or both. It is further provided that any person that may have printed or engraved any defamatory material, or made any sale or any provision to sell such defamatory material will also be punished with simple imprisonment extending up to a maximum period of two years, fine, or both.

History of Defamation

Historically, reputation has always been one of the foundational values of any human society. Where there lied a human society, there was a need for an individual to make and protect their individual reputation, along with their family and their community, as part of any society. In the Roman empire, 'injuria', as a term comprised of any personal wrong.

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Defamation, especially slander was considered as one of the ‘injurie’ that the law sought to correct and deter.

Traces of defamation can be found back during the Roman times where slander was considered one of the injuries, which was punishable if committed. Back then, written defamation, or libel, found no mention in law. Personal insults back then were the only form of defamatory medium recognized by law. Remedies to such insults were considered to be fines or penalties. Another remedy provided by Roman law was a public apology where the defamatory statement was admitted to be false.⁵

With time, laws saw the rise of Catholic church, leading to rise of the English laws. During the greater part before the Elizabethan era, defamation found no mention as any wrong. This was before the Austinian sovereignty theory⁶, which governed the concept of sovereignty. Before the Elizabethan era, the concept of sovereignty was rather followed through the social contract theory, which hypothecated the idea of an agreement between the individual and the society at large, wherein, to be a member of the society, the individual has to let go of some of his liberty so as to be criticized by the society and his actions be kept in check by other members. Thus, reputation, in the Dark ages, was not a protected right, as there was no authority under which it could be protected.

The origin of defamation was found in the Oxford Constitution of 1222, which was based on the Canon laws of 1215, wherein a provision related to defamation ran as follows...

“We excommunicate all those who, for the sake of hatred, profit, or favour, or for whatever other cause, maliciously impute a crime to any person who is not of ill fame among good and substantial persons, by reason of which purgation at least is awarded to him or he is harmed in some other manner.”⁷

This definition given in the Oxford Constitution, laid the foundation of the modern concept of defamation in criminal law. Although, this definition only dealt with the criminal penalties for defamation and the priority of this definition was more to promote

⁵Barry Nicholas, *An Introduction to Roman Law* (Oxford: Clarendon Press, 1962).

⁶This theory dictated that each individual exhumed his/ her rights to the monarch of the land so as to grant law its authority over people.

⁷Chris Dent, “Locus of Defamation Since the Constitution of Oxford” 44 *Monash University Law Review* 494 (2018).

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true speech than to protect an individual's reputation, this provision provided quite a deterrent punishment for any false accusation.

In India, the foundation of defamation was found in the 1837 draft of the Indian Penal Code under Lord Macaulay. This draft penned Section 499 and the other accompanying provisions in regard to the same offense. The intention behind this provision was not the protection of the reputation of the individuals but it was rather used as a state mechanism to further exploit Indians, through stricter laws and foundations put in place. The most surprising detail about this provision is that it has remain unchanged to the present date ever since its first draft.⁸ The only attempt to amend this section to make it more inclusive was made in 1988, under the administration of Rajiv Gandhi. In this period, a defamation bill was proposed which sought to completely criminalize defamation. The bill was introduced as a measure to reign in the press from exercising their right of speech and expression. The most precarious feature of this bill was contended to be the fact that it completely violated the view "Innocent until proven guilty" undertaken by the Indian legal system, by shifting the onus of proof from the victim to the accused. Another factor for the rejection of this bill was the swiftness of the legislative wing in passing this bill into a law, which was a ground of suspicion for many, considering the track record of the Indian government in being inefficient. Thus, amidst social and public outrage, the then government retracted the bill in September 1988.⁹

After the attempt to broaden the scope of defamation in 1988, no further attempts were made to amend the scope of defamation in India. However, this stood true only for the legislative side of the concept.

Relation between media laws and defamation

Media affects the society in the most revolting ways. The press has a way of presenting information in such a way that seems convincing to any member of the general public. The media is one of the biggest soft powers that any nation can possess in international

⁸Yusra Khatoon and Avinash Ray, "Critical Analysis of Evolution and Legality of Defamation in India" *MyLawman Socio Legal Review* 2-3 (2020).

⁹N.D. Sharma, "How Rajiv Gandhi Stood up Against Public Opinion, and Eventually Bowed to It", News Room India, Jan. 04, 2021, available at: <https://newsroom.in/defamation-bill-farm-journalists-rajiv-gandhi/> (last visited on June 20, 2024).

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relations. The power to control the press is a power to control the narrative of any event. In such a case, it even becomes the responsibility of the press to ensure that any and every piece of information that is provided by them is authentic and not in any way tainted by personal prejudice.

Where, the press stands the potential to derail the wheels of justice by interfering in judicial proceedings, these powers of the press become a predicament rather than an advantage for the whole socio-legal system. Media trials, in the midst competing for the best bites of information, can lead to defamation of the parties to any case. For example, in a rape case, the press, in the pursuit of more details, can lead to needless defamation of the rape victim.

On the other hand, the press can also affect the political scenes in the nation. When any accusation against any politician or any official of the government, the media is exempted from such imputation under the garb of good faith. But to what extent is such imputation justified, is the real question.

Article 19 provides for the right to freedom of speech and expression. This right is fundamental in determining the power of the press. This same article also provides for the right to privacy. This is the right that is often infringed upon by the media in cases of media trials. The privacy of the parties is constantly bludgeoned in the name of free press. Thus, a regulating mechanism is needed to balance these two rights with each other. Although, it is seen by the law that no right is absolute, the exercise of rights in such a way so as to not infringe upon rights of others, is also a precaution that is imperative to be put forward to maintain a clear balance of rights, and no preferential treatment is given to either side.

Case laws dealing with defamation

In one of the most famous cases in relation to media trials, the K.M Nanavati case comes to mind. This case was one of the foremost cases of media trials, where the media played a great role in the deciding of the case. This case was the last case decided through a jury, where it is often believed that the jury's decision to exult the accused from his charges was a result of the press's release of information imputing the reputation of the plaintiff. This case also laid down one of the foremost definitions for media trials.

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“Media trials are defined as certain regional or national news ‘events’ in which the criminal justice system is co-opted by the media as a source of high drama and entertainment”

As might be seen, even the court, in this case has not failed to hold back from criticizing the media on their failure to refrain from searching for a story in the midst of a pursuit of justice, thereby instigating the public at large and derailing the jury’s decision.¹⁰

Another notable case law on the topic of media trial is the Sanjay Dutt case, which was a classical case of a celebrity losing his reputation in society even after being relieved of his charges by the Court. Sanjay Dutt was charged under the Terrorist and Disruptive Activities (Prevention) Act, 1987 for being in cahoots with Abu Salem and for suspicions of being involved in the 1992 Bombay bomb blasts. All of these charges were made on the grounds of him being in possession of two AK-47 rifles. In the duration of this case, it was proved that he had procured those rifles only for self-defense and all other charges against him were dropped, thus making him liable only for the possession of the rifles under the Arms Act, 1959. However, the media continued with the narrative of him being involved in the blasts. This resulted in widespread public backlash, while also degrading his reputation in the society.¹¹

Aside from this, one other notable case is the Jessica Lal murder case, where the media trial, in the midst of the miserable defamatory material spread about the victim Jessica Lal, also brought about the positive limelight on the case which furthered justice by re-opening of the case and bringing the culprits to justice. In this case, a girl was shot by a man in front of a bar full of people, but due to the man’s political connections, none of the witnesses came forward to identify the accused. In such a case, the court had no other choice but to close the case and acquit the accused due to lack of evidence. However, due to media intervention, the case was re-opened after a few years, and the culprits were brought to justice.¹²

¹⁰K.M Nanavati v. State of Maharashtra, 1962 AIR 605

¹¹Sanjay Dutt v. State of Maharashtra, 1995 SCC (6) 189

¹²Siddharth Vashisht A.K.A Manu Sharma v. State(NCT of Delhi, (2010) 2 SCC (Cri) 1385

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Another case along the lines of the Jessica Lal murder case was the Nirbhaya rape case. In this case, a girl was gang-raped and tortured in a moving bus, which later resulted in the girl's death. The perpetrators were at first convicted only with a life imprisonment. However, media intervention forced the court to re-consider the case and sentence the perpetrators to death. Out of those perpetrators, one was a minor, who was contended by many, to be considered as amajor, considering the grievous activities he was involved in. It was also established in the facts of the case, that among the tortures meted out on the victim, the most gruesome tortures were meted out by the same minor. Thus, it was contended that such a person should not be excused on the fact that he was a minor because his actions signified an adult well-aware of his actions. However, the court did not budge from its decision and chose to give a new life to the juvenile in a correctional home.¹³

Conclusion

Defamation and media laws are two opposing sides of the same coin. Where defamation is a provision for the protection of an individual's reputation, free press is the other side of the rights enshrined in the same provision, which is Article 19. This article provides an insight on defamation laws in India and how these laws have been a parallel to media laws in the country. This is not only done by providing a historical sequence but also by comparing the case laws where instances of defamation and media trials clashed with each other.

All in all, it can very well be said that defamation and the freedom of speech and expression need to be regulated so as to not create any preferential treatment for any class of people and also to maintain the freedom of the press. The dilemma of democracy is often to balance between two rights or two wrongs, which occasionally calls for some political insight to make a choice. Although, such choice may not always be right, but the political dynamics make the following of such decisions an iron-clad rule.

¹³Mukesh v. State Of NCT of Delhi, (2017) 6 SCC 1

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