**DEFAMATION**

**DEFINITION AND MEANING**

The definition of defamation was first given by Justice Cane in the case of Scott v. Sampson. He defined defamation as ***a false statement about a man to his discredit.***

In the words of **Salmond** defamation is:

***The wrong of defamation consists in the publication of a false and defamatory statement concerning another person without lawful justification.***

Defamation can be otherwise meant as an act which when done, injures the reputation of a person because he is exposed to hatred, contempt or ridicule.

Defamation under Indian Penal Code: Section 499 defines defamation as

*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 expected, to defame that person.*

**ESSENTIAL INGREDIENTS**

The essential ingredients of any act or statement to become defamation are as follows

1. **Representation:**

The defamatory statement must have been represented by gestures or words (spoken or written).

1. **Referred to Plaintiff:**

The statement must have been made with special reference to the plaintiff who seeks relief via defamatory suit.

1. **Publication:**

The statement must be published. Under section 499, publication need not be only printed. It can include a deep impact on the persons who are the audience to such statement.

1. **Falseness and Defamatory:**

To win a defamation suit, the statement which is made must be false and defamatory. Defamation arises from the moment statement is published.

**Making or publication**

Defamation must be made by any spoken words or intended to be read or by signs or by visual representation; there must be intention to harm the reputation of other’s or the person who is defaming has the knowledge or have a reason to believe that it will definitely harm the reputation of the concerned person.

Under Section 500 of the Penal Code, the punishment is provided for the defamation of a person. The offence of defamation is non-cognizable, bailable and compoundable with court’s permission Section.199 of Cr.PC, 1973 provides the practice and procedure for the offence of defamation. If an offence of defamation is committed by any person at present, he will be awarded only simple imprisonment to the extent of two years. Though simple imprisonment is not a sufficient punishment. That’s why for violation of law of defamation the imprisonment must not be simple. Punishment must be rigorous.

**HOW TO FILE A DEFAMATION LAWSUIT?**

First of all file the Complaint

First one must meet with their attorney and after the attorney will start the initial investigation of your matter and then a Complaint will be filed. Filling of a complaint will initiate the lawsuit. And one must always keep in mind that the lawsuits like this move more slowly than normally any individual expect. People usually expect after filling the suit all will be said and done in a couple of months but that’s not how it works sometimes if a case is not settled it takes a year or more for a case to go to trial. Settlement negotiations will also be moving over the life of a case.

**Service and Discovery**

After the filling of a lawsuit, the defendant has to be served and will have a very less time in which he has to respond in writing. Then a scheduling order is issued by the court which includes all the important deadlines in a case. The process called “discovery” begins at that point of a time. Formal investigation undertaken by both sides of a case is known as Discovery. Written questions will be send by the each party to the other through their attorney’s called Interrogatories. Parties has to take an oath to answer these questions and answers to these questions help the opposing party to find out more about you, your potential witnesses, and the facts of your case.

The other party probably will also ask you to produce documents that back up your claims. Your attorney will work with you to gather documents and answer questions. Sometimes there are reasons that you can withhold documents or decline to answer questions, and your attorney can advise you about that.

**Depositions**

Deposition will then occur simultaneously. An interview under oath during which the attorney for the other party keep asking you questions is known as deposition. This is an opportunity for the party to examine and determine that what kind of witness you will be at trial, how a jury might anticipate you, and to know how strong are your claims? You will be prepared by your lawyer for that.

**How a party will get a Settlement?**

After the discovery process is over, settlement negotiations typically begin as soon as possible. Attorneys usually think that settlement can be done throughout the case, but information provided by the discovery process are required by most attorneys to assess the likely outcome of the case , clients can be advised by their attorneys about the settlement, armed with this information.

It ultimately depends on client whether to settle case out of the court or go to trial. But it is very important that a client must consider his/her attorney's advice because he or she has enough experience to know how strong or weak your case is. For a variety of reasons, attorneys may advise settling even strong cases, depending on the situation. You may have a great deal of anxiety about trial, which can be stressful.   There may be information you do not want publicized that may come out at trial. Another factor is that juries in some areas tend to give only small damages awards -- it is possible for a jury to find in your favor and still refuse to give you very much money, especially in a defamation case where quantifiable damages can be difficult to establish

**In case of Chris Gayle v Fairfax Media**

International cricketer Chris Gayle succeeded in his defamation lawsuit against Fairfax Media, contesting articles published by the media outlet claiming that Gayle had exposed himself to a female masseuse in a changing room at Drummoyne Oval in 2015.

Fairfax advanced two defences of truth and qualified privilege, both which were rejected by the jury, who notably found malice on the part of Fairfax. Fairfax later issued a statement disputing that it had received a fair trial which was, uncommonly, criticised by presiding NSW Supreme Court Justice McCallum.

Inform [reposted](https://inforrm.org/2017/11/03/australia-gayle-v-fairfax-a-not-so-surprising-verdict-graham-hryce/) an analysis of the case by Graham Hyce. The case also received coverage from the [Guardian](https://www.theguardian.com/sport/2017/oct/31/chris-gayles-reputation-harmed-by-fairfax-claims-it-didnt-get-fair-trial-court-told), [Mail Online](http://www.dailymail.co.uk/news/article-5030413/Chris-Gayle-WINS-defamation-case-against-Fairfax-Media.html) and [Herald Sun](https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjq-ovnxfDYAhWkAMAKHX_eB9YQFggpMAA&url=http%3A%2F%2Fwww.heraldsun.com.au%2Fnews%2Flaw-order%2Fjury-deliberates-over-chris-gayle-fairfax-media-case%2Fnews-story%2F6aeaba23ee0d5e06d4a9f63198dc6cae&usg=AOvVaw37qlWoMD5t_f3dsgNQ75Af).

**In 2008 in case of**[**Anil Ambani**](https://www.business-standard.com/search?type=news&q=anil+ambani)**vsMukesh Ambani**  
  
[Anil Ambani](https://www.business-standard.com/search?type=news&q=anil+ambani)sued brother Mukesh for damages of Rs 10,000 crore for certain libelous statements by the latter in an interview to New York Times. The American publication and some Indian papers which reproduced this were also made respondents. Case was withdrawn after the truce between brothers a few years later

**REMEDIES**

In India, the remedy which is available to a person who files a suit for defamation is given in Indian Penal Code. If it appears to the Court that the offence under Section 499 has been committed, it can sentence the accused to undergo imprisonment for 2 years and pay a certain amount of fine. But the amount of fine varies from case to case.

**DEFENSES AGAINST DEFAMATION**

The accused person can escape the liability arising out of the act of defamation on the basis of the following grounds:

1. **Truth** – If the accused is able to prove that the statement he has made is truthful
2. **Fair Comment -** the accused has the liberty to comment as critic on the plaintiff
3. **Privilege –** the persons who are privileged cannot be sued for defamation. For example, who are from military, judicial etc.

The Supreme Court has held[[1]](#footnote-2) that in a criminal defamation case, the limitation period shall start from the date on which accusations were made on the accused, and not from the date of acquittal.

**Conclusion**

The right to keep reputation of an individual subtle is one of the very important rights which every individual enjoys. If reputation of any individual is attacked in India in any way, the person defamed can bring an action against the person who defamed his reputation. The accused will be charged with the offence of defamation. Defaming an individual is not a new offence and personal in India, but defamation is recognized in all most all the countries. The offence under Sections 499-500 is in some way has been taken from the English law, although that’s not exactly same, but on some points it is identical. The current law is dealt with under S. 499-500 of the Indian Penal Code, 1860. In 1971, the Report of Law Commission was published, which suggested some minor changes in the language of Ss. 499, 500, 501 and 502 of the Code. There is no further change since change.

1. Surinder Mohan v. Asharaj 1978 (2) SCC 403 [↑](#footnote-ref-2)