



LAWS FOR everyday life

LAW week



# Defamation is a punishable offence

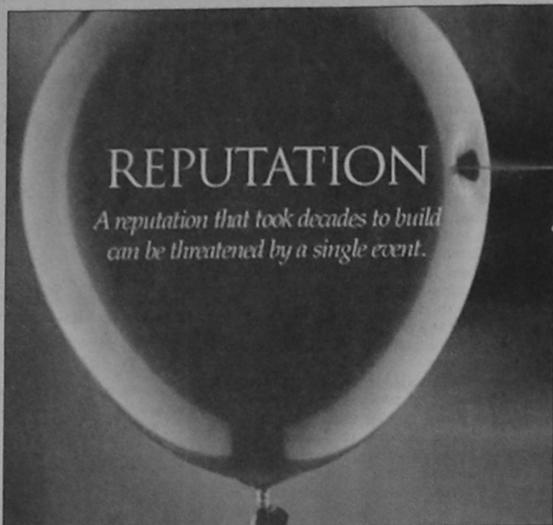
JAHANGIR ALAM SARKER SAGAR

**T**HE word 'defamation' means 'insult, offence, slander, libel, slur, smear, denigration, vilification, calumny and character assassination.' Generally, the act of damaging the reputation of another by means of false and injurious communications that expose that person to contempt, ridicule, hatred, or social ostracism is known as defamation. In the common law, defamation in writing is classified as libel, and oral defamation as slander.

The tort of defamation consists of publishing a statement that injures the reputation of a person or organization. Publishing is defined as communicating the statement to at least one person other than the subject of the statement. An injury to reputation may result if the statement reduces the esteem or respect in which the person is held; casts the person into an improper light (for example, by suggesting that the person is a criminal); or generates derogatory or unpleasant feelings about the person. If the statement is spoken, the tort is known as slander. Defamation is known as libel when the statement is expressed visually, through words or images. Thus, a defamatory comment made at a public speech is slander and a written pamphlet containing the same information is libel. An injured party will not prevail in a claim of defamation if the statement, though derogatory, is true. For example, if a person says that another person is a murderer and that person was convicted of murder, there is no defamation. Special rules make it much harder to bring a defamation claim where the target of the statement is a public figure.

**Ingredients of Defamation**

If we analyze the definition of defamation then it is very much clear that it consist main three essential ingredients, such as-



1. Making or publishing any imputation concerning any person;
2. Such imputation must have been made by words either spoken or intended to be read, or by signs, or by visible representation, and
3. Such imputation must have been made with the intent to harm or with knowledge, or belief that it will harm the reputation of the person concerned.

**Historic case**

In *New York Times Co. v. Sullivan* (1964) case, the Supreme Court of the United States set a new burden of proof for plaintiffs in libel cases, requiring public figures suing for libel to prove that the defendant acted against them with "actual malice" that is, reckless disregard for the truth. In 1960 the New York Times ran an advertisement signed by several African-American clergymen

that criticized public officials in Montgomery, Alabama, for their handling of civil rights protests. L. B. Sullivan, a Montgomery city commissioner, filed suit against the Times and the clergymen, claiming that incorrect statements in the ad were libelous and damaged his reputation.

**Bangladeshi law**

Section 499 of the Penal Code deals with defamation. According to the section, 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.

Section 500 of the Penal Code deals about the punishment of defa-

mation. According to the said section, whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. Where there is no substantial defense, an immediate apology in the widest and most unreserved terms may fairly be presumed to lessen the punishment. When the defamatory words are uttered in the heat of passion it can not be said that a serious case of defamation has arisen. A journalist is required to attach more care and caution in publishing items which are likely to harm the reputation and good name of others. Papers publishing scandalous articles sometimes get wide publicity and the circulation in such cases and consequently the income of the journalist also increases. Thus, therefore, calls for deterrent punishment and a mere sentence of fine in such cases will not at all be adequate.

**Proof**

The proof of defamation requires the following elements:

1. That the imputation in question consisted of words, spoken or intended to be read or of sign, etc
2. That the imputation concerned the complainant.
3. That such imputation emanated from the accused.
4. That he made or published the same.
5. That he intended thereby to harm the reputation of the complainant or that he knew or had reason to believe that it would do so.

**Case Law**

In *Abdur Noor & Others v. State & another* (50 DLR 456) it was held that a complaint made by the petitioners in good faith to the Hon'ble Chief Justice regarding the conduct of the complained judicial officer is not defamation as the same is covered by exception.

In *Sigma Huda v. Ishaque Samad* (50 DLR 129) it was established that

imputation made by lawyer when protected-Imputation made by lawyer in discharge of professional duty on the character of any person in good faith and for the protection of the interest of the person making it or any other person or for the public good will not constitute offence of defamation. In the instance case, the petitioner as an advocate under instruction for protection of her client's interest cannot constitute the offence in view of exception 9 to section 499 PC.

In *Mr. A.Y. Masihuzzaman v. Shah Alam* (41 DLR 180) the court said that English law of absolute privilege, whether applicable to the statements made by the parties or by the statements made by the parties or by the advocates in court proceedings in Bangladesh. Immunity having been not extended to judicial proceedings a respondent allegedly defamed would be competent to file a complaint in the court against the maker of defamatory statement. In our codified law the expression "defamation" has been defined in section 499 of the Penal code. (4 BCR 489 AD). In *Khondokar Abu Taleb v. State* (19 DLR 198, SC) the court observed that in the criminal prosecution, for defamation under section 499, it is sufficient; if the accused can show that the imputation was substantially true.

There is a difference between civil and criminal liability for defamation. The civil liability for defamation to pay damage, however, is not governed by any statute law but is determined with reference to the principle of justice, equity and good's conscience. It follows that if a defamatory statement does not fall within the specified exception; it is not privileged and is not protected from the mischief of section 500 of the Penal code.

The writer is an advocate & human rights activist.



LAW amusements

**Surreal law facts**

The truth is always stranger than fiction.

**Suicide to avoid a judicial appointment**

In 1770, Charles Yorke (1723-1770) had publicly committed himself to the Whig political party of Charles Wentworth (1730-1782, aka Lord Rockingham). Yorke was a graduate of Cambridge University (1742) and had been called to the bar in 1743.

But the British king, George III, knowing Yorke's father had been chief justice and minister of justice (Lord Chancellor) desperately wanted to bring some instant credibility to his cabinet table.

Knowing Yorke's value to the government, and hoping to keep good men from the government in power, Rockingham made Yorke promise he would not submit to any offer from the opposition's prime minister or the King.

The king asked Yorke to meet him on January 13 and again on January 16. There, he threatened Yorke that if he refused the Lord Chancellorship now, he'd never be offered it again. King George even offered Yorke a peerage; he and his descendants could use the title of Lord Morsden - an irresistible offer to any good class-loving Brit.

Unable to refuse the package, Yorke gave in and accepted to become Lord Chancellor.

But then he visited upon his brother to debrief, only to find Rockingham and other members of his opposition party present. Yorke was violently reproached.

Overwhelmed with shame, he retreated to his home and started drinking. In those few ominous days left to him, his diary had uncharacteristic mentions of suicide.

Finally overwhelmed, three days later, to avoid the appointment as England's chief justice, he took his own life and was found dead in his home, in a pool of blood.

On his desk was discovered the Great Seal of the Lord Chancellor in his house as well as the peerage papers but because he failed to affix the seal on the patent, the peerage failed and was denied his descendants.

Source: www.duhaimie.org

HUMAN RIGHTS watch

## Reporters without borders

**"P**RESS freedom must be defended everywhere in the world with the same energy and the same insistence." Reporters Without Borders secretary-general Jean-François Julliard said on October 20, 2009 as his organisation issued its eighth annual world press freedom index.

"It is disturbing to see European democracies such as France, Italy and Slovakia fall steadily in the rankings year after year," Julliard said. "Europe should be setting an example as regards civil liberties. How can you condemn human rights violations abroad if you do not behave irreproachably at home? The Obama effect, which has enabled the United States to recover 20 places in the index, is not enough to reassure us."

Reporters Without Borders compiles the index every year on the basis of questionnaires that are completed by hundreds of journalists and media experts around the world. This year's index reflects press freedom violations that took place between 1 September 2008 and 31 August 2009.

**Europe no longer an example?**

Europe long set an example in press freedom but several European nations have fallen significantly in this year's index. Even if the first 13 places are still held by European countries, others such as France (43rd), Slovakia (44th) and Italy (49th) continue their descent, falling eight, 37 and five places respectively. In so doing, they have given way to young democracies in Africa (Mali, South Africa and Ghana) and the western hemisphere (Uruguay and Trinidad and Tobago).

Journalists are still physically threatened in Italy and Spain (44th), but also in the Balkans, especially Croatia (78th), where the owner and marketing director of the weekly Nacional were killed by a bomb on 23 October 2008.

But the main threat, a more serious one in the long term, comes from new legislation. Many laws adopted since September 2008 have compromised the work of journalists. One adopted by Slovakia (44th) has introduced the dangerous concept of an automatic right of response and has given the culture minister considerable influence over publications.

**Israel: operation media crackdown**

Operation Cast Lead, Israel's military offensive against the Gaza Strip, had an



impact on the press. As regards its internal situation, Israel sank 47 places in the index to 93rd position. This nose-dive means it has lost its place at the head of the Middle Eastern countries, falling behind Kuwait (60th), United Arab Emirates (86th) and Lebanon (61st).

Israel has begun to use the same methods internally as it does outside its own territory. Reporters Without Borders registered five arrests of journalists, some of them completely illegal, and three cases of imprisonment. The military censorship applied to all the media is also posing a threat to journalists.

As regards its extraterritorial actions, Israel was ranked 150th. The toll of the war was very heavy. Around 20 journalists in the Gaza Strip were injured by the Israeli military forces and three were killed while covering the offensive.

**Iran at gates of infernal trio**  
Journalists have suffered more than ever this year in Mahmoud Ahmadinejad's Iran. The president's disputed reelection plunged the country into a major crisis and fostered regime paranoia about journalists and bloggers.

Automatic prior censorship, state surveillance of journalists, mistreatment, journalists forced to flee the coun-

try, illegal arrests and imprisonment such is the state of press freedom this year in Iran.

Already at the lower end of the rankings in previous years, Iran has now reached the gates of the infernal trio at the very bottom - Turkmenistan (173rd), North Korea (174th) and Eritrea (175th) where the media are so suppressed they are non-existent.

**Obama effect brings US back into top 20**

The United States has climbed 20 places in the rankings, from 40th to 20th, in just one year. Barack Obama's election as president and the fact that he has a less hawkish approach than his predecessor have had a lot to do with this.

But this sharp rise concerns only the state of press freedom within the United States. President Obama may have been awarded the Nobel peace prize, but his country is still fighting two wars. Despite a slight improvement, the attitude of the United States towards the media in Iraq and Afghanistan is worrying. Several journalists were injured or arrested by the US military. One, Ibrahim Jassam, is still being held in Iraq.

Source: Human Rights Education Associates (HREA).

**EC delays action as parties miss deadline**

The Election Commission (EC) has finally decided to exempt 39 political parties from submitting to it within the timeframe, audit reports on their financial transactions in the immediate past year, without amending the legal provision in this regard. It took the decision on Monday in response to a letter from BNP expressing its inability due to some complexities to comply with the mandatory provision for submission of audit report within the deadline -- July 31 last. - *The Daily Star, Oct 29, 2009.*

**Babar's remand stayed a few hrs after granting**

Several hours after placing the former state minister for home affairs Lutfozzaman Babar on remand in the August 21 grenade attack case, a Dhaka court stayed its order upon a High Court directive. First Additional Chief Metropolitan Magistrate Ehsanul Haque passed a five-day remand order around 1:00pm following a 10-day remand prayer by the investigation officer (IO) of the case. - *The Daily Star, Oct 29, 2009.*

**Mohiuddin's 2 sons arrested**

Detective Branch of Police (DB) arrested two sons of Lt Col (retd) Mohiuddin Ahmed, a death convict in Bangabandhu murder case, for suspected links to the bomb attack on Awami League lawmaker Fazle Noor Taposh. DB picked up Nazmul Hasan alias Sohel, 34, his younger brother Mahbulul Hasan, 30, from their residence at Gawair Prembagan of Ashkona in the city's Dakkhinkhan at around 3:00am. Later they were produced before a Dhaka court, which placed them on a five-day remand. - *The Daily Star, Oct 28, 2009.*

**JS bodies want ADR to recover defaulted loans**

Two parliamentary standing committees held a joint meeting to find out ways to recover huge amount of defaulted loans and stressed introducing alternative disputes resolution (ADR) system to get better results in loan recovery. On invitation of the parliamentary standing committee on law justice and parliamentary affairs ministry, members of the parliamentary standing committee on finance ministry joined the meeting at the Jatiya Sangsad Bhavan. - *The Daily Star, Oct 28, 2009.*

**EC wants to know 14 MPs' tax status**

The Election Commission will ask the National Board of Revenue to see if the 14 lawmakers who did not include tax records in their candidacy applications had earnings subject to tax. The decision came at a meeting where the EC Secretariat placed a list of lawmakers who in documents submitted to the commission before the December 29 election claimed they did not have any taxable income, EC sources said. - *The Daily Star, Oct 27, 2009.*

**Attorney gen, Indian HC get death threat**

An anonymous person has threatened to kill Attorney General Mahubey Alam along with his family members unless the convicts in the Bangabandhu Assassination case are released in 15 days. Alam received a death threat letter by post in the evening. The letter, addressed to the attorney general and dated October 3, reads, "The accused of Mujib murder case have been put behind bars unjustly. You along with your family members will die if they are not released in 15 days". Meanwhile, Indian High Commissioner Pinak Ranjan Chakravarty also received an e-mail that issued threats on his life and also threatened to make bomb-attack at the Indian High Commission in Dhaka. - *The Daily Star, Oct 27, 2009.*

**Govt to leave the act alone**

Pressurised by developing partners including the World Bank, the finance minister has moved to restore in Public Procurement Act the previously dropped provision for having prior experience and discontinue the lottery system for getting government work up to Tk 2 crore. A cabinet meeting had recently dropped the provision and included the lottery system in the act. A few senior colleagues of Finance Minister AMA Muhith, however, raised objection to the move at a meeting, but no decision was finalised. - *The Daily Star, Oct 26, 2009.*

**Legal notice served on Bashundhara**

A legal notice has been issued on Bashundhara Group Chairman Ahmed Akbar Sobhan and four others for recent publication of libellous, false and baseless advertisements in different national dailies, publishing derogatory posters and leaflets, and its ill attempt to file a fabricated case against the daily Prothom Alo. The legal notice issued by Dr Kamal Hossain and Associates on Saturday asks the Bashundhara Group chairman to withdraw the published advertisements and other publicity materials within 48 hours of receiving the notice and apologise to Prothom Alo Editor and Publisher Matiuur Rahman and Transcom Group Chairman Latifur Rahman. - *The Daily Star, Oct 26, 2009.*

**Prosecute Rab men**

The Bangladesh government should prosecute the Rapid Action Battalion (Rab) officers who arrested and tortured FM Masum, a journalist of the daily New Age, Human Rights Watch (HRW) said. In a statement, the New York-based watchdog said the new government had promised to put an end to abuses by the paramilitary law enforcement agency long implicated in tortures and the extra judicial killings termed "crossfire". But the government is yet to take any action in this regard. - *The Daily Star, Oct 25, 2009.*

**Nursing held hostage by a few culprits**

A quarter with the help of Directorate of Nursing Services (DNS) is extorting and threatening nurses of transfers if they do not become members of yet to be formally constituted Diploma Nurses Association. Under the banner of Diploma Nurses Association (DNA), which has no registration, Senior Staff Nurse Shahjahan Howlader of National Institute of Traumatology, Orthopaedics and Rehabilitation is leading the extortion. Shahjahan and his associates forced 24,000 nurses across the country into becoming members of the DNA by paying Tk 200 at a time and Tk 50 per month. - *The Daily Star, Oct 25, 2009.*

**Dear reader,**  
You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: LawDesk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax: 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net

LAW event

## HRSS from 10-21 December

The 10th Human Rights Summer School (HRSS) this year is going to be held from 10-21 December, 2009. Senior law students from different law schools of home and abroad would participate in this residential course. The school would focus on human rights jurisprudence and advocacy skills. The theme of this HRSS is 'Post-conflict Justice, Human Rights and Peace. HRSS is organized by Empowerment through Law of the Common People (ELCOP) and directed by Dhaka University Law Professor Dr. Mizanur Rahman. On the eve of 10th year, HRSS alumnae would bring out a commemorative souvenir. The graduates of past HRSS have been requested to communicate with ELCOP office or email: hrss2009@gmail.com

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