

Exceptions and Defenses in Defamation

Exceptions to Defamation:

Section 499 of the IPC provides for 10 cases which are not to be considered as defamation. An accused charged with the offence of defamation may take the resort of any of these ten exceptions as defense. These are the privileged occasions. These privileged occasions exempt a person from criminal liability. These exceptions are as follows:-

1. Public good: Imputation of truth made or published for public good.
2. Public conduct of public servants: Any opinion made in good faith with respect to the conduct or character of a public servant in the discharge of his public functions so far his character appears in that conduct, and no further.
3. Conduct of any person touching any public question: Any opinion expressed in good faith with respect to the conduct or character of a person touching any public question, so far his character appears in that conduct, and no further.
4. Reports of proceedings of Courts: Publication of substantially true report of the proceedings of a Court of Justice or result of any such proceedings.
5. Merits of a case or conduct of witnesses: Expression of opinion in good faith regarding merits of a case decided in Court or conduct of witnesses, parties or agent or with respect to the character of those persons appears in that conduct, and no further.
6. Merits of public performances: Expression of opinion in good faith regarding the merits of any performance which its author has submitted to the judgment of the public or with respect to the character of the author, so far as his character appears in that performance and no further.
7. Bona fide censure: Censure passed in good faith by person having lawful authority.
8. Bona fide accusation: Accusation preferred in good faith to authorized person.
9. Bona fide imputation: Imputation made in good faith by person for protection of his or other's interests.
10. Conveying caution: Caution intended for good of person to whom conveyed or for public good.

Defenses

With the proof of publication of defamatory material, plaintiff must be deemed to have established his case unless the defendant pleads either of defenses open to him. Following are the defenses available in an action of civil liability in the case of defamation:

1. **Defense of justification of truth**: The truth of a defamatory words is even though the words were published spite to be and maliciously. A publication based on verifiable facts can extinguish liability for defamation. It negatives the charge of malice and it shows that plaintiff is not entitled to recover damages too.
2. **Defense of fair comment**: A fair and bona fide comment on a matter of public interest is not libel. For the purposes of the defense of fair comment on a matter of public interest such matters must be (a) in which the public in general have a legitimate interest, directly or indirectly, nationally or locally, e.g. matters connected with national and local government, public services and institutions and (b) matters which are at public theatres and

performances of theatrical artists offered for public entertainment but not including the private lives of public performers. In a recent case of *KokanUnnatiMitramandal and Others versus Bennett Coleman & Company Limited and Others*,¹ Hon'ble Bombay High Court while dismissing suit for defamation filed by plaintiff has held that *"defendants have shown and proved the truthfulness of the statements and fair comment made by them in public interest. The defamation of the plaintiffs alleged by them is, therefore, amply justified."*

3. **Defense of absolute privilege:** 'Privilege' means a person stands in such relations to the fact of the case that he is justified in saying or writing what would be slander or libel by anyone else. The general principle underlying the defense of privilege is the common convenience and welfare of society or the general interest of society. Privileges can be absolute or qualified.

- **Absolute Privilege-** a statement is said to have absolute privilege when no action lies whether against Judges, Counsel, Jury, Witnesses or Parties, for words spoken in the ordinary course of any proceedings before any Court or Tribunal recognized by law.
- **Qualified Privilege-** a statement is said to have a qualified privilege when no action lies for it even though it is false and defamatory, unless the plaintiff proves express malice. There are occasions and circumstances when speaking ill of a person or uttering or writing words defamatory is not regarded as defamatory in law and for the reason that public interest demand it.

One example of qualified privilege is the immunity of members of the press from defamation charges for statements made in the press in good faith, unless it can be proven that they were made with malice.

4. **Consent:** Where the defendant has communicated or published certain material with the consent of plaintiff or plaintiff himself has invited the defendant to repeat the defamatory words, the defendant can plead this defense of consent.
5. **Apology:** Apology is available as a defense in actions for libel against newspapers and another periodical publication, if the newspaper inserts a sufficient apology and adheres to certain other conditions. When there is an apology and an acceptance thereof, the defendant can resist plaintiff's suit for reimbursement for defamation. Nevertheless, there has been no similar legislation in India. In past judgments it is been held that even if the plaintiff accepted an apology and withdraw a criminal prosecution for defamation he can still sue the defendant in a civil suit.

¹2012 (2) MLJ 338