

DEFAMATION/ASR

- Defamation consists in injury to the reputation of a person.
- Mental suffering caused to the person defamed is the gist of this wrong.
- Lowering him in other's estimation.
- Defamation is the act of saying false things in order to make people have a bad opinion of someone.
- The plaintiff's right to reputation outweighs the right of free speech.

ENGLISH LAW

- English Law divides actions for defamation into Libel and Slander. Libel is a representation made in some permanent form ,e.g., writing, printing, picture, effigy or statute. Slander is the publication of defamatory statement in a transient form. In English Law, the distinction is material for 2 reasons:-
 1. Slander is only a civil wrong whereas a libel is both a crime and a tort
 2. Slander is actionable, save in exceptional cases, only on proof of special damage. Libel is actionable per se.

SLANDER=CONVEYED BY SPOKEN WORDS/GESTURES

INDIAN LAW

- Unlike English law, under Indian law, libel and slander are treated alike, both of them constitute a crime as well as a tort. Moreover, weight of various decisions is to make slander like libel, actionable per se.
- **ESSENTIALS OF DEFAMATION**
 1. The statement must be defamatory;
 2. The statement must refer to the plaintiff; and,
 3. The statement must be published

Sec 294 IPC-utter obscene words in a public place

The statement must be defamatory

- Whether a statement is defamatory or not depends **upon how the right thinking members of the society are likely to take it.** If the likely effect of the statement is the injury to the plaintiff's reputation, **it is no defence to say that it was not intended to be defamatory.**

The Innuendo(latent /secondary meaning/HIDDEN

/Concealed):-To say "**But King's second wife is good**" indicates that **the first wife is not good.** To say that **X is a honest man and he never stole my watch**

The Innuendo(latent /secondary meaning/HIDDEN /Concealed):-

- To say “*But King’s second wife is good*” indicates *that the first wife is not good*. To say that *X is a honest man and he never stole my watch* may be defamatory if the persons to whom the statement is made understand from this that X is a dishonest man having stolen the watch.
- “Come to my guest house in the evening”
"We need to go deeper"

The statement must refer to the plaintiff

- If the statement is taken to be referring to the plaintiff, the defendant will be liable and *it will be no defence that the defendant did not intend to defame the plaintiff.*
- If a newspaper publishes that *Rahul Singh, a resident of Mussoorie is convicted for bigamy and if there is a rahul Singh in Mussoorie not convicted for bigamy, he can bring an action for defamation.*

The statement must be published

- Publication means making the defamatory matter known to some person other than the person defamed. Sending the defamatory letter to the plaintiff is no defamation. If a third person wrongfully reads a letter meant for the plaintiff, the defendant is not liable. /When the defamatory matter is contained in a postcard or a telegram, the defendant is liable. /Communication of a matter defamatory of one spouse to the other spouse is defamation. /Every person who repeats the defamatory matter is liable in the same way as an originator, because every repetition is a fresh publication giving rise to fresh cause of action.

DEFENCES

1. Justification or Truth,
2. Fair Comment,
3. Privilege- Absolute or Qualified

1.JUSTIFICATION OR TRUTH

- Under the law of torts, truth of the defamatory matter is complete defence. The defence is available even though the publication is made maliciously. Under Criminal Law, merely proving that the statement was true is no defence. First exception to sec. 499,IPC requires that besides being true, the imputation must be shown to have been made for public good.

Fair Comment

Required Essentials:-

- 1. It must be a Comment, i.e., an expression of opinion rather than assertion/statement of fact;**
- 2. The comment must be fair; and**
- 3. The matter commented must be of public interest**

1.COMMENT:-

- For example, 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. These are only comments based on Z's book and A will be protected if he has said that in good faith. 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 man, who freely indulges in sensual pleasures without regard to moral principles).It is not a comment on Z' book but is rather/astatement of fact

Comment(continued):- It is also essential that the facts commented upon must be either known to the audience addressed or the commentator should make it known along with his comment . For example, X says that “ A has been held guilty of breach of trust and, therefore, he is a dishonest man”, the latter words are a comment on the former

ii) **The comment must be fair:** The comment cannot be fair when it is based upon untrue facts. If due to malice on the part of the defendant, the comment is a distorted one, the comment ceases to be fair and no defence. **(1. Truthful/2. No Malice)**

iii) The matter commented upon must be of public interest

- Administration of Govt. departments, public companies , courts, conduct of public men like ministers or officers of State, public institutions and local authorities, public meetings , pictures, theatres, public entertainments, textbooks, novels , etc.

3 PRIVILEGE:-

The law treats some occasions to be privileged and a defamatory statement made on such occasions is **not** actionable . Privilege is of 2

kinds: (1)ABSOLUTE,(2)QUALIFIED

ABSOLUTE PRIVILEGE: In matters of absolute privilege, no action lies for the defamatory statement even though the statement is false or has been made maliciously.(Can be false/made with malice)

ABSOLUTE PRIVILEGE:-(i)Parliamentary Proceedings

(ii) Judicial Proceedings(judges,counsels,witnesses,or parties, for words written/spoken in the course of)

(iii) State Communications.

QUALIFIED PRIVILEGE:-Unlike the defence of absolute privilege, in this case it is necessary that the statement ***must have been made without malice.***

(i)Statements should be made in discharge of a duty or protection:- Former employer to new employer/ creditor to creditor/Interview Board/DPC

(ii)Reports of Parliamentary, Judicial or other public proceedings(***truthful/without malice /public good***)

Arun Jaitley- Arvind Kejriwal - Ram

Jethmalani

- Jaitley had filed a defamation suit seeking Rs 10-crore in damages after Kejriwal and five other AAP leaders accused him of alleged irregularities and financial bungling in the DDCA, of which Jaitley was the president for about 13 years until 2013.
- Union Finance Minister Arun Jaitley sued Delhi Chief Minister Arvind Kejriwal today under an additional defamation suit worth Rs 10-crore, after the latter's Counsel Ram Jethmalani confirmed that Jaitley was called a 'crook' after being instructed by his client to do so./ Jethmalani accused Jaitley of being 'guilty of crimes and crookery'

CONSUMER PROTECTION ACT, 2019 /KEY CHANGES/ASR

- Who is a Consumer?

- A consumer is defined as a person who buys any good or avails a service for a consideration. It does not include a person who obtains a good for resale or a good or service for commercial purpose. It covers transactions through all modes including offline, and online through electronic means, teleshopping, multi-level marketing or direct selling.
- **2 FORUMS= Need not pay Ad valorem Court fee**

Covers E-Commerce Transactions

- The New Act has widened the definition of 'consumer'. The definition now includes any person who buys any goods, whether through offline or *online transactions, electronic means, teleshopping*, direct selling or multi-level marketing. The earlier Act did not specifically include e-commerce transactions, and this lacuna has been addressed by the New Act.

Applicability to product service providers, electronic service providers and endorsers

- Under the Old Act, an aggrieved consumer could file complaints against the manufacturer or trader of the purchased good (which also included the seller, distributor, or packer of goods) and the service provider.
- However, the Act has introduced two new definitions namely a '*product service provider*' (one who services the purchased product/good) and an '*electronic service provider*' (one who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes online aggregators, intermediaries, e-marketplaces, online auction sites etc.).

Right to file a complaint from anywhere

- The jurisdiction of the Consumer Commissions has been expanded to allow complaints to be made where the complainant resides or personally works for gain, as opposed to the 1986 Act where complaints had to be instituted where the opposite party resides or conducted business, or where the cause of action arose.
- **E-Filing of Complaints:** The New Act also contains enabling provisions for consumers to *file complaints/notices electronically and for paying the required fee digitally*.

Right to seek a hearing using video conferencing

- Any complaint will be presented before the district commission based on an affidavit and documentary evidence placed before it. If an application has been forwarded by a consumer for hearing through video conference, the commission can allow for this provision

Pecuniary Jurisdiction

Forum

District Commission

Old Act: Value of goods or services and compensation, if any claimed *does not exceed Rs. 20 lakhs*

New Act: Value of goods or services paid as consideration *does not exceed Rs. 1 crore*

State Commission

Old Act: Value of goods or services and compensation, if any claimed *is more than Rs. 20 lakhs but does not exceed Rs. 1 crore*

New Act: Value of goods or services paid as consideration *is more than Rs. 1 crore but does not exceed Rs. 10 crores*

National Commission

Old Act: Value of goods or services and compensation, if any claimed *exceeds Rs. 1 crore*

New Act: Value of goods or services paid as consideration *exceeds Rs. 10 crores*

Money that the consumer has paid

- Another crucial change says that now the money spent on buying the product till that time will determine the value of the case as opposed to the previous parameter of total value of the purchased goods/service. “Say something is bought on discount, it’s only fair that the amount the consumer has paid is the determiner in place of the MRP,”

(a) Establishment of the Central Consumer Protection Authority

- Under the old regime, no authority or institution was designated to initiate action to prevent or curb unfair trade practices and consumer rights violations.
- The Act now provides for the establishment of a central regulatory body called the Central Consumer Protection Authority (**Central Authority**).
- The CCPA is established to address issues related to consumer rights, unfair trade practices, misleading advertisements and impose penalties for selling faulty and fake products.
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CCPA

- **The authority may:**
- **Direct recall of food products, which are not in adherence with the standards prescribed by the food safety authority and other regulators in India. Nestle India Ltd. had to recall its popular product Maggi after a ban was imposed by the Food Safety and Standards Authority of India.**
- **Direct recall of vehicles in the automobile sector on account of faulty spare parts or manufacturing defects. Currently, automakers recall products based on a voluntary industry protocol. Recently, Maruti Suzuki Ltd. recalled vehicles on account of faults in their fuel systems.**
- **Amway, a direct seller in India had to recall its tablets and products under the Nutrilite brand pursuant to directions issued by the food regulator.**

CCPA

- The Central Authority can also initiate an inquiry into violations of consumer rights or unfair trade practices, either *suo motu* or on receipt of a complaint or as directed by the Central Government.
- **Broadly, regulatory moves of CCPA will be directed towards the manufacturers, sellers and service providers and will not address customers' grievances and disputes directly.**

CCPA

- The Central Consumer Protection Authority can initiate preventive action against deceptive trade practices prevailing in the market or may direct recall of unsafe food items which do not adhere to the standards prescribed by the regulatory authorities. Unethical trade practices can also be curbed on a preventive basis.
- **Violation of rights of consumers as a class and complaints against misleading advertisements can only be reported to the Central Consumer Protection Authority.**

CCPA

- Additionally, **the Authority can also file complaints and intervene in matters before the Consumer Commissions**
- The Authority is empowered to order reimbursement of price paid for goods and services, as well as issue directions and penalize manufacturers and endorsers for misleading advertisements. ***Appeals against such orders can only be preferred before the National Commission.***

Investigative wing headed by a Director-General

- To promote and enforce consumer rights, prevent unfair trade practices and prevent false or misleading advertisements, the Authority is empowered to **inquire and investigate, which it does through a dedicated investigative wing set-up headed by a Director-General**, analogous to the Competition Commission.

Enlarged Scope to include unfair contracts

- The Act enables a consumer to raise a claim relating to unfair contracts and product liability, in addition to defective goods and services and unfair trade practices.
- *(i) Unfair Contracts:*
- A contract between a manufacturer/trader/service provider and a consumer is unfair if it has terms which cause significant change in the rights of a consumer, including the following:
 - - **demand for excessive security deposit;**
 - - **refusal to accept early repayment of debts;**
 - - **disproportionate penalty;**
 - - **unilateral termination;**
 - - **assignment of a contract to a third party to the detriment of the consumer without his consent; or**
 - - **imposing unreasonable charges or conditions which put the consumer at a disadvantage.**

Enlarged Scope to include product liability

- **CONSUMER CAN SEEK COMPENSATION FOR HARM CAUSED BY A PRODUCT OR SERVICE**

- The Act has proposed provisions for product liability under which a manufacturer or a service provider has to compensate a consumer if their good/service cause injury or loss to the consumer due to manufacturing defect or poor service. For instance, if a pressure cooker explodes due to a manufacturing defect and harms the consumer, the manufacturer is liable to compensate the consumer for the injury. Earlier, **the consumer would only be compensated with the cooker's cost. The consumer could ask for compensation, but through a civil court, which usually takes years to resolve a case, and not consumer forum.**

Preventing false and misleading advertisements

- Endorsement of goods and services, normally done by celebrities, are also covered within the ambit of the 2019 Act. In fact, an additional onus has been placed on endorsers, apart from manufacturers and service providers, to prevent false or misleading advertisements.
- **The New Act fixes liability on endorsers considering that there have been numerous instances in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors. In such cases, it becomes important for the endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.**

Penalties for Misleading Advertisement

- The CCPA may impose a penalty of up to 10 Lakhs on a manufacturer or an endorser, for a false or misleading advertisement. The CCPA may also sentence them to imprisonment for up to 2 (two) years for the same. In case of a subsequent offence, the fine may extend to 50 Lakhs and imprisonment of up to 5 (five) years. The CCPA can also prohibit the endorser of a misleading advertisement from endorsing that particular product or service for a period of up to 1 (one) year. For every subsequent offence, the period of prohibition may extend to 3 (three) years.**
- Whether it is MS Dhoni in the Amrapali case or Amitabh Bachchan or Madhuri Dixit in the Maggi case, celebrities have drawn much flak for endorsing faulty goods and services.**

Speedy resolution of disputes & provision for Alternate Dispute Resolution

- **COURT CAN REFER SETTLEMENT THROUGH
MEDIATION**

- Further, the Act provides for a reference to mediation as an alternate method to resolve disputes. If, at any stage of the complaint, the District Commission believes that a mutual settlement may be possible, it may direct parties to give written consent to settle their disputes by mediation. For this purpose, ***a consumer mediation cell will be attached to each District and State Commission in every State.***