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Defamation as a Crime in India: Examining Legal Framework, Liability, And Judicial Trends

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Defamation as a Crime in India: Examining Legal Framework, Liability, And Judicial Trends

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Abstract

Defamation law in India occupies a unique position at the intersection of the fundamental right to freedom of speech and expression under Article 19(1)(a) and the right to reputation, which has been recognized as an integral facet of the right to life under Article 21 of the Constitution. This research paper critically examines the legal framework governing defamation in India, with particular emphasis on criminal defamation under Sections 499 and 500 of the Indian Penal Code, 1860, and its continuing relevance in a democratic society.

The study adopts a doctrinal methodology, analysing statutory provisions, constitutional principles, and key judicial pronouncements that have shaped the contours of defamation law in India. It explores the scope of criminal liability, including the essential ingredients of defamation, recognized exceptions, and the burden of proof. Special attention is given to judicial interpretation in landmark cases, where courts have sought to balance individual reputation with the broader public interest in free speech, especially in the context of media, political discourse, and digital platforms.

The paper further evaluates the constitutional validity of criminal defamation, particularly in light of evolving jurisprudence on proportionality and reasonableness of restrictions on free speech. It highlights concerns regarding potential misuse of defamation laws to stifle dissent, suppress criticism, and create a chilling effect on journalistic freedom and democratic participation. At the same time, it acknowledges the necessity of protecting individuals from false and malicious statements that harm reputation.

The findings suggest that while the legal framework provides adequate safeguards, its application often reflects inconsistencies and raises questions about over-criminalization. The paper concludes by advocating for a more balanced and rights-oriented approach, including reconsideration of criminal defamation provisions, strengthening civil remedies, and developing clearer judicial standards to ensure harmony between freedom of expression and protection of reputation in contemporary India.

Keywords: Defamation, Criminal Liability, Freedom of Speech, Reputation, Article 19(1)(a), Article 21, Judicial Interpretation, India.

Introduction

In the realm beyond death, a man's standing and esteem hold significant value to him. Defamation, as per Black's Law Dictionary, refers to the deliberate and deceitful harm caused to someone's name, reputation, or character. The phrase seems to reference both defamation and calumny. The current intense media attention around the protection of freedom of speech and expression, as outlined in article 19 (1) (a), has brought defamation to the forefront as a highly discussed subject.

Whether speaking in public or in private, individuals often exhibit a reluctance to express views that may incite controversy or lead to personal repercussions. This study aims to conduct a critical evaluation of the definition of defamation, the current state of defamation laws in different jurisdictions, the current state of defamation laws in India, and the function of the judiciary in relation to defamation. In order to achieve this, we will analyse the Subramanian Swamy v. Union of India verdict, with a particular focus on the Shreya Singhal case. Defamation is employed as a means of protecting one's reputation in cases when private or public rights have been violated, such as Strategic Lawsuits Against Public Participation (SLAPP) and similar instances.¹

Hence, it is crucial to examine these issues in relation to the decision in order to address any unresolved queries and promote the development of an informed agreement with the subject in question.

Defamation: Definition and Elements

Defamation, as legally defined, refers to the act of damaging someone's reputation by making false statements or spreading misinformation to a third party with the intention of discrediting the individual in question. The concept's potential for modification is solely constrained by the bounds of human imagination, which is an exceedingly elusive attribute. Although the rules concerning defamation originated in England, the fundamental concepts have roots that extend back several millennia. In Roman law, the utterance of an offensive chant was subject to the penalty of death. Early German and English judicial systems enforced rules that punished insults with the act of cutting out the offender's tongue. Prior to the enactment of the Slander of Women Act of 1891, which made it illegal to falsely accuse women of being unchaste, slander in England was restricted to allegations of criminal behaviour, social malaise, and derogatory remarks about one's professional abilities.

This assertion held true even during the 18th century. In accordance with French defamation legislation, publications featuring prominent figures are only permitted to utilise the truth as a legal defence if they have publicly retracted any defamatory text from newspapers. While Germany still experiences similar crimes in the present day, honesty is often regarded as a valid defence. In Italy, the use of truth as a defence is rare due to the illegality of defamation. Defamation is commonly described as the act of spreading false information without the consent of the person being targeted.²

Both words and images are comprehended within the framework of their publications and in line with established conventions. Defamation refers to the act of damaging someone's reputation, and it should be distinguished from simply causing emotional distress. It is sufficient for the slanderer to be identified; their name is not necessary. Defamation can only be attributed to a group of individuals if every single member of the group is specifically named in the publication. This is particularly accurate in situations where the group is limited in size or if certain members are mentioned.

¹ Shreya Singhal v. Union of India, AIR 2015 SC 1523.

² W.E. Peel, J. Goudkamp, Winfield & Jolowicz on Tort 360 (Sweet & Maxwell, 19th edn., 2014).

Libel and slander are two distinct legal categories that fall within the broader term of defamation. The implementation of electronic communications has introduced some intricacy to the process of classification. Radio defamation is considered libel in certain countries and slander in others. Television presents comparable concerns. Laws also recognise the capacity of printed defamation to do greater injury than simply spoken communication. Libel and slander actions may provide for several forms of compensation. Libel suits aim to obtain reparation for all adverse consequences resulting from the act of defamation. Special damages refer to financial losses explicitly incurred, while general damages pertain to harm inflicted on one's reputation. In a slander lawsuit, only special damages can be pursued as many countries do not differentiate between special damages and other types of damages. Defamation is prohibited by multiple statutes, but prosecution requires that it directly harm the public interest. The veracity of the publication is frequently the focal point of a defence in a defamation claim. Legal privilege stemming from a distinctive relationship or position, such as that of US senators, serves to further diminish liability. This means that senators cannot be prosecuted for their statements made on the Senate floor. Within the framework of "fair comment and criticism," the mass media is granted considerable freedom in certain domains.

However, it is essential that any critique is both factually accurate and directly related to the subject's professional endeavours rather than their personal life. Defamation refers to the act of publishing anything that damages a person's reputation, reduces their respectability in the eyes of morally upright individuals, or leads to their avoidance or rejection. Diverse Approaches to Determination Defamation can be classified into different categories based on historical factors: Libel refers to a continuous type of representation that can be expressed by words, photographs, prints, monuments, or writing. Slander refers to a transient form of public shame. Essentially, verbal instructions or physical gestures are utilised. Defamation can be classified into two distinct categories: slander and libel.³

Libel refers to the deliberate and permanent dissemination of false information through various mediums such as writing, printing, photographs, statues, waxworks, effigies, and more. Slander, on the other hand, refers to the act of defaming or belittling another person or thing via spoken or non-verbal means. In the case of *Monson v. Tussands Ltd.*,⁴ the distinction was elucidated in the following manner: Although libels are commonly spread through print or written communication, incorrect information can also circulate through any type of enduring media. Items such as photographs, posters, satirical drawings, symbolic representations, sculptures, and wall paintings are examples of objects that can be used in defamatory ways.

In the subsequent case of *Yousopoff v. Metro Goldwyn-Meyer Pictures Ltd.*⁵, it was established that, in addition to the permanence test, visual communication is also a necessary condition. In this case, the issue of whether speech and movie stills can be interpreted as libel arose. The court determined that the audio component would also be considered libel, as it was considered an integral part of the visual image and formed a unified presentation. This was due to the fact that the audio and visual elements were not independent of each other. Furthermore, the court found that the audio component would be considered libel because it was of a permanent nature. According to common law, slander is only acknowledged as a civil wrongdoing, whereas libel is also regarded as a criminal violation. Although the slanderous language used in this statement could potentially be seen as instigating criminal behaviour, causing contempt of court, or being blasphemous, seditious, or obscene, it remains truthful.

According to Section 356 of the B.N.S., the act of spreading false and damaging information about someone by written or spoken words is considered a criminal offence in India. Given

³ Madhavi Goradia Divan, 'Facets of Media Law' (Eastern Book Company, Lucknow, first ed. 2006) pg. 85.

⁴ (1894) 1 QB 671, P. 692.

⁵ (1934) 50 TLR 581 (CA).

that our courts in India have not embraced the common law principle that slander is not inherently actionable, there is no need for us to excessively highlight the differentiation between libel and slander. In India, libel and slander claims can be pursued in civil court without the requirement of demonstrating exceptional harm. According to Section 356 of the B.N.S, written and spoken communication are treated similarly, so both slander and libel are classified as felonies. During a defamation trial, the defendant has the opportunity to reiterate their original statement in a concise manner. Nevertheless, if the derogatory comment is extensive, it would be legally improper to insist on the verbatim repetition of the precise words uttered.

Essential details provided in the description i. The assertion must be untrue. Any comment that damages another person's reputation is regarded as defamatory. There is no need to sacrifice the moral or intellectual integrity of the person in question. In general, the two fundamental criteria for determining whether a statement is defamatory are the intention to injure someone's reputation and the potential to cause the target to feel ridiculed, hostile, or negatively impacted. In the case of *Cassidy v. Daily Mirror*⁶, Cassidy's spouse initiated a legal action for defamation, alleging that the published photographs insinuated that Corrigan is not in a committed relationship and that she is engaged in an illicit relationship with him. The court ruled that although it is not necessary to demonstrate the defendant's intention, factual evidence plays a crucial role in evaluating the liability for libel. In the *Newstead v. London Express Newspapers Ltd. case*,⁷ the Daily Express named the defendant in the bigamy trial as "Harold Newstead, a 30-year-old resident of Camberwell." Upon filing the lawsuit, the plaintiff alleged that they conformed to the given description. The plaintiff prevailed in court due to her ability to substantiate the claim of defamation. The court determined that the defendant's exceptional caution is irrelevant. The inclusion of Section 2 in the English Defamation Act of 1996 was intended to specifically tackle this problematic position, which had severe negative consequences for the media. ii. The plaintiff must be explicitly named in the stated accusation. In order to prevail in a defamation claim, the plaintiff must establish that the statement was specifically directed towards them.

It signifies that the plaintiff must present substantiating evidence demonstrating that they have been subjected to defamation. The House of Lords, in the case of *Hulton v. Jones*, determined that defendants might be held responsible for defamation even if they did not have any purpose to harm the plaintiff. Viscount Simon, L.C. stated in *Knupffer v. London Express Newspapers* that for a defamation case to be valid, it is crucial that the words in question are published about the plaintiff. The *Eastwood v. Holmes*⁸ case revolved around the issue of group defamation. The court determined that proving the intention of remarks made against a certain group towards an individual member of that group is a challenging task. An illustrative instance in this particular situation could be the assertion that "all lawyers are thieves," however this does not confer any individual lawyer the power to file a complaint. iii. The declaration must be made publicly accessible, meaning it must be communicated with at least one person who is not the claimant. The primary objective of defamation laws is to safeguard an individual's reputation and integrity in the public sphere.

Thus, to initiate a defamation claim, the plaintiff must establish that the defamatory statements were aimed at a person other than themselves. An attorney in the case *Re, S.K. Sundaram* made multiple rude and insensitive remarks about the Chief Justice of India. The Chief Justice received a letter containing offensive comments. The court concluded that sending a telegram is considered the same as publishing because the telegraphic office had access to the message's

⁶ (1929) 2 KB 331.

⁷ (1940) 1 KB 377.

⁸ (1858) 1 F&F 347.

contents both before and after it was sent. In the case of *Slipper v. British Broadcasting Corporation*, a defamation complaint was launched by a retired police officer who alleged that he was portrayed as a "inept fool" in a sitcom. The objective of the show was to locate and repatriate a train bandit to Brazil. After the defendants presented this programme to the media and television journalists, newspapers published several assessments. These assessments left the complainant with a negative perception. The court has convicted the defendants of both defamation and defamation arising from the activities of other media practitioners. This occurred because the assessments mostly relied on the defendant's account of the events. The Supreme Court panel, consisting of Justices Dipak Mishra and P.C. Pant, concluded that the criminal defamation provisions in Subramaniam Swamy's case are legally valid and do not violate the right to freedom of speech. Many media celebrities and leaders were ultimately eliminated.

Furthermore, others have asserted that it would curtail the liberty to express oneself. The case's vibrant and unintelligible language will have a more lasting impact on people's memory than its educational worth. The announcement clearly indicates that the right to free expression has been compromised. Their research findings led them to incorporate public remedies for private wrongs, as they found that the public strongly desires an explanation for the violation of trust they encounter.⁹

They possess sufficient evidence to deduce that the verdict flagrantly violates the right to freedom of expression. Article 19(2) of the Indian Constitution established justifiable limitations on the freedom of expression to prevent the act of defaming others. However, it is ambiguous from the story whether this pertains to civil or criminal defamation. To ensure fairness, it is necessary to establish a proportional relationship between the level of infringement on free speech and the public interest at stake. Chorus members are not obligated to perform the same tune. A magistrate should exercise great prudence when issuing summonses in response to a plea for the initiation of criminal defamation proceedings. The centre justified the criminal provisions by presenting reasons regarding the chaotic nature of Indian society and the inhibiting effect of criminal defamation on people's right to free speech and expression.

Presumably, the majority of politicians facing prosecution are those who level accusations of slander against their competitors. In the case of *Subramaniam Swamy v. Union of India* in 2016, the Supreme Court of India upheld the legality of Sections 499 and 500 of the Indian Penal Code, which pertain to the offence of criminal defamation.

Defamation Laws in India

Sections 499-502 of the IPC provide protection for an individual's reputation. Section 124A of the Code pertains to the act of defaming the state; Section 153 pertains to the act of defaming a class or group, including inciting riots; and Section 295A pertains to hate speech that incites intense religious sentiments. [Hate Speech] Defamation, as defined in Section 499 of the Indian Penal Code,¹⁰ encompasses the act of defaming someone through the use of signs, written or spoken words, or visual representations. Defamation is the deliberate act of creating or disseminating false material about someone, knowing or sincerely believing that it would damage their reputation.¹¹

The document contains ten exclusions and four justifications. Notable omissions: 1. Any factual information about an individual that is disclosed to the public and is in the public's best interest is not considered defamatory. Expressing honest comments about the behaviour or

⁹ *Subramaniam Swamy v. Union of India* (Writ Petition (Crl.) No. 184/2014),

¹⁰ Indian Penal Code, 1860, s. 499.

¹¹ M.Neelamalar, 'Media Law and Ethics', (PHI Learning Private limited, New Delhi, 2010) pg.25-28.

character of a public worker while they are doing their official duties is not considered defamatory. Being candid about the conduct or attitude of someone who brings up a matter of public concern does not amount to defamation. Disseminating a report or ruling from a legal system, or any other mechanism, is not considered defamatory as long as it is predominantly accurate. Speaking openly about the merits of a civil or criminal matter that has been adjudicated by a court of justice, as well as the actions of any party, witness, or agent involved in the case, is not considered defamatory.

Similarly, discussing the character of any such individual, to the extent that their character is clear in their conduct, is also not considered defamatory. Speaking openly about the quality of a performance that an author has presented to the audience, or discussing the author's character as demonstrated in that performance, is not considered defamatory, as long as no further information is included. If an individual in a position of power critiques someone else's behaviour within the scope of their rightful authority, whether that authority is derived from a contractual agreement or legal jurisdiction, it is not deemed defamatory as long as it is done in good faith.¹²

Providing someone with legal authority over another person with truthful information concerning an accusation made in good faith is not regarded as defamatory. Accusations made in a sincere attempt to protect oneself, others, or society as a whole are not considered defamatory. Informing someone about another individual, whether for personal gain or the welfare of the public, does not constitute defamation. Causes for the aforementioned: 1. Defamation can arise when derogatory statements are made about a deceased someone with the deliberate aim of causing harm to their family or other close relations, thereby tarnishing their reputation as if they were still alive. Defamation includes false statements made about a firm, organisation, or collective group of persons. Even a seemingly harmless joke can be seen as defamatory. Nothing is considered detrimental to an individual's reputation unless it suggests, either directly or indirectly, that their physical appearance is unclean or unkempt, or it undermines their trustworthiness or their moral or intellectual qualities in relation to their social status or profession.

Section 500 of the Indian Penal Code delineates the possible penalties for the offence of defamation. The perpetrator is subject to a maximum penalty of two years of incarceration in a standard correctional facility, a monetary penalty, or both. Anyone who knowingly prints or engraves defamatory material may face a maximum penalty of two years in jail, a fine, or both. This complies with Section 501, which prohibits the publication or engraving of any recognised derogatory material. This broad concept is based on four explanations and is limited by ten exclusions. If an individual is found guilty of defamation as per section 499 of the IPC, they can be sentenced to a maximum of two years in prison, a monetary penalty, or both, as per section 500 of the IPC.

The Criminal Procedure Code (Cr PC) delineates the procedural norms of the legal system and defines an offence as one that is eligible for both bail and non-cognizable. Instead of just contacting the police, an individual who has been injured would typically be required to file a formal complaint before a magistrate. This is because an accused person cannot usually be arrested without a warrant. The "truth defence" is commonly recognised as a legal defence used to counter civil charges like defamation. Nevertheless, within the realm of criminal law, the utilisation of truth as a defence against defamation is exceedingly limited, contingent upon its verifiability. Under the Indian Penal Code, it is possible for someone to be convicted of defamation, even if they make statements that are based on facts. Defamation in the form of written statements, known as libel, typically receives greater focus than oral defamation, known

¹² M.Neelamar, 'Media Law and Ethics', (PHI Learning Private limited, New Delhi, 2010) pg.25-28.

as slander, in the context of tort law. In order for a remark to be considered libellous, it must satisfy four criteria: (i) it must be proven to be untrue, (ii) it must be in written form, (iii) it must be defamatory, and (iv) it must be published. An intriguing characteristic of defamation as a legal wrong is that it is only considered unlawful if it damages the reputation of a living individual. In most circumstances, defaming a deceased person is not considered a tort unless the plaintiff can demonstrate that the words were specifically directed towards the deceased individual. It is important to note that there can still be a legal basis for a lawsuit even if someone defames a deceased individual.¹³

For instance, it could be legally supported if a comment is both defamatory and causes harm to the reputation of the successor of the deceased individual. Moreover, the plaintiff, who is usually the one who has been defamed, will have the right to receive compensation if a defamation litigation is initiated and it is determined that defamation has occurred. Furthermore, an individual has the option to get an injunction in order to prohibit the publication of content if they have reason to suspect that it may contain defamatory statements about them. Prepublication injunctions are seldom in India.

However, Indian courts often adhere to the *Bonnard v. Perryman*¹⁴ standard established in 1891. This principle allows the court to utilise both an interlocutory order and an injunction to prevent the publication of defamatory statements. An interlocutory injunction should only be granted in cases where the court finds the situation to be extremely clear and obvious. This is because if the court determines that the topic of the complaint is not defamatory, they would consider the jury's judgement to be unreasonable and reject it.

However, there is room for judgement in how the jurisdiction is used. An interlocutory injunction should be denied if the defendant makes a sworn statement that he will be able to disprove the libel and the court is not convinced that he may not be able to do so. The idea was upheld by a panel of judges in the Delhi High Court in the 2002 case of *Khushwant Singh v. Maneka Gandhi*. Thus, unless there are extraordinary conditions—such as cases where compensating the defamed individual with damages in the future would clearly be inadequate to remedy the harm caused—it is improbable that the dissemination of the content would be halted, even in situations where there is a valid concern that it could be defamatory. Indian courts have consistently demonstrated a propensity to safeguard freedom of expression and have refrained from issuing restraining orders that would hinder speech based on allegations of defamation. The Rajiv Gandhi administration introduced a defamation bill to address the legal issues related to defamation. However, the Defamation Bill, 1988 was discarded because of its stringent provisions after receiving significant backlash from the media and other political parties. In a legal action based on civil law defamation, the plaintiff seeks compensation for the injury caused to their reputation. The court will establish the appropriate quantum of damages, which may vary depending on the specific circumstances of each case. In a defamation claim, the defendant has the option to use the defence of justification, arguing that their remark is fundamentally accurate. The veracity of the defamatory remark affords absolute immunity in a libel or slander lawsuit. If the assertion is proven to be accurate, the reason behind its creation becomes inconsequential. There is no evidence to suggest that the defendant intentionally damaged the plaintiff's reputation in order to challenge the justification defence.

If a defendant can demonstrate that a defamatory statement is completely factual in all relevant aspects, they may be able to "justify" it. Even if the assertion is shown to be largely accurate, a minor inaccuracy will not alter its validity. It was concluded that there was adequate justification in the case where the plaintiff was supposed to be convicted and sentenced to three weeks in jail, but in reality, his penalty was reduced to two weeks. Burrough J. Inquires whether

¹³ Ratanlal and Dhirajlal, *The Law of Torts* 279 (LexisNexis, New Delhi, 26th edn., 2013).

¹⁴ (1891) 2 CH 269.

the assertion made in *Edwards v. Bell* is accurate both in essence and in reality. Notably stated that it would be satisfactory if the allegations of defamatory material were confirmed. Justification is not required if the charge is limited to something that lessens its impact. However, the amount of justification required should be proportional to the seriousness of the accusation. I often contemplate if specific terminology is applicable to a particular type of action or if it has a broader scope.

The claim of widespread misconduct cannot be substantiated by a solitary, atypical occurrence of behaviour. However, the presence of evidence indicating that the plaintiff has previously engaged in similar unlawful activities does not provide sufficient proof that he is guilty of a particular violation. It is essential to determine whether the numerous complaints are expressing different meanings or if they are all experiencing the same negative impact while handling multiple situations. A broad "sting" could be deemed justifiable even in the absence of evidence for every single allegation made by the defendant. When there are many separate assertions in disputed phrases, the defence of justification must sufficiently address each interpretation of the words. In defamation actions, presenting only the factual information is not an adequate defence. Evidence of the publication's public benefit must be provided. Inside the R.K. The Supreme Court analysed a defence in this case. The individual in question is Sewakram Sobhani. Karanjia referenced the eighth exception of section 499 of the Indian Penal Code of 1860. As per a publication in a weekly magazine, the appellant, who is a politician, impregnated a female inmate while she was incarcerated in Bhopal's central jail.¹⁵

The government investigation's conclusions appeared to provide as a dependable foundation for the news article. It was concluded that the prison administration should not have allowed the marriage of male and female criminals because a prison is a public facility that must uphold law and order. The news story was founded on trustworthy sources who exercised caution and carefulness in the best interest of the public. Merely believing that a statement is true does not serve as a defence. Even in the event of an unfavourable outcome, it is not advantageous. The justification defence is grounded in the principle that "the law prohibits an individual from seeking compensation for harm to a reputation they either do not possess or should not possess." The defendant must counter any presumption that a statement made in defamation is false. In this particular situation, the person who starts the processes is not need to provide evidence, which is different from the usual method.

The defendant can always challenge the assumption that any defamatory statements are false. When it comes to determining the accuracy of the statement, it is important to give the plaintiff the presumption of innocence. Furthermore, the defendant must demonstrate not only the authenticity of the perspective but also its ownership. Verifying the veracity of a rumour is equally important as validating its existence. The defendant has the option to raise this defence to demonstrate that the speech made was a reasonable comment on a matter of public interest and that it did not possess any illegal characteristics. Similar to justification, the defence of reasonable comment on an issue of public interest provides absolute immunity from a defamation case. The media should give special consideration to this argument since it enables the expression of ideas and criticism in an appropriate manner. Originating from public policy, the defence safeguards the freedom of individuals to articulate their opinions and critique subjects that really concern the public, as long as they do not have any malicious intent. Topics such as public institutions, local governance, religion, the government, the judiciary, literature, art, visual media, theatres, concerts, and public entertainment are all seen as matters of public interest. The following are the prerequisites for the defences: i. Public Interest: Lord Denning, in the *London Artists v. Littler* case, underscored the paramount importance of the genuine

¹⁵ Madhavi Goradia Divan, 'Facets of Media Law', (Eastern Book Company, Lucknow, first ed. 2006) pg. 97-98.

concern of the public with the subject matter, which should be given priority over any potential issues. Public interest subjects and general interest subjects differ in terms of the level of attention they receive from the public. Public interest issues are those that are actively discussed or condemned by the public, whilst general interest themes receive limited public attention.¹⁶ In order to qualify for the seventh exemption to section 499 of the India Penal Code, 1860, it is required to provide evidence of both sincere intention and the overall benefit to society. In defamation litigation, evidence of the imputation being made for the purpose of safeguarding the author's interests can also be utilised as a defence. In other words, for the imputation to be valid, both parties must have a common interest and the individual making the imputation must be credible. ii. Distinguishing between a remark and a fact is necessary, even if a comment is supported by factual evidence. A comment is an expression of personal opinion rather than a statement based on objective facts. When determining whether something is an assertion or a fact, it is important to evaluate both the presentation style and the context in which the statements are made. Winfield and Jolowicz argue that characterising A as a disgrace to human nature constitutes a factual claim. Nevertheless, if the final statement were "A committed patricide and is thus a detestable embodiment of human essence," it would be evident that the concluding line was an evaluative remark regarding the preceding 56 sentences.¹⁷

Foundation of veracity: After confirming that the statements being examined are assertions rather than facts, the subsequent task is to ascertain if they are substantiated by dependable evidence. A statement is considered a commentary when it is accompanied by a factual assertion or introduced by phrases such as "it would seem" or "it is therefore apparent." The defendant is not required to justify every single aspect, but it should be evident from the statement's publication that it is based on truth. The Evening Standard report's headline stated, "Below Kemsley." The decision was made that the writer had effectively provided the audience with all the necessary information regarding the facts he had written on, by citing Kemsley. In the case of *Kensley v. Foot*, the owner of a competing newspaper, Kemsley, filed a defamation lawsuit. The House of Lords ruled in favour of Kemsley, citing a statement made by a writer for the tribune who described the article in question as "the most offensive piece of journalism to have been published in this country in a long time." In India, the fairness criteria used is whether an honest person, regardless of their biases or strong opinions, would have written such a criticism. In this particular case, it is not essential to include every piece of information. This protection applies to both the informed commentator discussing topics of public importance and the mentally unstable person expressing the most absurd or exaggerated opinions. Encouraging debate by allowing a variety of conflicting ideas is ultimately in the best interest of the public. Nevertheless, it is imperative that the comments are genuine and devoid of hostility. Privilege: Despite their falsehood, defamatory words may sometimes be publicly uttered. We designate specific time intervals as auspicious periods.¹⁸

A privilege might be either comprehensive or unconstrained. Absolute privilege is a term used in public policy to describe a benefit that is granted without any limitations or limits. A qualified privilege is awarded in a benevolent manner and is subject to specific limitations. When asserted, qualified privilege offers less protection compared to absolute privilege, but it has a substantially wider scope. Under common law, if a sender of a message has a legal, social, or moral obligation to convey it to the receiver, and the recipient has a duty or interest in receiving it, the sender is granted a qualified privilege. Reciprocity is necessary. Qualified privilege applies to the reporting of legislative and court proceedings, while absolute privilege applies to the actual sessions themselves. In a defamation lawsuit, the defendant could

¹⁶ *Mitha Rustomji v. Nusservanji Nowroji*, AIR 1941 Bom 278.

¹⁷ *Wason v. Walter*, (1868) LR 4 QB 73; *Darius v. Shepstone*, (1886) 11 App Cas 187, 190.

¹⁸ *London Artists v. Littler* (1969) 2 QB 375.

potentially use the plaintiff's explicit or implied assent to the publication in question as a defence.

The defendant can avoid defamation charges by issuing an apology to the plaintiff. However, expressing remorse and acknowledging an inconsistency are distinct from providing an apology. The "offer of amends," as outlined in the Defamation Act of 1996 in the UK, might serve as a legal defence in certain situations during defamation litigation.

This is a situation that would decrease the amount of harm in both countries, even though it is not a legally valid law in India. The complainant has the right to launch a defamation lawsuit against the owner, publisher, printer, author, and editor in order to seek redress. If a lawsuit occurs, each of these individuals may be held liable, both collectively and individually. Punitive damages are employed to impose penalties on the wrongdoer. When determining the amount the defendant should pay for their actions, the court takes into account what is considered appropriate rather than what the plaintiff desires. Punitive or exemplary damages are granted in instances of exceptional circumstances, and the amount is subsequently included in the compensatory damages. Protecting the reputations of people involved is the main goal of the legal system that handles defamation matters. Finding a middle ground between the conflicting demands of free speech and the organization's actual goals is one of its toughest problems. That's one of the biggest obstacles it needs to get past. Conversely, the latter is the essential element of a democratic society, and those who have achieved civilised behaviour probably value the former the most. The advancement of civilization is contingent upon the possession of these two attributes. However, in today's culture, both of these goals are highly valued, with the former being the most highly wanted potential quality.

These two interests are highly valued by the community, which alone makes them both very significant. The petitioner has been granted an eight-week temporary stay by the nation's highest court. The petitioner will have an opportunity to challenge the judge's decision during this period. Other issues also surfaced during this period of transition 91 years ago, the most prominent of which had political connotations. Two instances of the kinds of concerns being handled here are the defamation suit against Gogoi¹⁹ and the purported arrest of Kiku Sharda. Although the ruling resolves the conflict, it also brings up several other issues that require more investigation. In spite of this, the result represents progress.

The dilemma of whether or not to use criminal force in a progressive economy like India is an illustration of this, especially at this particular time when reformatory justice is quickly displacing retributive justice. Right now, this is a really relevant question. The growing intolerance that is observed across the country could also be explained by this conviction. This problem might have its roots in this notion. This option makes it more likely that this issue has an explanation. This decision could offer an answer for the issue raised. It's imperative that you start chatting to individuals about all of the opportunities that are there to you and let go of any inhibitions you might have in these kinds of situations. Click this link to see the pertinent conversations. One concept that is taken into account to fall under this category is the right of reply. Here are a few more ideas that fall under this group. Indeed, there have undoubtedly been earlier discussions on this topic. There is absolutely no doubt about that. Regarding the right to respond, however, it has just served to confirm the suspicion that was there in the first place. This predicament arises from the potential for chilling effects on the person or group. It would seem more polite to respond to the situation by reacting rather than by behaving rashly, suing, and seeking damages. This is because the ability to respond to criticism is granted to those who exercise their freedom to react. This stands in sharp contrast to the various strategies that could be employed to deal with the situation. It's crucial to remember that this idea has been embraced by a number of US states as well as by foreign nations.

¹⁹ M.Neelamalar, 'Media Law and Ethics', (PHI Learning Private limited, New Delhi, 2010) pg.27

Beyond that, we are completely confident in our ability to execute this plan. That is beyond a shadow of a doubt. After this discussion, we have come to the conclusion that matters concerning the interpretation of the Constitution carry significantly greater stakes. Our recent conversation has brought this to our attention. Anything can be reviewed far more quickly than it can be finished, especially when compared to the work required to conduct thorough research on the topic. But criticism is simpler to comprehend.

Constructive criticism that aims to help the recipient grow unquestionably encourages creativity. It is easier to acquire a critical perspective in the current environment than it is to actually examine the core of the matter at hand. Completing this assignment is easy given the current situation. This makes sense considering how complicated the current issue is. To exacerbate the situation, it is hard to ignore the fact that in situations like these, the legal system does everything it can to provide a coherent framework. One could argue that it is challenging to disregard this fact. It is impossible to overlook in this sense. As citizens, we have a duty, and it is crucial that we think about this role. This is the result of our duty to fulfil our responsibilities.²⁰

Defamation Under BNS (Bharatiya Nyaya Sanhita)

Defamation is when someone says something that hurts another person's reputation. This can damage a person's character, honor or social standing because of statements being made public. In India the Bharatiya Nyaya Sanhita, 2023 is the law that deals with defamation. It has taken the place of the Indian Penal Code, 1860. The law tries to balance protecting a person's reputation with protecting the freedom of speech and expression which is guaranteed by the Constitution of India. Reputation is a part of a person's right to life and personal liberty as stated in Article 21 of the Constitution. So, the law provides ways for people to protect their reputation from harm while also making sure that genuine criticism and expressions made in faith are not punished. The idea of defamation is very old. It shows how important it is to protect a person's honor and dignity in society. Throughout history societies have tried to stop allegations that could hurt a person's standing. In India the laws about defamation were influenced by principles introduced by the British during their rule. These principles were part of the Indian Penal Code, 1860 which had rules about defamation. With the Bharatiya Nyaya Sanhita, 2023 the law about defamation has been kept with some changes showing both continuity and reform. To prove that someone has committed defamation under this law certain things must be shown. First the statement must be false meaning it is not based on truth. If a statement is true and made for the good it is usually not considered defamation. Second the statement must have the potential to hurt the persons reputation in their personal life. This can include damaging a persons character making them less credible or exposing them to hatred or ridicule. Third the statement must be made public which means it must be shared with least one other person besides the person making the statement and the person it is about. If the statement is not made public then defamation cannot be proven. Fourth the person making the statement must have intended for it to be false and to hurt the persons reputation. Defamation is usually divided into two types: libel and slander. Libel is when defamatory statements are written or printed and have a lasting impact. Examples include statements in newspapers, books or on media. Slander is when defamatory statements are spoken or gestured and are usually temporary. Indian courts have played a role in shaping the law of defamation through cases. In one case the Supreme Court laid down criteria for determining if a statement was made in faith. The Court looked at things like whether there was malice if there was an inquiry and if there was care and caution. In another case the Supreme Court upheld the validity of defamation saying that the right to reputation is a right and that it is okay to put reasonable limits on

²⁰ Vijay Kant v. Union of India [T.P. (CrI) No. 94-101/2015].

freedom of speech to protect reputation. The Bharatiya Nyaya Sanhita, 2023 has a section about defamation. This section says that defamation involves making or publishing statements about a person with the intention of hurting their reputation.²¹ There are also explanations that clarify what this means. For example, statements about a person can be considered defamation if they would have hurt the persons reputation if they were alive and were meant to hurt their familys feelings. The law also says that statements about companies or groups of people can be defamation. The law provides exceptions to make sure that freedom of expression and public interest are not restricted much. Statements that are true and made for the good are not defamation. Opinions about servants or public questions are protected if made in faith. The law also protects reports of court proceedings opinions about decided cases and opinions about performances that're open to public judgment. Censures from authorities' accusations made in faith and cautionary statements are also covered under these exceptions. The Bharatiya Nyaya Sanhita prescribes punishments for defamation, including imprisonment, fines or community service depending on how serious the offenses. These punishments are meant to stop people from making statements and to protect individuals from harm to their reputation. In the end the law of defamation under the Bharatiya Nyaya Sanhita 2023 shows Indias commitment to protecting dignity and reputation while also protecting the freedom of speech and expression. The law defines defamation says what its essential elements are provides exceptions for statements made in interest or good faith and prescribes punishments for acts. This balance between rights and social interests ensures that individuals are protected from harmful statements while also allowing for fair criticism, public debate and the expression of opinions that are necessary in a democratic society. The Bharatiya Nyaya Sanhita, 2023 is the law that deals with defamation in India. It is very important for protecting the reputation of individuals. Defamation is an issue. The law is in place to protect people from it. The Bharatiya Nyaya Sanhita, 2023 is a continuation of Indias efforts to protect dignity and reputation. It is a law that balances the need to protect reputation with the need to protect freedom of speech and expression. The law of defamation is complex. Has many different parts. It is governed by the Bharatiya Nyaya Sanhita, 2023. It is very important for individuals to understand their rights and responsibilities under this law. The Bharatiya Nyaya Sanhita, 2023 is a law that is designed to protect individuals from harm to their reputation while also allowing for freedom of speech and expression. It is a balance between rights and social interests. It is an important part of Indias legal system. The law of defamation, under the Bharatiya Nyaya Sanhita, 2023 is a part of protecting dignity and reputation in India. The Bharatiya Nyaya Sanhita, 2023 is a law that deals with defamation. It is necessary for people to know about it.

Defamation as a Tort

Defamation law is mainly about libel. Libel refers to written or published statements that're bad for someones reputation. This is different from slander, which's about spoken words. To prove that a statement is libellous you have to show that it is false written down bad for someones reputation and shared with someone. A big part of defamation is that it only matters if it hurts a living persons reputation. If someone says something about a person who has died it is not usually considered defamation. This is because the person who is hurt has to be alive to prove that the bad statement was about them.²² However, there is an exception. If someone says something about a person who has died and it hurts the reputation of their family then the family might be able to take action. When defamation is proven the person who was hurt can get money to make up for the harm to their reputation. They can also go to court to stop

²¹ Ibid

²² “Justice V.R. Krishna Iyer”, “The Regional Media and the Democratic Process” Pg. 26 (2008) 1 Madras Law Journal”

someone from publishing something about them. Courts in India do not usually do this. They think it is more important to protect people's right to speech. The courts in India follow a rule that was set in a case called *Bonnard v. Perryman* in 1891. This rule says that courts can stop someone from publishing something. They should only do this if they are absolutely sure that what is being published is libellous and there is no good reason for saying it. If the person who is being accused says that what they said is true and the court thinks they might be right then the court will not stop the publication. This rule was used in a case in India called *Khushwant Singh v. Maneka Gandhi* in 2002. The court said that they should only stop someone from publishing something in circumstances. So even if someone thinks that what is being published might be bad for their reputation the court will not usually stop it unless they think that paying money later will not be enough to fix the harm. Defamation law in India is still an issue. The government of Rajiv Gandhi tried to change the law in 1988 with a bill called the Defamation Bill. A lot of people did not like the bill because they thought it would restrict freedom of speech much. So the bill was withdrawn. This shows that there is still a debate about how to balance protecting peoples reputations with protecting their right to speech in India. The law of defamation is very important in India. Defamation law is about libel and slander. Libel is published statements that're bad for someones reputation. Defamation law says that you have to prove that a statement is false and bad for someones reputation to win a case. The courts in India are careful about defamation cases. They want to protect peoples right to speech. Defamation cases are complex.²³ The courts have to consider things before making a decision. Defamation law is still evolving in India. There are challenges to overcome. Defamation law, in India needs to be looked at to make sure it is fair. People need to be able to say what they think. They also need to be careful not to hurt someones reputation. Defamation law is important because it helps people to know what they can and cannot say about someone.

Understanding the Laws and Legal Remedies

The right to freedom of speech and expression, as outlined in Article 19(1)(a), grants all citizens the entitlement to express themselves and communicate their thoughts without restraint. This article is justified by the serious resolve expressed in the Preamble of the Indian Constitution, which aims to ensure the freedom of thought and expression for all citizens.³ Nevertheless, as mentioned in "Article 19(2) of the Constitution of India," this freedom may be subject to reasonable restrictions in order to accomplish specified objectives. In order for speech and expression to be unrestricted, the presence of the following elements is necessary: The term "freedom of speech and expression" encompasses four distinct components.

The right to freedom of speech and expression is limited to Indian citizens only; anyone who are not citizens, including foreigners, do not have the right to this benefit. Freedom of expression under Article 19(1)(a) refers to the fundamental right to express one's ideas and opinions on any subject using various forms of media, such as spoken, written, printed, visual, or moving content. The reason this right is not absolute is that it grants the Indian government the authority to pass legislation that can impose justifiable limitations on issues such as defamation, contempt of court, incitement to commit a crime, maintaining friendly relations with other nations, safeguarding security, sovereignty, and integrity of the country, as well as preserving public order, decency, and morality.

The government has the authority to impose limitations on an individual's freedom of expression, as mentioned before, through both active measures and passive inaction. If it is found that the state has not taken all reasonable measures to ensure that all its citizens have the "fundamental right to freedom of speech and expression," it would be in violation of Article 19(1)(a).⁴ Therefore, it is crucial that individuals possess the ability to articulate their thoughts

²³ Supra note 45.

effectively and communicate their viewpoints, beliefs, and perspectives on a diverse array of topics. Consequently, in a democracy, the absence of this privilege hinders individuals from expressing their opinions openly.²⁴

It is an essential and inherent democratic entitlement. In the absence of this entitlement, the government could potentially exploit its power to curtail the freedoms of its citizens. Hence, the fundamental nature of free speech for citizens is indispensable in a democracy. Men, being sociable creatures, derive pleasure from socialising and embracing life. The individuals meticulously safeguard their reputations as they play a key part in their social existence. Individuals with a widely recognised name are more prone to garnering respect from others within their group. Ensuring the preservation of their reputation is of utmost importance to them. Therefore, their capacity to operate effectively in society is crucial for them. The government enacted legislation to safeguard their reputation. These legal clauses define "defamation" and provide the compensation that the victim is entitled to. They are categorised as defamation laws. Sections 499 to 502 of the Indian Penal Code specifically deal with the issue of slander, as previously stated.

Defamation refers to the deliberate act of publicly making a false or malicious statement with the intention of harming someone's reputation, character, or public image. In this instance, damage is specifically defined as the erosion of one's reputation due to both emotional distress and the consequent harm. "Truth serves as a legal protection against accusations of defamation." Defamation laws aim to protect an individual's reputation and emotional well-being from harmful or unwarranted statements or criticism.

Denying individuals, the chance to exercise their entitlement to free speech and expression has a deterrent impact that leads to self-restraint instead of enabling the government to enforce limitations on free speech. Individuals exercise caution to avoid disseminating material that is overtly untrue. Individuals often refrain from discussing legal matters due to concerns about their personal security. Defamation places further limitations on the freedom of speech and expression by illustrating that the remarks made by others harm an individual's reputation. They are being criticised for their prowess. When the Indian judicial system has excessive delays in delivering a verdict or when the opposing party is unable to financially support their own legal representation.²⁵

Owing to these issues, a significant number of individuals are decreasing their level of engagement, while others are using the stringent defamation statutes. There is a need to reconcile Article 19 and Article 21, which pertain to slander. Ensuring the appropriate equilibrium between the provisions of Article 19 and Article 21 is of utmost importance. In order to protect one's reputation and uphold their entitlement to freedom of speech and expression, it is advisable to peruse both of these articles. To express his convictions and ideas and to hold those accountable for damaging his reputation. The Supreme Court's ruling affirms that Article 21 of the Indian Constitution, which safeguards "life and personal liberty" against government interference, includes the right to reputation. In order to reach its verdict, the Supreme Court dismissed Subramanian Swami's lawsuit challenging the constitutionality of Section 356 of the B.N.S.. The court further determined that Article 21 presents a significant peril to the safeguarding of basic rights, since it has the potential to defame and harm an individual's reputation. The court concluded that the protection of one's reputation, as guaranteed by Article 21, must be balanced with the right to freedom of speech, as safeguarded by Article 19(1)(a). The Supreme Court's stance on the freedom of speech and expression has been inconsistent, often regarding it as a source of worry rather than a basic right.

²⁴ Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni (1983) 1 SCC 124.

²⁵ "Justice V.R. Krishna Iyer", "The Regional Media and the Democratic Process" Pg. 26 (2008) 1 Madras Law Journal

The ruling in question affirms the application of defamation law to support the negative and distant history in question. In relation to the legality of defamation as a criminal offence, the Indian Supreme Court maintains that engaging in criminal defamation is acceptable as long as it does not pose a threat to the reputation of the victim, in the context of protecting freedom of speech. The Court determined that although the right to free expression is considered "absolutely sacrosanct," it is not without limitations, unlike other rights, despite its broad and unrestricted nature. It depends on the correct implementation of limits. As per Article 21, it explicitly affirms that an individual's "reputation is an essential component of the right to life" and cannot be relinquished to protect another person's freedom of speech.

The Influence of social media on Defamation Litigation "Defamation on Social Media" "Social media serves as a medium through which individuals uphold relationships and stay connected with friends, family, and members of diverse communities." Social media is the sole medium that enables folks to promptly interact with each other, regardless of their geographical location, whether it be within the country or across the globe. Users of social media platforms regularly share content with each other on a wide range of subjects. Cyber defamation is a synonym for online defamation.²⁶

The act of wrongfully accusing someone of anything online and causing harm to their reputation is commonly known as "cyber defamation". Disseminating this fraudulent assertion on the internet or on popular social media platforms like Facebook, Instagram, LinkedIn, and similar platforms is against the law. Furthermore, it cannot be generated by written language or any other kind of communication. While social media and the internet are undeniably beneficial for society, they are equally indispensable for personal and national development. Nevertheless, it is imperative to examine both perspectives of the argument as every issue has its advantages and disadvantages. It is widely recognised that expressing one's thoughts online is a straightforward process. Intentionally or unintentionally, the individuals the tensions observed in the media and entertainment sectors frequently stem from the exercise of the rights to freedom of speech and expression. The Indian Constitution provides for the right to freedom of expression, however with certain limitations that allow for its restriction in certain circumstances, such as when it is necessary to safeguard one's reputation.

Various forms of media and entertainment, such as news reports, social media posts, TV series, movies, blogs, podcasts, and social media platforms, can all serve as forums for defamation. Because celebrities are widely known to the public, they are especially vulnerable to defamation and often turn to legal measures to protect their reputations. In the present era, due to the extensive utilisation of social media, deceptive material has the ability to rapidly circulate and adversely impact an individual's reputation. The growing occurrence of situations in which individuals spread false material with deceptive intentions or through fraudulent means due to the anonymity provided by internet platforms has made it increasingly difficult to identify and legally pursue those responsible for defamation. The media has significantly enhanced the potential for human interaction, surpassing the combined impact of all other forms. The news disseminated by the media is both astonishing and consequential.²⁷

Nevertheless, it is crucial to acknowledge that any ambiguous news that is broadcast has the potential to impact every individual worldwide. The media should undergo rigorous scrutiny prior to being broadcast to the broader public, and its accuracy should not be doubted. Instead of coercing individuals into making definitive or derogatory statements, the media should provide the public with precise information and allow them to determine the authenticity of progressive progression. The media opportunity does not have any specific legal privileges

²⁶ "Jacob Rowbottom, Media Freedom and Political Debate in the Digital Era, Pg. 491 (2006) 69(4) *Modern Law Review* 489-513"

²⁷ "Defamation, 3 *Encyclopaedia Britannica* (Encyclopaedia Britannica Inc., U.S.A., 2007)."

conferred to it. Article 19(1)(a) safeguards the entitlement to freedom of speech and expression, while Article 21 safeguards the entitlements to life and liberty. Even without the presence of these rights or freedoms, the media is morally obligated to abide by the law and refrain from negatively affecting the nation in order to maintain its influence. Individuals engaged in the media and entertainment industry in India must possess a profound understanding of the ethical responsibilities and the legal aspects pertaining to defamation laws. The media has a moral and legal duty to conduct its operations in accordance with established media standards. Defamation cases involving the media and entertainment sectors pose a distinct legal difficulty due of the delicate balance between the freedom of expression and the necessity to safeguard one's reputation. Ensuring a healthy information environment and protecting individuals' privacy and dignity require finding the right equilibrium between accountability and freedom. However, there are instances when this delicate balance is disrupted. Precedents regarding slander in the media The Daily Newspapers Order of 1960 was deemed unconstitutional. The criteria for determining the suitability of a newspaper for distribution in terms of price and number of pages were established in the legal case of *Sakal Papers Ltd. v. Association of India*.²⁸ The government justified the low pricing by arguing that it discouraged the locals from engaging in business activities. The Supreme Court dismissed the state's stance and denied the application. The court determined that it would not be permissible to curtail individuals' freedom of expression as a means to prevent them from engaging in business-related travel.

Restricting freedom of speech for the specific reasons stated in clause (2) of Article 19 is clearly justified. To summarise Defamation is a significant challenge in the media and entertainment sectors since it has the potential to harm an individual's reputation and raise doubts about their credibility. The spread of misleading material of this nature poses a serious danger of causing substantial harm to both individuals and assets. Media law firms and media solicitors offer a variety of legal solutions to individuals who have been defamed in order to minimise the adverse effects of the defamation. The practice group at Khurana & Khurana collaborates closely with clients in the advertising, media, and entertainment sectors, adapting to the ongoing changes and emerging structures and technologies. Our aim is to offer innovative and advanced media law solutions that adhere to legal and regulatory standards.

²⁸ *Sakal Papers Ltd. v. Association of India* 1962 AIR 305

Conclusion

The defamation laws have caused tension between the public and the individual. It's been called "a tale of two interests" by others. These interests include the desire of the individual to maintain their reputation and the requirement for open exchange of information by society. One could argue that everyone who has the freedom of speech and expression also has the right to their reputation, which is regarded as property. According to Article 12 of the Fourth Universal Declaration of Human Rights, no one may be the target of unjustified attacks on their honour or character. Everyone is entitled to a legal defence against these kinds of attacks. Since defamation is regarded as a grave offence, the limiting clause (2) of Article 19 allows for appropriate legislative restrictions on the freedom of the press, speech, and expression with regard to this issue. The word "defamation" was not originally present in the restricted clause of Article 19 (2). Rather, as limitations, the words "libel" and "slander" were used.

They were eliminated by the Constitution (First Amendment) Act of 1951, which replaced them with the phrase "defamation." According to P.M. Bakshi, the significance of this area of law grows as civilization progresses. The amount of spoken and written content that reaches or is capable of reaching expands naturally as a result of rising literacy rates, reading habits, increased use of mass media for communication, and advancements in technology that make it possible to communicate spoken and written word to a very large audience. Reputational damage is more likely as a result of this. However, some of the defamation law's provisions could need to be changed in light of the growth of democracy, the value of free expression, and the public's right to know the truth about particular circumstances.²⁹

²⁹ "W.E. Peel, J. Goudkamp, Winfield & Jolowicz on Tort 360 (Sweet & Maxwell, 19th edn., 2014)."

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