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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

COMPARATIVE ANALYSIS OF DEFAMATION LAWS ACROSS UK, USA & INDIA

AUTHORED BY - SUVEER DUBEY

STATEMENT OF PROBLEM

In the era of interconnected global communication, the legal landscape surrounding defamation varies significantly across jurisdictions, leading to a complex web of divergent standards and consequences for individuals and entities alike. This research aims to address the critical need for a comprehensive understanding of the variations in defamation laws worldwide and their impact on the freedom of expression, media practices, and cross-border communication.

The research will include in-depth analysis and comparison of instances of defamation from diverse jurisdictions, highlighting notable precedents, legal interpretations, and their implications for the development of defamation laws. With the rise of digital communication, the study will also analyse the challenges posed by defamation laws in the context of online platforms. This involves examining issues of jurisdictional reach, enforcement, and the clash of legal standards in across the sphere.

By delving into these aspects, the study seeks to provide a nuanced understanding of the challenges and opportunities presented by defamation laws around the globe.

RESEARCH QUESTIONS

- a) Whether the meaning of defamation is uniform across various jurisdictions in terms of defining and identifying defamatory statements?
- b) Whether there are variations in legal standards, such as the burden of proof and available defences, impact the balance between protecting freedom of expression and safeguarding against false or damaging statements in defamation cases across varying legal systems?
- c) Whether defamation laws influence journalistic practices and ethical considerations, especially in the context of reporting on public figures and contentious issues?

- d) Whether there are challenges and opportunities for defamation laws present for cross-border communication?

RESEARCH OBJECTIVES

The primary objective of this research paper is to conduct a comprehensive comparative analysis of defamation laws across three critical diverse jurisdictions, aiming to elucidate the variations in legal frameworks, their impact on fundamental rights, and the broader implications for freedom of expression, media practices, and cross-border communication. Through a meticulous examination of key elements such as definitions, standards of proof, available defences, and the evolving challenges in the digital era, the research seeks to provide a nuanced understanding of the complexities surrounding defamation laws on a global scale.

Ultimately, the objective is to contribute valuable insights that can inform legal discourse, guide potential reforms, and foster a more coherent and equitable international framework for addressing defamation in an interconnected world. By achieving these objectives, the research paper seeks to contribute to a deeper understanding of the global landscape of defamation laws, facilitating informed discussions and potential reforms to enhance legal clarity, protect fundamental rights, and promote responsible communication in an era of heightened global connection.

HYPOTHESIS

Divergent defamation laws will exert a discernible influence on media practices, shaping how journalists and media organizations report on public figures and contentious topics.

Further, a uniform approach to defamation regulation may not adequately address the diversity of legal traditions, cultural norms, and societal values across jurisdictions.

CHAPTER-2

CONCEPT OF DEFAMATION

The law of defamation provides safeguard for an individual's reputation, a value considered by some to be even more cherished than one's own life. In legal terms, defamation entails making any statement that tarnishes an individual's character, with the requisite mens rea or guilty mind.¹ Defamation, causing harm to an individual's reputation, is deemed both a criminal offense and a civil wrong.

Originating from English law, the classic definition, according to Mr. Justice Cave in the case of *Scott v. Sampson*, defines defamation as a "false statement about a man to his discredit." Salmond similarly describes defamation as the wrongful act of publishing a false and damaging statement about another person without lawful justification.

The Law of England and Wales, America and India, all essentially share the same idea and philosophy at their heart regarding the underlying concept of Defamation, however, the application of the protection varies widely in all three countries. The application of the concept vary solely to the differing ideologies in the lands. America valuing its First Amendment, while English respecting one's reputation and India akin to England revering reasonable restriction to the freedom of speech.

In India, the law of civil defamation, kin to English and other common law jurisdictions, is not codified and is primarily based on precedent. While in the backdrop, the American law is more so codified to respect the existing constitutional right granted to its citizens. However, civil defamation now has been completely codified, over the recent years. Conversely, criminal defamation in India is codified in sections 499 to 502 of the Indian Penal Code. However, in both the UK and the US criminal libel mostly remains uncoded.

In the recent times, Defamation has more or less taken on a civil colour with a criminal intent, with more countries taking on civil actions over criminal.

¹ Avtar Singh and Prof (Dr) Harpreet Kaur, *Introduction to the Law of Torts and Consumer Protection* (LexisNexis Butterworths Wadhwa, 4th edn., 2020).

CHAPTER-3
COMPARATIVE ANALYSIS OF THE LAWS OF ENGLAND,
USA and INDIA

England and the United States share a legal heritage influenced by principles that trace back at least 800 years to the era of the Magna Carta. Even after the American colonies proclaimed independence from England in 1776, English legal norms continued to be widely observed in the new nation, unless they conflicted with American institutions or novel concepts. Until as late as 1964, American libel law closely resembled English libel law, as both countries primarily defined defamation law through common law and court decisions rather than statutes, constitutional principles, or the UK's adherence to freedoms guaranteed by the European Convention on Human Rights (ECHR). However, over the past five decades, the trajectories of England and the United States in the realm of defamation have notably diverged. The disparities are so pronounced that in recent years, U.S. courts have declined to enforce English judgments related to claims of libel and slander.

3.1) ENGLISH LAW –

The English legal framework pertaining to defamation is primarily defined by two significant statutes, namely the Defamation Acts of 1952 and 1996. Within English law, a key distinction exists between libel and slander, with two main reasons for this differentiation. Firstly, libel, as opposed to slander, can lead to criminal charges, making it an offense. In contrast, slander is not considered a criminal offense and is only actionable in specific circumstances. Therefore, libel is inherently actionable per se. Secondly, in most instances of slander, one must demonstrate "special damage" to establish a case. In terms of tort law, slander is only actionable in exceptional cases where special damage can be proven. Consequently, in England, slander is primarily considered a civil wrong. It's worth noting that pursuing a civil action can be more demanding compared to criminal proceedings.

3.2) AMERICAN LAW –

In the United States, defamation law differs significantly from its European counterpart, primarily due to the enforcement of the First Amendment, which protects freedom of religion, the press, and expression. The United States introduced the "SPEECH Act" in 2010, a law that prevents American courts from recognizing or enforcing foreign judgments related to libel and slander when those

judgments do not provide as much protection for speech and press as afforded by the First Amendment of the United States Constitution and state laws.

3.3) INDIAN LAW-

In India, there is no distinction between libel and slander; both are considered criminal offenses. To better comprehend this, the offenses can be categorized into two types: criminal and civil defamation.

As a criminal offense, the Indian Penal Code (IPC) under Chapter XXI, sections 499-502, safeguards an individual's or person's reputation. Defamation against the state is addressed in section 124A (Sedition), section 153 deals with defamation of a community (Riot), and section 295A pertains to hate speech and outraging religious sentiments (Hate Speech). Section 499 of the IPC² defines defamation, involving spoken or published imputations about any person with the intent to harm their reputation or the knowledge that such imputation will cause harm. This broad definition is subject to four explanations and ten exceptions. If found guilty under section 499, the punishment is stipulated in section 500, which includes simple imprisonment for up to two years, a fine, or both.

The Criminal Procedure Code (CrPC) outlines the procedural aspects of the law, stating that the offense is non-cognizable and bailable. Accused individuals generally would not be taken into custody without a warrant. An aggrieved person typically needs to file a complaint before a magistrate rather than filing a police complaint.

Regarding the 'truth defense,' while truth is generally a defense in civil defamation, under criminal law, it is a defense to defamation only in specific circumstances, assuming it is demonstrably true. This makes individuals susceptible to being found guilty of defamation under the IPC even if their statements were truthful. Regarding defamation as a tort under the law, the primary focus is typically on libel, which involves written defamation, rather than slander, which pertains to spoken defamation. To establish that a statement qualifies as libel, it must meet certain criteria: (i) it must be false, (ii) it must be in written form, (iii) it must be defamatory in nature, and (iv) it must be published.

One noteworthy aspect of defamation as a tort is that it only constitutes a wrong when the defamatory

² The Indian Penal Code, 1860 (Act 45 of 1860), s. 499

statement harms the reputation of a living person. In most instances, this means that defaming a deceased person is not considered a tort, as a general rule requires the plaintiff to prove that the defamatory words are about them. However, this does not imply that there can be no legal action if a deceased individual is defamed. For instance, if a defamatory statement adversely affects the reputation of a deceased person's heir, a defamation lawsuit can be pursued³. Furthermore, if a defamation lawsuit is filed and defamation is proven, damages are typically awarded to the plaintiff, typically the person who was defamed. Additionally, an individual concerned about being defamed in a publication may seek an injunction to prevent such a publication⁴.

Similarities between defamation laws of English, Indian and American Law:

Statements that are "substantially true" are generally not subject to legal action.

- 1) Defamatory communications must be published to a third party other than the plaintiff to be considered legally actionable.
- 2) Whether a statement is defamatory is determined from the perspective of a reasonable person.
- 3) Printers, distributors, and sellers of publications are typically not held liable for defamation if they are unaware of the libelous content.
- 4) Liability may be imposed in certain circumstances for failing to remove a defamatory statement posted by another.
- 5) Aggregate communications are subject to a single publication rule for statute of limitations purposes.
- 6) The originator of a defamatory statement may be responsible for damages resulting from foreseeable republication. Therefore, the sender of a defamatory letter may be liable if the letter is read by a third party other than the intended recipient who could reasonably foresee reading it.
- 7) Slanderous imputations of a serious criminal offense or professional incompetence may be actionable without the need to prove special damages.

³ Indira Jaising, "It is Time to Get Rid of the Law of Criminal Defamation", *The Wire*, May 16, 2016, available at: <https://thewire.in/law/it-is-time-to-get-rid-of-the-law-of-criminal-defamation> (last visited on Oct. 5, 2023).

⁴ Vincent R. Johnson, "Comparative Defamation Law: England and the United States" 24 *The University of Miami International and Comparative Law Review* 4 (2016).

In summary, while the defamation laws in England and the United States differ significantly, there are some common principles and elements that both legal systems share.

Difference between English, American and Indian defamation laws-

It lies in the regulatory provisions. In England, a comprehensive framework of common law and statutory principles governs all cases of libel and slander. In contrast, in the United States, tort law is primarily governed by individual state laws, resulting in variations across the fifty states and the District of Columbia. Consequently, it is often more straightforward to articulate the substance of English law than to encapsulate the content of corresponding American principles. Notable distinctions exist between English and American law concerning the burden of proof regarding truth or falsity, the establishment of culpability, the actionability of opinions, the relevance of a statement to matters of public interest, the availability of jury trials, and the extent of remedies.

The subsequent sections elaborate on these key distinctions:

- A. **Basic Choice of Values:** In numerous aspects, English defamation law and Indian law lean in favour of the plaintiff, whereas American defamation law tends to be more favourable to the defendant. This divergence stems from a fundamental choice of values. The legal framework governing defamation in any society mirrors "the assumptions of that society respecting the relative importance of an untarnished reputation, on the one hand, and an uninhibited press, on the other. English Law is Pro Reputation, Pro Plaintiff: The inclination in English law is towards protecting reputation and favoring the plaintiff in defamation cases. In contrast, American law leans towards promoting freedom of speech and protecting defendants, especially in cases related to matters of public interest. In numerous instances, the U.S. legal system has determined that the value of unrestricted expression and robust public debate often outweighs compensating plaintiffs for harm resulting from defamatory statements. In contrast, Indian Law
- B. **False and Faulty:** As previously mentioned, England, India and the United States agree that a plaintiff cannot succeed in a libel or slander action if the expressed or implied statement is true or substantially true. However, the three jurisdictions differ regarding the burden of proof for the truth or falsity of the defamatory statement and whether the plaintiff must demonstrate

- the defendant's fault in relation to its falsity (i.e., acted knowingly, recklessly, or negligently)⁵.
- C. Presumed Falsity vs. Presumed Truth: In England and India, the presumption is that a defamatory statement is false, and truth is considered a defence to be asserted and proven by the defendant. In the United States, there is generally no presumption of the falsity of a defamatory statement. Instead, the plaintiff bears the responsibility of proving the statement's falsity, making it challenging for a plaintiff to establish libel or slander under American law.
- D. Strict Liability vs. Fault as to Falsity: Indian and English law favours libel and slander plaintiffs not only because defamatory statements are presumed false but also because defendants are held strictly liable if no affirmative defense is established. The plaintiff is not required to prove that the defendant knew the statement was false or acted recklessly or negligently regarding its truth or falsity. In the U.S., strict liability is rarely imposed in tort actions, and it is not a viable option. Americans find the idea of imposing strict liability for oral or written statements startling as it poses a significant threat to the principles of free speech and a free press protected by the First Amendment. Especially concerning speech on matters of public concern, strict liability would impede free expression, contrary to the U.S.'s commitment to uninhibited, robust, and open debate⁶.
- E. In the United States, defamation cases are classified into three categories, each dictating the level of fault required for falsity. For public officials or figures addressing public concerns, "actual malice" is necessary, implying the defendant acted with knowledge of falsity or reckless disregard for the truth. Private individuals in public interest cases need to demonstrate the defendant's negligence regarding falsity, and for purely private matters, the U.S. Supreme Court has yet to establish a constitutional standard, with many states demanding proof of negligence. Contrastingly, English law rejects such categorical distinctions in defamation cases. The House of Lords argues that categorizing cases, such as political speech, conflicts with the European Court of Human Rights' jurisprudence, which calls for a nuanced, fact-specific balancing in cases of competing rights and interests. While this approach seeks perfect justice, it is seen from an American standpoint as undermining legal certainty, depriving potential defendants, including the media, of fair notice.
- F. England, India and United States grapple with whether statements of opinion can be grounds

⁵ Arshdeep Ghuman, "Comparative Analysis of Defamation Laws in England and USA" 5 *Journal of Emerging Technologies and Innovative Research (JETIR)* 37 (2018).

⁶ *Ibid.*

for defamation. Both recognize that opinions cloaked as such may imply facts and be actionable if the implied facts are false. However, they differ in their legal analysis. In the U.S., this analysis is part of the plaintiff's case, with the burden of proving false statements of fact resting on them. In England and India, it is typically addressed as an affirmative defense, placing the burden of proof and risk of non-persuasion on the defendant⁷.

Reynolds Privilege: In *Reynolds v. Times Newspapers* (1999), the House of Lords introduced a "qualified privilege for responsible reporting on matters of public interest." This privilege, allowing for "responsible journalism," marked a notable exception to the strict liability principle in English libel law, where proving the truth of a defamatory statement is typically required to avoid liability. The Reynolds privilege acknowledged the importance of responsible reporting in the context of public interest. Regarding the 2013 Statutory Public Interest Defense, the term "public interest" is not explicitly defined in the Defamation Act of 2013 and has been left for interpretation by the judiciary⁸.

Hence the above hypothesis is proved. There is has been an influence on media practices, shaping how journalists and media organizations report on public figures and contentious topics. Further there are some recommendations discussed further for improvement in defamation law all across the country.

CHAPTER - 4

CONCLUSION

In summary, our comparative analysis of defamation laws across various jurisdictions has revealed a legal landscape marked by significant differences and nuances. These disparities encompass how defamation is defined, the legal standards applied, and the methods of enforcement within each jurisdiction. These variations are not merely theoretical distinctions but have real-world consequences, affecting how individuals can safeguard their reputations, express themselves freely, and how media organizations operate.

⁷ Bhairav Acharya, "Criminal Defamation and the Supreme Court's Loss of Reputation", *The Wire*, May 14, 2016, available at: <https://thewire.in/law/criminal-defamation-and-the-supreme-courts-loss-of-reputation> (last visited on Oct. 8, 2023).

⁸ Durga Das Basu, *Law of the Press* (Lexis Nexis, 5th edn., 2010).

This research underscores the need for carefully considered and context-specific reforms. It highlights that a uniform, one-size-fits-all approach to defamation regulation is ill-suited to address the intricate interplay of cultural norms, legal traditions, and societal values that influence how defamation laws are implemented and perceived in different regions.

As we navigate an increasingly interconnected global communication landscape, it is imperative that policymakers, legal practitioners, and all stakeholders remain attentive to the insights derived from this analysis. The pursuit of a more coherent and globally harmonized legal framework for defamation laws is crucial to strike a balance between the protection of reputation and the preservation of freedom of expression in our interconnected world. The research serves as a valuable resource for shaping informed discussions, reforms, and international cooperation in the realm of defamation regulation.

RECOMMENDATION

Based on the comprehensive analysis of defamation laws across diverse jurisdictions, several key recommendations emerge to enhance the effectiveness and coherence of these legal frameworks. First and foremost, we recommend fostering international collaboration and harmonization efforts to establish globally recognized principles for defamation laws. Such efforts should respect cultural diversity while providing a foundation for consistent and fair treatment across borders. Additionally, the ambiguous term "public interest" should be addressed by jurisdictions, aiming for precise and uniform definitions within defamation laws to reduce legal uncertainty and facilitate more consistent interpretation.

Striking an appropriate balance between protecting individuals' reputations and upholding the fundamental right to freedom of expression is paramount. Policymakers should ensure that defamation laws deter false statements while safeguarding robust public discourse. In the context of the digital age, flexible legal standards are necessary to address challenges posed by online platforms and cross-border communication.

Furthermore, advocating for media education initiatives and guidelines can promote responsible journalism and ethical reporting practices, fostering a culture of responsible communication.

Lastly, the reader recommends continuous dialogue among legal experts, policymakers, media representatives, and stakeholders to regularly review and update defamation laws to ensure their relevance, fairness, and alignment with evolving societal norms. These recommendations provide a roadmap for refining defamation laws to better accommodate the complexities of our interconnected world while upholding principles of justice, freedom, and responsible expression.

CHAPTER – 5

BIBLIOGRAPHY

Books:

- Indian Penal Code
- S.K. Sarvaria, Universal Law of Defamation and Malicious Prosecution Civil and Criminal, 14th Edn., Universal Law Publishing, Lucknow 2017
- K.M. Sharma & S.P. Mago, Ready Referencer On Defamation, Kamal Publishers, Lawman Series, Latest Edition 2020
- Mehrotra’s Commentary on Law of Defamation, Damages, Malicious Prosecution, 8th Edn., Delhi Law House, New Delhi, 2023
- Black Law Dictionary
- Dr. Avtar Singh, Introduction to the Law of Torts and Consumer Protection, 4th Edn., LexisNexis Butterworths Wadhwa.

Secondary Sources:

- Van Vechten Veeder, “The History and Theory of the Law of Defamation”, Columbia Law Review, Vol. 3, Issue 8, pp. 546-573
- “Critical Analysis of Defamation Laws in India”, E-Journal Legal Service India

Web sources:

- <https://journals.sagepub.com/>
- <https://rgnul.ac.in/>
- <https://www.nlb.gov.sg/>
- <https://www.researchgate.net/>