

CHAPTER 3

The Legal Framework

THE LAW of defamation, pertaining to civil liability, is uncodified in India. On a large number of matters, such as the ingredients of the tort, the principles of liability, the defences available in civil actions for defamation and the burden of proof of various defences, courts broadly follow the rules of the common law.¹

There are, however, a few important exceptions to the above mentioned general proposition. For example, most High Courts do not follow the English rule that slander is not actionable without special damage.²

In so far as the common law rules have proved to be productive of hardship, injustice or anomaly, attention must be paid to the need for reform. It is in this context that the statutory modifications effected elsewhere in the law of defamation require consideration. The reasons justifying these changes are substantially applicable in India. The experience of the working of common law rules in the United Kingdom broadly tallies with the position in India also. Professional opinion in India (*i.e.*, views of scholarly authors and media men) does not seem to necessitate a different approach in this regard.

This does not, of course, mean that there should be a slavish imitation of English law either in the areas where it has been reformed or in other areas. Some features of the English law of defamation are unsatisfactory and ill-suited to Indian conditions. In the subsequent chapters, this aspect will, of course, be borne in mind while making concrete suggestions.

Such points recommended by the Faulks Committee as are relevant to India will, of course, be dealt with in due course. The recommendations made by the Second Press Commission in India in its report will also be considered at the appropriate place.

Criminal Law

Coming to criminal liability, section 499 of the Indian Penal Code codifies the criminal law of defamation. The main paragraph of the section defines the offence in terms which definitely require a *mens rea*. The requisite mental element is constituted by an intention to harm reputation, or by knowledge that it would be harmed. Certain special situations, however, provide a defence to the criminal liability that would otherwise arise. Amongst themselves, these excep-

1. For the principal rules see *infra* p. 12,

2. Chapter 4, *infra*.

tions exhaust almost all the traditional defences to proceedings for defamation. As in civil liability, the defences are as important as the gist of the main section. The exceptions to the section are, therefore, as important as the main paragraph. In fact, they are invoked more often than the main provisions.

It is also to be noted that in India, the aggrieved person may proceed both in criminal and in civil law simultaneously, or bring a civil action after the criminal proceeding and *vice versa*. There is no question of election between civil and criminal remedy. An aggrieved person has both the remedies.³ In a Bombay case,⁴ the defendant was convicted in the criminal court for the offence of defamation and then the suit for the tort of defamation was brought for damages. Damages were granted by the court, though the first conviction was taken into consideration while considering the *quantum of damages to be awarded*.

3. *Asoke Kumar v. Fadha Kasto*, A.I.R. 1967 Cal 178.

4. *Hirabai Jehangir v. Dinsha v. Edulji*, A.I.R. 1927 Bom. 22.