

Survival of Causes of Action for Defamation

THERE ARE certain anomalies in the present Indian law as to the survival of causes of action after the death of the person wronged or of the wrongdoer. The anomaly is of particular relevance to defamation. The matter is primarily governed by section 306 of the Indian Succession Act, 1925. It reads as under :

306. All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Illustrations

(i) A collision takes place on a railway in consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(ii) A sues for divorce. A dies. The cause of action does not survive to his representative.

It should be noted, at the outset, that in Kerala,¹ a state Act contains provisions, *inter alia*, relating to the survival of causes of action and expressly repeals section 306 of the Indian Succession Act by providing that section 306 of the Succession Act so far as it relates to the right of *action in torts*, shall cease to apply in the State of Kerala. The Act seems to re-enact an earlier Travancore Act² on the subject.

Consideration of section 306 of the Indian Succession Act may begin with the maxim—personal action dies with the person. Although somewhat obscure in its origin, the principle that a personal cause of action dies with the person seems to have been linked with the criminal flavour of early tort remedies.³

1. Kerala Torts (Miscellaneous Provisions) Act, 1976 (8 of 1977): (1977) K.L.T. Statutes 37-39.

2. Travancore Law Reform (Miscellaneous Provisions) Act (12 of 1924).

3. See Fleming, *Torts* 695 (1965).

The maxim was originally introduced to prevent actions of a penal character, like trespass and its offshoots, from being brought after the death of the wrongdoer against his representatives.⁴ The main reason was that the trespass was "drowned in the felony". Later, however, the maxim was applied to cases of death of the injured person, even though the reason⁵ underlying the maxim had no application.⁶

Thus, the wide scope that the rule came to acquire was more a product of the accidents of history, than of any deliberate view taken as a matter of policy.

On principle, there is hardly any justification for not allowing survival of the cause of action for defamation.

Value of Reputation

By many, reputation is regarded as even more precious than life. Indian literature has beautiful sayings on the subject.⁷ It may be mentioned that article 12 of the Universal Declaration of Human Rights has also recognised the increasing importance of reputation. It provides :

12. No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

It may also be mentioned that the principle that the cause of action for defamation should survive has been approved by the Faulks Committee.⁸

Editors of several leading books on torts have criticised the exclusion of defamation from the category of causes of action that survive under the Law Reform (Miscellaneous Provisions) Act, 1934. Salmond has stated : "Defamation may cause much more harm to the next of kin than an assault."⁹ According to Winfield :

[T]he exclusion of defamation . . . from the provision of the Act of 1934 is hard to justify. Not only does the victim of a libellous attack lose his right to damages if his defamer dies, but he also loses the opportunity of vindicating his character in a court of law.¹⁰

The above material clearly points to the need for amendment of the law as contained in section 306 of the Indian Succession Act.¹¹

4. Holdsworth, 3 *History of English Law* 576. See also Street, *Torts* 407 (1977).

5. Death of Wrongdoer in case of penal action.

6. *Admiralty Commissioners v. S.S. Amerika*, (1917) A.C. 38, 43, 44.

7. *E.G. Bhagvadgreta*, ch. 2, verse 34.

8. *Report of Committee on Defamation* 116, para 423 (1975).

9. Heuston (ed.), *Salmond on Tort* 451, f.n.49 16th ed. (1973). Also Salmond and Heuston, *Torts* (1981), 416 f.n.57.

10. J.A. Jollowicz and Ellis Lewis (ed.), *Winfield on Tort* 627 (1967).

11. *Supra* p. 72.