

# Appendix I

## Indian Case Law on Slander<sup>1</sup>

IMPORTANT DECISIONS as to how far slander is actionable in India without special damage are noted below :

### Allahabad

*Dewan Singh v. Mahip Singh.*<sup>2</sup> (Mufassil)

Abusive language was held actionable *without special damage, unless excused or protected by other rule of law and a civil injury apart from defamation*, in India. But it was also observed that the English law of slander drawing an arbitrary distinction was not applicable in India.

*Harak Chand v. Ganga Prasad Rai.*<sup>3</sup> (Mufassil)

The true test of spoken actionable words is their tendency to excite feelings of hatred, contempt, ridicule, fear, dislike or disesteem, due regard being had to the circumstances in which the language was used.

(Point of special damage not decided, though some cases on the point are referred to).

*Sagar Ram v. Babu Ram.*<sup>4</sup> (Mufassil)

Language implying moral misconduct held actionable without proof of substantial loss.

*Rahim Bakhsh v. Bachcha Lall.*<sup>5</sup> (Mufassil)

Allegation that B's firm was the most dishonest in the city held actionable without special damage.

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1. Only selected cases dealing with the actionability of slander, with or without special damage, are dealt with.

2. I.L.R. 10 All. 425, 456 (1888) (Mahmood, J.).

3. I.L.R. 47 All. 391 (1924) : A.I.R. 1925 All. 371 (Lindsay & Kanhaiya Lal JJ.).

4. (1904) 1 All. L.J. 102, cited in *supra* note 3 at 400.

5. A.I.R. 1929 All. 214.

*Suraj Narain v. Sita Ram.*<sup>6</sup>

Following *Rahim Bakhsh v. Bachcha Lall*,<sup>7</sup> it was held that abusive and insulting language was actionable without special damage, though there was no injury to character.

## Bombay

*Hirabai v. Dinshaw*<sup>8</sup> (Original side)

Though Parsis are governed by the common law, yet words *imputing* adultery to Parsi married women are actionable *without special damage*, as adultery is an offence under the Indian Penal Code. This case is important, because, though actually, in the circumstances of the case, slander was held to be actionable without special damage, yet, the court did lay down the general proposition that the English *rule* as to non-actionability of slander without special damage *applies to Parsis*. It was held that in an action for slander, the law to be applied to Parsis, *in the town and island of Bombay*, is the English common law so far as the circumstances of the place and of inhabitants admit. Since adultery was a crime, the court took the view that the English judges would not apply the general rule as to slander in cases where adultery was a crime.<sup>9</sup> The origin of the English rule on the subject was attributed by Marten, C.J. to "commonsense".<sup>10</sup> The history of the provisions as to the law applicable in the High Courts on the original side was also traced in detail.<sup>11</sup>

A point of law reform was also made by Marten, C.J. He pointed out that this decision did not affect those cases of slander of women, where the crime of adultery was not involved :

*and that it may well be a matter for consideration by the Indian Legislature as to whether an Act on the lines of the Slander of Women Act, 1891, should not be passed for the better protection of women and girls in India against imputations on their chastity.*<sup>12</sup>

## Calcutta

*Girish Chunder Mitter v. Jatadhari Sadukhan*.<sup>13</sup>

Mere use of abusive and insulting language (like *sala*, etc.) *apart from*

6. A.I.R. 1939 All. 461 (Mohammad Ismail, J.).

7. *Supra* note 5.

8. 28 Bom. L.R. 391; A.I.R. 1927 Bom 22; I.L.R. 51 Bom. 167 (1926) (Sir Amberson Marten, C.J., and Kemp. J.).

9. *Id.* at 182.

10. *Id.* at 179.

11. *Id.* at 171 to 173.

12. *Id.* at 184 (emphasis added).

13. (1899) I.L.R. 26 Cal. 653 (F.B.) (Maclean, C.J., Mepherston, Hill, Jenkins, JJ.) (C.M. Ghose, J., dissenting).

defamation, is not actionable irrespective of special damage.

*Bhooni Money Dossee v. Natarbar Biswas*.<sup>14</sup> (Case from town of Calcutta).

Action for damages for false and malicious slanderous words imputing unchastity to plaintiff (Hindu married woman) dismissed, *as no special damage was pleaded or proved*.

*Girwar Singh v. Siraman Singh*.<sup>15</sup> (*Mufassil*)

It was held a that suit for damages for slander will not lie in a civil court at the instance of a person about whose sister the allegation was made that she was in the keeping of X, as the words complained of were neither defamatory of him (the plaintiff) nor had they caused him injury.

*Sukhan Teli v. Bipal Teli*.<sup>16</sup> (*Mufassil*)

Slander is actionable without special damage.

*H.C. D'Silva v. E.M. Potengar*.<sup>17</sup>

Imputation of "bastard" held actionable without proof of special damage. Categorical proposition laid down (dissenting from *Bhooni Money*<sup>14</sup>) that the English rule did not apply in India.

### Lahore

*Girdhari Lal v. Panjab Singh*.<sup>18</sup> (*Mufassil*)

(i) A statement calling another person an "outcaste" is not actionable without special damage. That certain words are not actionable in themselves, is a part of the law of India also (articles 24 and 25, Limitation Act, 1908 referred to).

(ii) Apart from that, mere abusive and insulting language is not actionable without such damage.

### Lucknow (Oudh)

*Gaya Din Singh v. Mahabir Singh*.<sup>19</sup> (*Mufassil*)

The rule of English law prohibiting action for damages for oral defamation

14. (1901) I.L.R. 28 Cal. 452 (Harington, J.). Dissented from in *H.C. D'Silva v. E.M. Potengar*, I.L.R. (1946) 1 Cal. 157.

15. I.L.R. 32 Cal. 1060 (1905) (Harington and Mookerjee, JJ.).

16. I.L.R. 34 Cal. 48 (1906).

17. I.L.R. 1 Cal. 157, 167, 168 (1946) (Gentle, J.).

17a. *Supra* note 14.

18. A.I.R. 1933 Lah. 727 (Addison, J.).

19. A.I.R. 1926 Oudh 363, I.L.R. (1926) 1 Luck. 386 (Sir Louis Stuart, C.J., and G.N. Misra, J.).

without special damage does not apply in India. (Allegation was that the plaintiff, a high caste Thakur, had married an Ahir daughter).

### Madras

#### *Parvati v. Mannar.*<sup>20</sup>

Defendant abused the plaintiff, saying that she (the plaintiff) was not the legally married wife of her "husband" and was unchaste. This was held to be actionable without special damage.

#### *Yallabha v. Madusudanan.*<sup>21</sup>

In this case, a caste enquiry was held on a suspicion of the commission of adultery by a Nambudri woman. She confessed that the plaintiff had illicit intercourse with her. Both of them were declared outcasts, but the plaintiff was not heard in the inquiry. Plaintiff sued for damages for defamation against those who had declared him an outcaste. It was held that the declaration that the plaintiff was an outcaste was illegal and that the defendants had not acted *bona fide* in making the declaration and that the plaintiff was entitled to recover damages.

#### *Leslie Rogers v. Hajee Fakir Muhammad Sait.*<sup>22</sup>

In this case, the decision in *Parvati v. Mannar*,<sup>23</sup> was noted, apparently, with approval, because the court (Wallis, C.J.) observed :

Taking it then to be defamatory to say that a person is suspected of having committed an offence. I think the person against whom the offence is alleged to have been committed must have a qualified privilege to discuss the case mentioning his suspicion. . . .<sup>24</sup>

#### *Subbaraidu v. Sreenivasa Charyulu.*<sup>25</sup>

Plaintiff and defendant were rival candidates at an election. Plaintiff called the defendant "rowdy suspect" at an election meeting. Defendant retorted that plaintiff was a drunkard and repeated this after the meeting.

Held (i) allegation at the meeting enjoyed qualified privilege, but  
(ii) its repetition afterwards was actionable.

20. 1.L.R. 8 Mad. 175 (1884).

21. 1.L.R. 12 Mad. 495 (1889) (Collins, C.J., and Muttusami Ayyar, J.).

22. 35 M.L.J. 673 (1918).

23. *Supra* note 20.

24. *Supra* note 22 at 676-77.

25. 52 M.L.J. 87 (1926); A.I.R. 1927 Mad. 329 (Devadass, J.).

*Narayana Sah v. Kannamma Bai.*<sup>26</sup> (Original side)

It was held that a suit for defamation in respect of words imputing unchastity was maintainable by a Hindu woman on the original side of the Madras High Court without special damage. (History of the provisions regarding law to be applied, traced from 1687).

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26. A.I.R. 1932 Mad. 445 (Beasley, C.J., and Cornish, J.).

## Appendix II

### Section 468, Code of Criminal Procedure, 1973

(1) EXCEPT AS otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

- (a) six months, if the offence is punishable with fine only ;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year ;
- (c) three years, if the offence is punishable with imprisonment for a term exceeding three years.

# Appendix III

## Sections 499-502 I.P.C.

### Chapter XXI

#### Of Defamation

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.

*Explanation 1.*—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

*Explanation 2.*—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

*Explanation 3.*—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

*Explanation 4.*—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

#### Illustrations

(a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

*First Exception.*—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

*Second Exception.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

*Third Exception.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

#### Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

*Fourth Exception.*—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

*Explanation.*—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

*Fifth Exception.*—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

#### Illustrations

(a) A says—“I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest”. A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—“I do not believe what Z asserted at that trial because I know him to be a man without veracity”; A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

*Sixth Exception.*—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

*Explanation.*—A performance may be submitted to the judgment of the public



expressly or by acts on the part of the author which imply such submission to the judgment of the public.

#### Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

*Seventh Exception.*—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

#### Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—arc within this exception.

*Eighth Exception.*—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

#### Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

*Ninth Exception.*—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the

protection of the interests of the person making it, or of any other person, or for the public good.

### Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

*Tenth Exception.*—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend two years, or with fine, or with both.

## Chapter XXII

### Of Criminal Intimidation, Insult and Annoyance

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

*Explanation.*—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

## Appendix IV

### Recommendations of the Press Council on Law of Defamation

1. *Libel and slander* : The distinction between libel and slander, recognised in English law but rejected by most of the courts in India, should be specifically abolished in India, and the law on the subject settled, by providing that "Words spoken and published shall not require special damage to render them actionable."

2. *Privacy* : Section 13(1)(c) of the Press Council Act, 1978 should be amended by adding, after the words "the maintenance of high standards of public taste", the words "including respect for privacy".

(*Explanatory note* : The Second Press Commission in its report, while not inclined to recommend any general law regarding privacy, recommended that the Press Council Act should be amended by adding the words "including respect for privacy".<sup>1</sup> The Press Council agrees with the need to amend the Press Council Act.)

3. *Spouses (criminal and civil law)* : Statements made by one person to his or her spouse should enjoy absolute privilege in regard to liability for defamation, (civil as well as criminal).<sup>2</sup>

(*Explanatory note* : This is necessary to protect marital confidences with great sanctity. The real basis for recognising such a privilege is not the supposed doctrine of "identity of personality of the spouses", but the need to protect family confidences. A defamatory statement made by one spouse to the other (as distinct from a statement made to the *spouse* of the plaintiff) cannot be the subject of an action and "it is an instance of absolute privilege, the reason for which is the highly confidential character of the relationship".<sup>3</sup>)

There is, therefore, need to amplify section 499 of the Indian Penal Code, by inserting an additional exception on the subject. The point is valid for civil liability also, for which specific provision may be made by suitable legislation).

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1. *Report of the Second Press Commission*, vol. I, ch. 6, pp. 67-77, particularly paras 41-44 (1982).

2. *M.C. Verghese v. T.J. Poonan*, (1969) 1 S.C.C. 37, 40

3. *Salmond and Heuston, Torts* 154-155, para 56(6); (1981); also *Prosser, Torts* 785

4. *Joint responsibility* : See *infra*, paragraph 5 (Innocent dissemination).

### DEFENCES

5. *Innocent dissemination* : The defence of "innocent dissemination" should be (i) recognised for distributors of alleged defamatory matter; and (ii) extended to printers; (iii) as also to translators, including newspaper employees. But the protection need not be given to publishers of offending matter in translation. A person who makes a translation (orally or in writing) should be protected by qualified privilege, provided that the words complained of have been translated in accordance with the sense and substance of the original. The privilege should be available also to a newspaper employee making such a translation.

Suggested draft for distributors is as follows :

A person who is a distributor of a publication containing defamatory matter shall not be liable in tort for defamation merely on the ground that he distributed such matter, if, having taken all reasonable care, he did not, at the time of distribution, know that the publication contained such matter and had no reason to believe that it was likely to do so.

Suggested draft regarding translators<sup>5</sup> is as follows :

A person who is a professional translator shall not be liable in tort for defamation, merely on the ground that he translated defamatory matter, provided the translation is in conformity with the sense and substance of the original.

*Explanation* : The expression "professional translator" includes an employee of a newspaper establishment.

(*Explanatory note* : (a) Under the present law, every person who takes part in the publication of a libel is *prima facie* liable for it.<sup>4</sup> Thus, for example, where an article containing a libel is published in a newspaper, the following persons are *prima facie* liable (in a civil action) :

(i) the writer of the article;

(ii) the proprietors<sup>5</sup> of the newspaper : They will be liable as participants in the publication. They are likely also to be liable

4. 28 *Halsbury's Laws of England* 17, 19, 35, para 32, 38, 65. (4th ed. 1979). See also *Duncan & Neill, Defamation* 41, paras 8, 12 and f.n. 1 (1978).

5. *Munshi Ram v. Mela Ram*, A.I.R. 1936 Lah. 23, 26 (knowledge of publication not required) (*Proprietor of Bharat*, an Urdu newspaper).

vicariously, as the employers of the editor and the journalist concerned;

(iii) the editor;

(iv) the printers; and

(v) subject to the defence of innocent dissemination, persons such as newspaper vendors who sell the newspaper to the public.

(b) The Second Press Commission stated the existing position regarding joint responsibility for the publication of a defamatory statement, as under :

82. Under the existing law, where an action for defamation is brought in respect of a joint publication of a libel, malice on the part of any one of the persons jointly responsible for such publication is sufficient to defeat the plea of 'fair comment' or 'qualified privilege' so as to render all the defendants jointly liable to the plaintiff. The presence of malice on the part of one defendant renders the whole of the damage recoverable from a co-defendant who may himself be wholly innocent of malice. We think the following statement of law on the point by Gatley is most appropriate :

Where a person has published defamatory words on an occasion of qualified privilege the privilege will only be defeated so far as he is concerned if he himself is malicious, or if he is liable on the basis of respondent superior for the malice of a servant or agent.<sup>6</sup>

(c) The Second Press Commission then analysed "the impact of this principle in our law", as under :

(i) A publisher of a newspaper will continue to be vicariously responsible for the malice of his agent.

(ii) A publisher of a newspaper will not be vicariously responsible for the malice of an independent contractor.

(iii) A publisher of a newspaper will not be vicariously liable for the malice of an unsolicited correspondent, whether anonymous or otherwise.

(d) It may be mentioned that under the defence of innocent dissemination, (which is non-statutory in character), distributors of a libel are protected, if they can prove that<sup>7</sup>—

6. *Supra* note 1 at 48, para 82.

7. *Emmens v. Pottle*, 16 Q.B.D. 354 (1885); *Vizetelly v. Mudie's Select Library*, (1900) 2 Q.B. 170.

- (i) they did not know that the book or paper contained the libel complained of; or
- (ii) they did not know that the book or paper was of a character likely to contain a libel; and
- (iii) such want of knowledge was not due to any negligence.<sup>8</sup>

(e) The Faulks Committee in the United Kingdom<sup>9</sup> went into the question of the liability of distributors, printers and translators of written publications. The committee had noted that distributors of written publications (for example, booksellers, news agents and news vendors) enjoy the special defence of "innocent dissemination", which is not available to the *first or main publishers* of a work. It had recommended the extension of the defence of innocent dissemination to *printers*, subject to the same or similar conditions and safeguards as in the case of distributors.

(f) The Faulks Committee had noted that the effect of this recommendation would be that printers who, in the normal course of their business of everyday printing, print written publications will have a defence. But where they are put on enquiry as to the potentially defamatory character of the work complained of, or are in any way negligent in failing to enquire (about the defamatory character) in relation to any given work, they would continue to be liable. In fact, the committee added that if the experience of distributors is any guide, the recommendation, if accepted, would ensure that printers are normally not joined as defendants.

(g) As regards translators, the Faulks Committee recommended<sup>10</sup> the enactment of the following clause, providing for a defence which "would be equivalent in nature to qualified privilege":

Publication by any person of a translation made by him (whether oral or written) shall be protected by qualified privilege provided that the words complained of have been translated in accordance with the sense and substance of the original.

(h) Having noted the recommendation of the Faulks Committee (summarised above), the Second Press Commission in India recorded the following conclusion on the subject :

We suggest that the recommendations of the Faulks Committee with regard to the liability of distributors (*sic*) and printers be incorporated in our law. As regards translation, we are of the view that protection

8. *Faulks Committee, Report*, Cmd. 5905, p. 81, para 294 (1975).

9. *Id.* at 81-85, para 293-315.

10. *Id.* at 84-85, para 311-312.

should be given to the translator, *but not to* the publication of offending matter in translation.<sup>11</sup>

(i) The suggestion made by the Second Press Commission should be implemented.

6. *Multiple publication* : Liability for the multiple publication of defamatory matter should be limited by enacting a suitable provision which will bar successive legal proceedings for multiple publication except in certain cases. The provision could be somewhat on the following lines :

Where, in respect of a defamation, proceedings instituted by a person have been concluded either by settlement, judgment, or final order at a trial or by discontinuance, the plaintiff shall not be permitted to bring or continue any proceedings against the defendant in respect of the same or any other publication of the same matter, except with the leave of the court and on notice to the defendant.

(*Explanatory note* : On multiple publication, the Second Press Commission endorsed the following recommendations made by the Australian Law Reforms Commission :

The rule as to separate publication should be abrogated and a single publication rule adopted. The multiple *publication of particular material* should give rise to one cause of action only but, in such an action, the plaintiff should have relief appropriate to all publications. This rule could, however, give rise to unsatisfactory results where a plaintiff was unaware of the extent of the multiple publications and, therefore, did not seek appropriate remedies. The suggestion of allowing the court a discretion to permit the plaintiff to bring further proceedings in respect of the same matter is a flexible approach, but it may result in uncertainty. Even after an action is determined, a defendant may be in doubt whether further proceedings may be brought against him. The position of a plaintiff who discovers that a publication received wider coverage than was first apparent is not entirely clear. Certainty is important to the parties. Moreover, it is desirable that the courts have full information as to the extent of publication in determining relief in the first action. The defendant is likely to know the extent of publication; he should be encouraged to disclose it. *Accordingly, the plaintiff should be limited to a single action in respect of a multiple publication, but only to the extent disclosed in the action.* The plaintiff will have a separate right of action in respect of any additional publication. This will automatically cover any further publication after the first trial, as well as any publication which the defendant failed to admit. The provision will leave no doubt as to the rights of the

11. *Supra* note 1 at 48, para 83, last sub-paragraph.

parties. A defendant who makes full disclosure will be liable, if at all, for the multiple publication once for all. A plaintiff who discovers undisclosed material is certain that the court will entertain his action.<sup>12</sup>

The recommendation of the Faulks Committee (in the United Kingdom) on the subject was as under :

Where proceedings by a person in respect of a defamation have been concluded either by settlement, judgment or final order at a trial or by discontinuance, the plaintiff should not be permitted to bring or continue any proceedings against the defendant in that action in respect of the same or any other publication of the same matter, except with the leave of the court and on notice to defendant.<sup>13</sup>

Such a reform of the law as recommended by Faulks Committee on the subject is eminently sensible, and is worth adopting in India.)

7. *Unintentional defamation* : For "unintentional defamation" (i.e. a statement which was not intended to defame the plaintiff, but which turns out to be defamatory by reason of facts not known to the maker of the statement) there should be no liability. Such a provision should be enacted in our law. In drafting it, assistance can be drawn from section 4 of the Defamation Act, 1952 (U.K.). Section 4, in brief, renders immune a person who has published words alleged to be defamatory of another person, if he proves that the words were published by him innocently in relation to that other person and if he has made an "offer of amends", as provided in the section.

(*Explanatory note* : 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.

Section 4 of the Defamation Act, 1952 relating to unintentional defamation now deals with the subject.

The section is worth adopting in India.

It should be mentioned that there is a Madras case<sup>14</sup> which does not follow the common law rule relating to unintentional defamation. The appellant in

12. *Id.* at 47-48 (emphasis added).

13. *Supra* note 8 at 80, paras 289-291.

14. *T.V. Ramasubba v. A.M. Ahmed Mohideen*, A.I.R. 1972 Mad. 398, 405, paras 10-13.



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.<sup>15</sup>

It was, however, held by the Madras High Court that the rule laid down by the majority of the House of Lords in the judgment mentioned above is not applicable in this country.

As it had been 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 should not be made liable for damages.

There were two earlier rulings<sup>16</sup> taking the same view, which the High Court followed in the above case.

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

8. *Truth as a defence to civil action for defamation*: As regards civil liability, the truth of a defamatory statement should give immunity from liability (as at present), and it is not necessary to further insist in "public good".

As regards criminal liability, both truth and public good should be proved, as at present.

(*Explanatory note*: The Second Press Commission rejected the suggestion that truth should not be a complete defence unless accompanied by public interest.<sup>17</sup> The Press Council agrees with this approach.

As regards criminal liability, mere truth should not be a defence and "public good" should also be required, as at present).

9. *Partial justification*: A provision similar to section 5 of the Defamation Act, 1952 (U.K.), to confer protection on a statement which is true in part, may be enacted. (Section 5 is quoted in the explanatory note below).

(*Explanatory note*: At common law, the defence of "justification" suffered from one drawback, in that, a person taking this defence had to prove

15. *Hulton v. Jones*, (1910) H.L. 20.

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

17. *Supra* note 1 at 46, para 77.

the truth of the *whole libel* i.e., of every defamatory statement contained in the words complained of. He remains liable to pay damages in respect of the part not justified, if that part is defamatory and materially injures the reputation of the plaintiff. This is the position if no other defence is established.<sup>18</sup> The Porter Committee in the United Kingdom recommended that in a defence of justification (truth), the defendant should be entitled to succeed if he proves that so substantial a portion of the defamatory allegation is true as to lead the court to the view that any remaining allegations which had not been proved to be true did not add appreciably to the injury to the reputation of the plaintiff. Section 5 of the Defamation Act, 1952 now provides as under :

*Justification*—In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved, if the words not proved to be true do not materially injure the plaintiff's reputation, having regard to the truth of the remaining charges.

A similar provision should be adopted in India.)

10. *Fair Comment* : The defence of "fair comment" (honest comment on a matter of public interest) should be available, if the comment is "fair" (honest), having regard to such of the factual allegations on which the comment is based as are proved to be true, *even if the other factual allegations made are not proved*. For framing the necessary provision, section 6 of the Defamation Act, 1952 may be drawn upon. (The section is quoted in the explanatory note below).

(*Explanatory note* : (a) A criticism generally made in the United Kingdom of the defence of fair comment was that the defence was unduly technical. The defence was available only in respect of expressions of opinion, and the portions of the statements that were in the nature of "assertions of facts" had to be proved strictly. In other words, the law envisaged a strict compartmentalisation between "facts" and "opinions". Now, normally, defamatory matter would not consist solely of expressions of opinion. Facts and expressions of opinions would be mixed up. Hence a strict adherence to the rule caused injustice. The Porter Committee noted this defect, and recommended<sup>19</sup> that the basis of the defence of fair comment should be broadened in a manner similar to that recommended by that committee in relation to the defence of justification.<sup>20</sup>

18. *Halsbury's Laws of England*, *supra* note 4 at 44-45, para 87.

19. *Porter Committee Report*, para 83-91, and *Summary of Recommendations* (No. 6).

20. *Supra*, para 9.

(b) Section 6 of the Defamation Act, 1952 now provides as under :

*Fair Comment* : In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved, if the expression of opinion is fair comment, having regard to such of the facts alleged or referred to in the words complained of as are proved.

A similar provision should be enacted in India.)

11. *Reports in newspapers of certain proceedings* : In regard to newspaper reports of certain proceedings, immunity from liability is conferred by section 7(1) to 7(5) of the Defamation Act, 1952 (read with the relevant schedule). That provision should be adopted in the Indian law with necessary adaptations, subject to an important exception for the situation dealt with in the explanatory note below, under "Exception".

(*Explanatory note* : In the United Kingdom, substantially implementing the recommendations made by the Porter Committee on Defamation (1948), the Defamation Act, 1952 expands the qualified privilege available in respect of reports of certain proceedings in newspapers. The relevant provisions are contained in section 7(1) to 7(4) (read with the schedule to the Act), which enumerate the proceedings for which qualified privilege is available, and in section 7(5) of the Act which incorporates a definition of "newspaper" that is wider than the earlier law. The qualified privilege is a wide one in respect of reports listed in part I of the schedule to the Act, in the sense that these reports are privileged without the need for explanation or contradiction. The qualified privilege, however, is subject to an explanation or contradiction in the case of reports enumerated in part II of the schedule to the Act.

These provisions may be adopted in India, subject to the exception indicated below.

*Exception* :

- (i) However, any privilege to be conferred in regard to defamation should not be construed as conferring also a privilege to publish *indecent* matter. This should be made clear, while drafting the relevant provision.
- (ii) There is also need to exclude, from such protection, matter the publication of which might constitute an offence against religion under the Indian Penal Code. This would correspond to "blasphemous" matter, excluded from the English provision.<sup>21</sup>

21. S. 3 of the Law of Libel Amendment Act, 1888 (Eng.)

## Punishment, Jurisdiction and Procedure

12. *Survival of cause of action for defamation* : Causes of action for defamation should survive after the death of the person wronged or wrong-doer. Section 306 of the Indian Succession Act, 1925 should be amended for the purpose. (The section is quoted in the explanatory note below.)

(*Explanatory note* : There are certain anomalies in the present Indian law as to the survival of causes of action for defamation after the death of the person wronged or of the wrong-doer. Section 306 of the Indian Succession Act, 1925 (omitting the illustration) reads as under :

All demands whatsoever and all right to prosecute or defend any action or special proceedings 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.

Section 306 of the Indian Succession Act reminds one of 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 persons seems to have been linked with the *criminal flavour* of early tort remedies.<sup>22</sup> The maxim was originally introduced to prevent *action of a penal character* like trespass and its offshoots, from being brought after the death.

Application of the doctrine to defamation is an anomaly. Section 306 of the Succession Act should, therefore, be amended so as to allow survival of causes of a action for defamation, even after death.

It may incidentally, be mentioned that in Kerala, section 306 of the Succession Act in so far as it relates to actions in tort<sup>23</sup> has been abrogated).

13. *Punishment for defamation* : (a) Under section 500 of the Indian Penal Code, the punishment for defamation should be *simple* imprisonment up to two years, or fine or both. It was recommended by the Law Commission of India that the punishment should be imprisonment of *either description* for two years or fine or both.<sup>24</sup> The Press Council does not agree with this recommendation.

22. Fleming, *Torts* 695 (1965).

23. Kerala Torts (Miscellaneous Provisions) Act 1976 (8 of 1977) ; see 1977 K.L.T. (Journal) 37, 39.

24. Law Commission of India, 42nd Report (Indian Penal Code) 331, para 21.5 (June 1971).

(b) However, as recommended by the Law Commission, where the defamatory statement has been published in a newspaper, the convicting court should have power to direct that the judgment (or a part thereof) shall be published in such newspaper as the court may specify, the cost of publication to be recovered from the convicted person. The Second Press Commission also expressed its agreement with this recommendation of the Law Commission.<sup>25</sup> The recommendation of the Law Commission (except as to the nature of imprisonment) deserves implementation.

14. *Jurisdiction and procedure* : (a) In regard to summoning (in court) persons accused of defamation, the Second Press Commission, recommended a suitable amendment of section 205(1) of the Code of Criminal Procedure, 1973 so as to provide that where the person accused of defamation is an editor, publisher or proprietor of a newspaper or periodical, the magistrate should dispense with the personal attendance of the accused, unless there is a *prima facie* case of malice.<sup>26</sup> However, there will be no interference with the wide discretion conferred by section 205(2) of the code on the magistrate to direct personal appearance of the accused at any subsequent stage of the proceedings or to dispense with his personal appearance at any stage.

The above recommendations should be implemented. Further, the same approach should be adopted in regard to writers (in newspapers or periodicals) and reporters (of newspapers or periodicals).

15. *Limitation* : Under section 468 of the Code of Criminal Procedure 1973, the period of limitation for a prosecution for defamation is three years. The period should be reduced to one year in the case of defamation committed by printed work.

16. *Radio and Television* : The above recommendations are intended to apply to matters broadcast on the radio and television also.

25. *Supra* note 1 at 44-45, para 73.

26. *Id.* at 47, para 80.

