

Unintentional Defamation

APART FROM liability for defamation in general, a question of considerable importance in regard to civil liability pertains to unintentional defamation.

By "unintentional defamation" is meant a statement which, though it may actually harm the plaintiff's reputation, was not intended to harm it, nor even known to be likely to do so. A series of English judicial decisions had led to a very anomalous situation in this regard. A person could be liable in tort for defamation, even though he did not know of the existence of the plaintiff. The injustice of this position had been realised for long. The Porter Committee recommended¹ that where a statement which is, in fact, defamatory of the plaintiff is made by a defendant who was unaware that it would be understood to refer to the plaintiff or was unaware of the facts which would make the statement defamatory of him, the plaintiff's remedy should be restricted to requiring the defendant to publish an explanation and an apology, and that if such explanation and apology is published, no damages should be recoverable.

Section 4 of the Defamation Act, 1952 has implemented this recommendation in the United Kingdom. The section is worth adopting in India.

It should be mentioned that there is a Madras case² which does not follow the common law rule relating to unintentional defamation. The appellant in that case published in his newspaper a news item charging a person (the respondent) with smuggling. The respondent alleged that the news item referred to him, and was defamatory of him. The lower court awarded damages against the appellant on the basis of the House of Lords decision of 1910.³ It was held that by the Madras High Court that :

The law of defamation as part of the law of torts, as applied and enforced under the common law of England, is applied to this country *only on the basis* of justice, equity and good conscience. There is no statutory law compelling the courts of this country to apply the English principles....⁴

The rule laid down by the majority of the House of Lords in the judgment mentioned above was held not applicable in India. As it had been

1. *Porter Committee Report*, paragraphs 61-64, and Summary of Recommendations, No. 4.

2. *T.V. Ramasubba v. A.M. Ahamed Mohideen*, A.I.R. 1972 Mad. 398.

3. *Hulton v. Jones*, (1910) A.C. 20.

4. *Supra* note 2 at 405.

proved that the appellant, when he published the news item, did not know of the existence of the respondent and he had, later on, also published a correction in his paper (that the item did not refer to the respondent) the appellant was not held liable for damages. There were two earlier rulings⁵ taking the same view, which the Madras High Court followed in the above case.

It is not certain whether other High Courts will take the same view. Hence an express provision would be useful.

5. *Naganatha Sastri v. Subramania Iyer*, A.I.R. 1918 Mad. 700; *Secretary of State v. Rukminibai*, A I R. 1937 Nag. 354.