

# DEFAMATION

1. “Every man has right to have his reputation preserved inviolate”-  
**Blackstones.**
- 2 . **Blackstones** -This right of reputation is acknowledged as an inherent personal right of every person as part of the right of personal security.
3. **Winfield**- “Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking member of the society generally.”
4. **Salmond**- “Defamation is the publication of a false and defamatory statement concerning another person without lawful justification”
5. **Bhagwat Gita**-” For a man of honour, defamation is worse than death.”

6. It is a right in rem- a right good against all the world.
7. It is an injury to the reputation of a person.
8. A man's reputation is his property, more valuable than other property.
9. It is both criminal offence as well as civil wrong.
10. S-499 IPC- "Defamation is the wrong done by a person to another's reputation by words, signs or visible representation."
11. Type of Defamation- (a) LIBEL and (b) SLANDER

## **Synopsis-**

Definition and Differences between Slander and Libel

Essentials of Defamation

Defences of defamation

Remedies of defamation

## Distinction between Libel and Slander-

1. Libel is a **publication** of a false and defamatory statement tending to injure the reputation of another person without any lawful justification or excuse. Slander is a false and defamatory statement by **spoken words or gesture** tending to injure the reputation of another.
2. Libel is written defamation addressed to eye as well to ear. Slander is spoken addressed to ear only.
3. Libel is in some permanent form(written or printed). Slander is in a transient form ( spoken or gesture).
4. Libel is both civil and criminal offence and slander is only civil wrong. In English law slander is no offence. In India both are offence.

5. A slander may be uttered in the heat of the moment and under sudden provocation. But Libel is not so.
6. A Libel conduces to a breach of peace but a slander does not.
7. Libel is actionable per se (without any proof). Slander Except in certain following cases special damage is required.
  - (a) Imputation of criminal offence to the plaintiff
  - (b) Imputation of a contagious or infectious disease to the plaintiff.
  - (c) Imputation that the person is incompetent, dishonest or unfit in regards to the office, profession, trade, business carried on by him.
  - (d) Imputation of unchastity / adultery to any girl/women

# Essentials of Defamation

1. The statement must be defamatory
2. The said statement must refer to the plaintiff
3. The statement must be published.

## **Defamatory statement**

- Statement which tends to injure the reputation of plaintiff.
- Imputation which expose one to disgrace and humiliation.
- Such statement may be-
  - Oral
  - In writing
  - Printed
  - Picture
  - By some conduct

Cases-DP Choudhury v. Manjulata AIR 1997 Raj-Running away in the name of night classes-published in Dainik Novjyoti of Jodhpur-Held defamation and Rs. One lakh awarded as damages.

Morrison v. Rithhie & Co(1902) – birth of twins-held defamation.

**Ramjethmalani v. Subramaniam Swami AIR 2006 Del 300.-**

Defamatory- Rs 5 lakh awarded.

**Cassidy v. Daily Mirror Newspaper Ltd (1929) KB 331-Mr. and Mrs.**

Corrigan and Miss X- held defamation.

## **The Innuendo**

Sometimes the statement may prima facie be innocent but because of some latent or secondary meaning it may be considered to be defamatory.

➤ In natural and ordinary meaning it is not defamatory.

➤ Plaintiff must prove if he wants to bring an action.

1. The of latent and secondary meaning and

2. Evidence of defamation.

➤ Cases-

Morrison v. Rithhie & Co(1902) – birth of twins-held defamation.

Cassidy v. Daily Mirror Newspaper Ltd (1929) KB 331

Tolley v. JS Fry (1931)AC 333-Golf champion- held Innuendo.

Capital and Counties bank v. Henty & Sons(1882) AC 741.-Circular of not receiving of cheques of the above bank- held no Innuendo

## 2. Statement must refer to the plaintiff

To get succeed the plaintiff has to prove.

### **Cases-**

**Hulton Co. v. Jones (1990) AC 20**-Publication of a fictional article on morals in Sunday Chronicle in the name of a person Artemus Jones, a churchwarden at Pekham - a barrister of same name bought an action-held libel.

**Newstead v. London Express Newspaper Ltd (1939) All ER 391**- Publication of an article that plaintiff had been convicted of bigamy- this was true but action was bought by another person of same name- held libel

**Eastwood V. Homes (1858)**- “All lawyers are thieves.”-No libel till not pointing to a particular lawyer.

**Dhirendra Nath Sen V. RK Bhadra AIR 1970 Cal 216**-defamation of a spiritual head of a community – an editorial in newspaper – an individual of that community does not have a right of action.

### **3. The Statement must be published**

Publication means making the defamatory matters known to some person other than the person defamed.

➤ Communication to the plaintiff himself is not enough because it is injury to reputation.

➤ Cases-

**Pullman v. Hill (1891) QB 524**-Dictating a letter to one's typist is enough publication.

**Theaker v. Richardson (1962) All ER 299**- If defamatory letter sent to the plaintiff is likely to read by someone else, there is publication.

Example- post card, Telegram, Facebook-?, Web sites-?

**Mahendra ram v. harnandan prasad AIR 1958 Pat 445-**

Defamatory Letter in Urdu- read by third person- held no libel.

# Defences of Defamation

1. Justification of Truth
2. Fair comment
3. Privileged
  - (a) Absolute and
  - (b) Qualified privileged

## Justification of Truth

Radheshyam Tewari v. Eknath AIR 1985 Bom- Defamation of BDO- defendant held liable as he could not prove.

Salenadandasi v. Gajjala Malla Reddy AIR 2009(NOC) AP- Rape of a harijan lady by an advocate-held defamation.

- When one portion of statement is true and another is untrue- No provision in India.

## Fair Comment-

Making fair comment on matters of public good is a defence (damnum sine injuria). And it should not be based on **Malice**

### **Essential of this defence**

1. It must be a comment-expression of Opinion
2. The comment must be fair
3. It must be of public good

## Privilege

Folkard- Privilege means a person stands in such relation to the facts of the case that he is justified in saying or writing what would be slanderous or libelous.

- Defamatory statements are not actionable if privileged.
- It is of two type.
  1. Absolute Privilege and
  2. Qualified Privilege

## **Absolute Privilege**

No action lies for the defamatory statement even though the statement is false or has been made maliciously.

### **Occasions of Absolute Privilege**

1. Parliamentary proceedings –Art 105(2)
2. Judicial proceedings
3. Military and naval Proceedings
4. State proceedings

### **Underlying Objects**

1. The common convenience and welfare of society or the general interest of society
2. Give way to freedom of speech

## Qualified Privilege

If a communication is privileged then statement made without malice is protected.

### ➤ **Essentials**

1. The statement was made on a privileged occasion- i.e. in discharge of duty.
2. The statement was made without any Malice.

➤ **Radheshyam Tiwary v. Eknath AIR 1985 Bom 424- BDO case**

➤ **RK Karajia v. Thackersay AIR 1970 Bom 424- Tax evasion case- editor held liable.**

➤ **The Parliament Proceedings( Protection of Publication) Act 1977 – gives such privileges.**

➤ **This defence can be refuted by the plaintiff unlike AP.**

## Distinguish between Absolute and Qualified Privilege

# REMEDIES FOR DEFAMATION

1. A Criminal prosecution and
2. A civil suit for damages

## **Under civil suit**

(a) Damages-Compensatory damages

(b) Injunction-s-38 and 39 of the specific relief Act 1963



# GENERAL EXCEPTIONS UNDER THE INDIAN PENAL CODE

MS. DIVYA D.

MR. PANKAJ KUMAWAT.

# SECTION 6, IPC

Every *definition* of an offence, every *penal provision*, and *illustration* should be understood **subject to** the exceptions contained in the Chapter titled “General Exceptions”

# GENERAL EXCEPTIONS

- Sections 76 to 106 of IPC
- An 'offence' becomes a 'non-offence'
- Obviates repetition in every penal clause  
a number of limitations

# GENERAL EXCEPTIONS

- Mistake of fact (S.76, 79)
- Judicial acts (S.77 and S. 78)
- Accident (S.80)
- Absence of criminal intent (Ss.81-86 & 92-94)
- Consent (Ss.87- 90)
- Trifling acts (S.95)
- Private defence (Ss.96-106)

# GENERAL EXCEPTIONS

- Act of a person bound by law to do a certain thing
- Act of a Judge acting judicially
- Act done pursuant to an order or a judgment of a Court
- Act of a person justified, or believing himself justified, by law
- Act caused by accident
- Act likely to cause harm done without criminal intent to prevent other harm
- Act of a child under 7 years
- Act of a child above 7 and under 12 years, but of immature understanding
- Act of a person of unsound mind

# GENERAL EXCEPTIONS

- Act of an intoxicated person and partially exempted
- Act not known to be likely to cause death or grievous hurt done by consent of the sufferer
- Act not intended to cause death done by consent of sufferer
- Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian
- Act done in good faith for the benefit of a person without consent
- Communication made in good faith to a person for his benefit
- Act done under threat of death
- Act causing slight harm
- Act done in private defence

**THE BURDEN OF PROOF  
LIES**

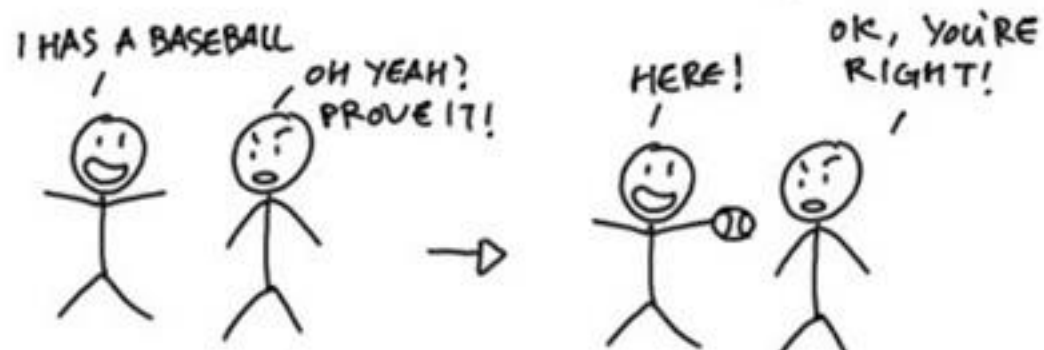
**WITH THE PERSON MAKING THE  
CLAIM**

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# ONUS OF PROOF

S.105, INDIAN EVIDENCE ACT:

A person **accused** of an offence **bears the burden** of proving the existence of circumstances to bring the case within any of the General Exceptions. The court shall presume the absence of such circumstances.



# MISTAKE OF FACT

***'Ignorantia facti doth excusat'***- *Mistake of fact is excusable*

- Mistake as an honest and reasonable belief
- In the existence of circumstances,
- Which, if true,
- Would make the act an innocent one

Not applicable if the fact itself is illegal-

***R. v. Prince***, 1875- Man was held guilty for abducting a girl below 16 under the belief that she was above 18.



# MISTAKE OF LAW

***‘Ignorantia juris non excusat’***- *Mistake of law is not excusable*

- Legal *presumption* that everyone knows the law of the land
- Often untrue as a matter of fact
- But needed for the purpose of expediency of the law
- Applicable even for recent statutes
- Not necessary that law should be published



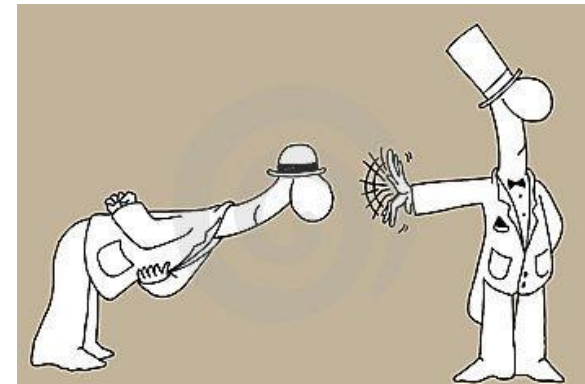
# MISTAKE OF FACT, BOUND BY LAW

S.76

- If by reason of ‘mistake of fact;’ and not ‘mistake of law’
- In *good faith* believes
- To be bound by law, in doing an act

Eg: If a soldier fires on a mob by the order of his superior, no offence is committed

- ❖ *Bound by law- Respondeat Superior-* Act done by the order of a superior
- Only obedience to legal orders comes within the ambit
- Obedience of illegal orders is not justified
- The servant should exercise his own judgment\*\*\*



# MISTAKE OF FACT, JUSTIFIED BY LAW

S.79

- If *justified by law*, or
- By reason of a ‘mistake of fact’ and not ‘mistake of law’
- In ‘good faith’ believes
- To be *justified by law*, in doing an act.

***Chirangi v. State***, 1952- The accused mistook his own son as a tiger and killed him

***Waryam Singh v. Emperor***, 1962- The accused mistook a human being as a ghost and killed him

# MISTAKE OF FACT AS A DEFENCE

- ✓ If the state of things as claimed is actually true, it would justify the act done
- ✓ Mistake must be reasonable, and
- ✓ Mistake must relate to 'fact' and not to 'law'

# IN GOOD FAITH

S.52

- Done with due care and attention
- The question is considered with reference to the position of the accused and the circumstances under which he acted.



"Sure I shot him — but I shot him in good faith!"

# JUDICIAL ACTS

S. 77

- If a Judge does an act
  - In the exercise of power given by law
  - Which in good faith he believes to be
- Eg: Judge sentencing a prisoner to death, even wrongly



S.78

- Act done
- By virtue of a judgment or order of a Court
- While in force
- Even if Court had no jurisdiction, but person in good faith believes Court had jurisdiction

Eg: Hangman who hangs the prisoner pursuant to order

# ACCIDENT

S.80

- Act done by accident or misfortune
- Without any criminal intention or knowledge
- While doing a lawful act in a lawful manner by lawful means
- With proper care and caution

“*Accident*”- Happens ‘out of the ordinary course of things’ and is unexpected

Neither wilfully nor negligently caused.



# ABSENCE OF CRIMINAL INTENTION

- “Criminal Intention”- Purpose or design of doing an act forbidden by criminal act without just cause or excuse
- Acts which are criminal but without the criminal intent, lacking *mens rea*, are not penalised. They include:

# ACT DONE TO AVOID OTHER HARM

S.81

- Act done with knowledge to cause harm
  - In good faith
  - Without any criminal intention to cause harm
  - To prevent or avoid harm to person or property
- In a sudden and extreme emergency, if two evils are inevitable, direct events so that the smaller one occurs.
- A crime cannot be committed in order to avoid a greater harm-
- Dudley v. Stephens***, 1884- A man to save himself from starvation kills another person for the purpose of feeding on his flesh

# ACT OF CHILD

S.82

- Act done by a child
  - Under seven years of age
- Absolute incapacity for crime under seven years of age.



Presumption of law- *Doli Incapax*-

A child has no discretion to distinguish right from wrong, thus criminal intention does not arise

# ACT OF CHILD

S.83

- Act done by a child
- Between 7-12 years of age
- Has no sufficient maturity of understanding
- To judge the nature and consequences of his conduct

- *Malitia Supplet Oetatem*- Malice Supplies Age

If proven to have sufficient maturity of understanding, liability arises

# ACT OF AN INSANE PERSON

S.84

- Act done
- Due to *unsoundness of mind- no free will-* born idiot, temporary failure, mad man, unconscious, intoxicated
- *Incapable of knowing* the nature of the act, or that it is wrong or contrary to law

***Ahmed v. King***, 1949- Accused killed his son by thrusting a knife in his throat under the delusion and in pursuance of a command by someone in paradise, given in his dream. Not held liable.

Tests:

- At the time of commission of offence
- State of mind before and after
- Only organic or natural incapability, not uncontrollable impulses, weak intellect, or eccentric behaviour

# ACT OF AN INTOXICATED PERSON

S.85

- Act of a person
- Incapable of judgment
- Due to intoxication
- Caused without his knowledge or against his will\*\*\*



***Mirza Ghani Baig v. State of Andhra Pradesh***, 1997-  
Voluntary drunkenness is no excuse for commission of a crime

S.86

- Offence requiring a particular intent or knowledge
- Committed by an intoxicated person
- Presumption of knowledge, unless proves intoxicated without his knowledge or against his will

# ACT OF AN INTOXICATED PERSON

## ***Basdev v. State of Pepsu***, 1956

- *Facts*: The intoxicated appellant was seated next to a boy during a meal served at a wedding. He asked the boy to move a little to so that he would occupy a more convenient seat. The boy refused. He shot him in the abdomen and killed him on the spot.
- SC- So far as attributing knowledge is concerned, the intoxicated man is treated as if he was sober. So far as intention is concerned, it is gathered from the general circumstances of the case and the degree of intoxication.

# BONA FIDE ACT FOR ANOTHER'S BENEFIT

S.92

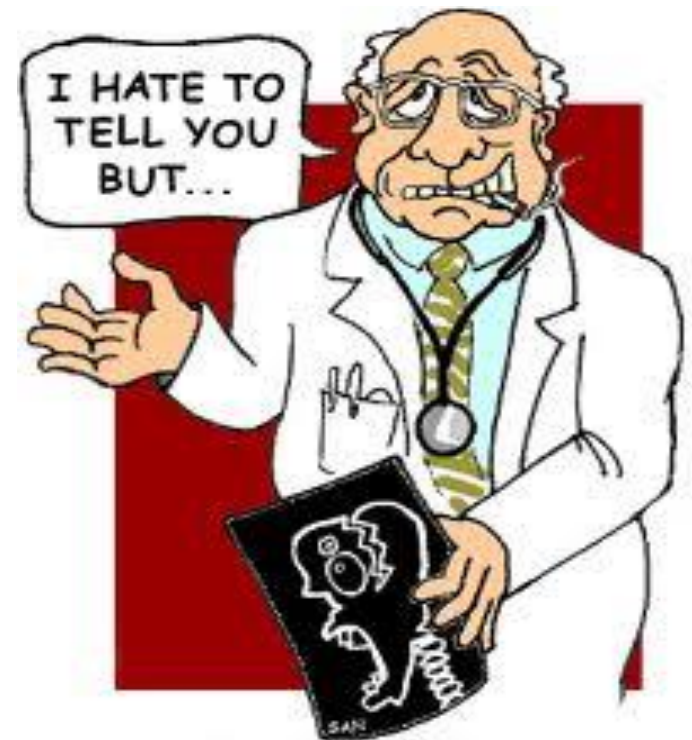
- Act causing harm to person for whose benefit is done
- In good faith
- Even without person's consent
- Under emergent circumstances

Eg: A is carried off by tiger. D fires at tiger knowing it might hit A, but not intending the same. D bullet gives A a mortal wound.\*\*\*

# COMMUNICATION MADE IN GOOD FAITH

S.93

- Communication made to a person
- In good faith
- For his benefit
- Even if it causes harm



# ACT DONE UNDER COMPULSION OR THREAT

S.94

- Act done under compulsion or threat
- Of instant death

Eg: If threatened with a dagger in hand to cause hurt to another person



- Cannot cause murder or offence against State punishable with death
- Did not put on his own accord into such constraint

# ACT DONE BY CONSENT

Ss. 87-91

Acts done with the consent of the victim which do not amount to an offence

S.90- What is not consent?

- Given under fear of injury or misconception of fact
- Given from unsoundness of mind or intoxication
- Given by person under 12 years of age



# ACT DONE BY CONSENT

S.87

- Act intended or known
- To cause death or grievous hurt
- Causes harm to person above 18 years
- On consent, to suffer

Proceeds from *volenti non fit injuria*- he who consents cannot complain



# ACT DONE BY CONSENT

S.88

- Act done
- With no intention to cause death
- In good faith
- For victim's benefit
- With victim's consent
- Surgeons

# ACT DONE BY CONSENT

S.89

- Act done
- In good faith
- For benefit of child or insane person
- By or by consent of guardian



# TRIFLING ACTS, CAUSING SLIGHT HARM

S.95

- *'De minimis non curat lex'*-

The law takes no account of trifles

- A harm
- Even with intention or knowledge
- Is so slight that a person of ordinary sense and temper would not complain



# RIGHT OF PRIVATE DEFENCE

S.96

Nothing is an offence which is done in the exercise of the right of private defence.



## ***Private defence-***

Right inherent in man, which is the duty to help himself.

# RIGHT OF PRIVATE DEFENCE

- Right is exercised when there is real and immediate threat
- If life is threatened by grave danger, need not wait for State aid, unless aid is available
- Right is protective or preventive and not punitive
- Not for self-gratification
- Should not be deliberate or for retaliation of past injury
- Right commences as soon as reasonable apprehension of danger arises and continues till the apprehension continues

# RIGHT OF PRIVATE DEFENCE

- The protective measures must be proportionate to injury or threat
- The right ends with the necessity for it
  - ***State of UP v. Ram Swarup, 1974***- The person exercising the right need not chase the feeling attacker and then beat him.
- Need not weigh the arguments for and against an attack in golden scales
- The aggressor cannot claim the right to self-defence
- No private defence against private defence
  - ***Deo Narain v. State of UP, 1973***- One who goes to beat the other cannot claim the right
- Even if private defence is not claimed, court may consider the plea based on material on record

# RIGHT OF PRIVATE DEFENCE OF BODY

## S. 97

- Every person has a right
  - To defend his own body or
  - Of any other person
  - Against an offence affecting the human body
- Thus even a stranger may defend the person or property of another person

## S.98

To exercise the right, the physical or mental capacity of the attacker is no bar (whether with or without *mens rea*)\*\*\*

# RIGHT OF PRIVATE DEFENCE OF BODY

## S.99- General restrictions

- No right if there is no apprehension of death or grievous hurt
  - If done by public servant under office or if acting under the direction of a public servant
  - In good faith
  - Even if not strictly justified by law
  
- No right if there is time to have recourse to protection of public authorities
  
- Right does not extend to inflicting more harm than necessary for the purpose of defence

# RIGHT OF PRIVATE DEFENCE OF BODY

## S.100

- When right extends to causing death
  - Assault causing apprehension of death
  - Assault causing apprehension of grievous hurt
  - Assault with intention of committing rape
  - Assault with intention to gratify unnatural lust
  - Assault with intention of kidnapping or abducting
  - Assault with intention of wrongfully confining a person

## S.101

In other circumstances the defender may cause any harm except death

# RIGHT OF PRIVATE DEFENCE OF BODY

S.102

Right commences as soon as reasonable apprehension of danger to body arises and continues till the apprehension continues

S.106

In case of reasonable apprehension of death if defender cannot exercise the right without risk of harm to innocent person, he may even run that risk

# RIGHT OF PRIVATE DEFENCE OF PROPERTY

## S.97

- The right to defend the property (moveable or immoveable) of himself or of any other person
  
- Against offence of or attempt of
  - theft,
  - robbery,
  - mischief, or
  - criminal trespass



# RIGHT OF PRIVATE DEFENCE OF PROPERTY

S.105- Continuation of right-

## ***Theft***

- Offender has effected his retreat with property, or
- Assistance of public authority is obtained, or
- Property is recovered

## ***Robbery***

- Offender causes/attempts to cause death/ hurt/ wrongful restraint, or
- As long as fear of instant death/ instant hurt/ instant personal restraint continues

## ***Criminal trespass or mischief***

- As long as the offender continues in the commission of criminal trespass or mischief.

## ***House breaking by night***

- As long as house trespass which has begun by such house-breaking continues.

# RIGHT OF PRIVATE DEFENCE OF PROPERTY

## S.103

- Right extends to causing death if
  - Robbery
  - House breaking by night
  - Mischief by fire to any building, tent or vessel used as human dwelling or as place of custody of property
  - Theft, mischief or house trespass under circumstances causing reasonable apprehension of death/grievous hurt

## S.104

- In other cases, right extends to any harm other than death

*Thank You!*