
IDENTIFICATION OF THE PLAINTIFF IN DEFAMATION CASES



Famous Quotes on Reputation

"A good reputation is more valuable than money."— Publilius Syrus

"Character is like a tree and reputation like a shadow. The shadow is what we think of it; the tree is the real thing." — Abraham Lincoln

"Reputation is an idle and most false imposition; oft got without merit, and lost without deserving." — William Shakespeare, *Othello*

"If I take care of my character, my reputation will take care of itself."— Dwight L. Moody



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE GUL HASSAN TAREEN BHC
SUBJECT: CIVIL LAW/CONSTITUTIONAL LAW/INTERNATIONAL LAW/SHARIA
DATE: 02 NOVEMBER 2024
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QUERIES:

1. *What is the importance of reputation for each individuals and in the context of law and sharia?*
2. *In defamation cases, is it essential that the defamatory statements specifically refer to the individual by name, image, or other explicit identifiers?*
3. *If explicit identification is not present, what legal principles are applied to establish the identity of the individual targeted by derogatory remarks?*

In response to the above queries, it is submitted as under: -

The Right to Reputation

*“Good name in man and woman, dear my lord,
 Is the immediate jewel of their souls.
 Who steals my purse steals trash; 'tis something, nothing;
 'Twas mine, 'tis his, and has been slave to thousands;
 But he that filches from me my good name
 Robs me of that which not enriches him,
 And makes me poor indeed.”
 (Shakespeare in Othello, Act II, Scene 3165:-)*

Reputation, an intangible yet invaluable asset, often defines one's social and professional identity. The quote from *Othello* highlights the profound value of a good reputation, illustrating that a person's name and honor are invaluable assets to their identity and soul. Reputation has been defined in *Britannica Dictionary* as “the common opinion that people have about someone or something : the way in which people think of someone or something” or as “the esteem in which a person is held by others, reflecting a mix of moral judgment and social assessment,” linking it to both personal character and public perception.¹⁷ It

reflects how individuals are perceived by others based on their past actions, words, or achievements and plays a critical role in shaping their social identity. In legal terms, reputation is often defined as a right that merits protection under defamation law, as it involves the public esteem in which a person is held. Courts have acknowledged reputation as integral to an individual's dignity and personal security, as it influences public trust and social standing. *Physical frame of a person is one proof of life. Reputation for a person is the whole purpose of life. So while the physical frame identifies life, reputation defines it.* While physical form is ephemeral, reputation is enduring. Reputation is the residue of life even after physical form ceases. Reputation has wings, it can fly faster than a man can move. Reputation it is said precedes a man. Truly reputation succeeds a man as well.¹⁶

Socrates one of the pioneering philosophers of ancient Greece, emphasizing the importance of reputation said:

"Regard your good name as the richest jewel you can possibly be possessed of - for credit is like fire; when once you have kindled it you may easily preserve it, but if you once extinguish it, you will find it an arduous task to rekindle it again. The way to gain a good reputation is to endeavor to be what you desire to appear."

Aristotle thought alike:

"Be studious to preserve your reputation: if that be once lost, you are like a cancelled writing--of no value, and at best you do but survive your own funeral".

The quest for and the possession of a good reputation is a universal value in human life. It transcends the barriers of time and does not recognize the boundaries of territory. Every individual possesses an inherent right to a good reputation, which must be respected and not violated. This right is often considered more valuable than any other form of property. The concept of human dignity envisages that human beings possess a special value that is intrinsic to their humanity owing to which they are worthy of respect whatever may be their race, colour, creed, gender or personal qualities or abilities.¹⁶

Islam also recognizes the significance of reputation and provides protection for it. In accordance with the objectives of Sharī'ah, libel is viewed as an infringement on honor and dignity⁴. In Islamic society, maintaining one's honor is crucial for social harmony. Disputes arising from defamation can lead to discord and unrest within the community. Therefore, Islam advocates for respectful communication and the avoidance of slander and gossip. Sharia, places a strong

emphasis on the protection of an individual's honor and reputation. The Quran explicitly condemns slander and false accusations, as illustrated in ***Surah Al-Hujurat*** (49:12), which advises believers to avoid suspicion and to refrain from backbiting. It ordains:

"Allah states in the Quran (what means): "O you who have believed! Avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allah; indeed, Allah is accepting of repentance and Merciful." [Quran 49:12]

Allah in Quran says: ***"And why, when you heard it, did you not say: 'It is not for us to speak of this. Exalted are You, [O Allah]; this is a great slander?'"*** [Quran 24:16]

The Prophet Muhammad (PBUH) also emphasized the importance of safeguarding the dignity of individuals, stating that a Muslim is one from whose tongue and hand others are safe. The Prophet, *peace and blessings be upon him*, said, "The slanderer will not enter Paradise." Hudhayfah reported: ***(Source: Sahih al-Bukhari 5709, Sahih Muslim 105)***.

Similarly, Abu Huraira reported: The Messenger of Allah, *peace and blessings be upon him*, said, "Five sins cannot be expiated: idolatry with Allah, killing a soul without a just case, slandering a believer, fleeing the battlefield, and bearing false witness to consume the wealth of another without right." ***(Source: Musnad al-Shamiyyin 1161)***

Article 4(2)(a) of the Constitution of Pakistan protects individuals from actions that may harm their reputation, while Articles 9 and 14 further safeguard rights related to life, liberty, and personal dignity. Article 9 ensures that no one can be deprived of life or liberty except by law, highlighting personal security, whereas Article 14 underscores the importance of dignity, recognizing reputation as a critical aspect that requires protection from defamation. Together, these articles create a robust framework for safeguarding both physical and reputational interests, affirming that dignity should not be compromised by falsehoods or malicious actions. The Supreme Court of Pakistan has consistently upheld the inviolability of personal dignity, reinforcing legal protections against defamation and demonstrating a commitment to preserving life, liberty, and

reputation as fundamental components of individual dignity in Pakistan's legal system.

In *Liberty Papers Ltd. and others v. Human Rights Commission of Pakistan* (PLD 2015 SC 42) the august Supreme Court of Pakistan held:

“Under the provisions of the Constitution of the Islamic Republic of Pakistan, 1973, reputation of a person has received the highest protection in Article 4(2)(a). Further under Article 14 the dignity of man and, subject to law, the privacy of home, shall be inviolable right of each and every citizen. The defamation of any person or citizen through spoken or written words or any other means of communication lowers the dignity of a man fully guaranteed by the Constitution, thus, not only is it the constitutional obligation of the State but all the citizens and persons living within the State of Pakistan to respect and show regard to dignity of every person and citizen of Pakistan otherwise if anyone commits an act of malice by defaming any person, would be guilty under the Constitution and would cross the red line of prohibition imposed by the Constitution, attracting serious penal consequences under the law and the person violating the same has to be dealt with under the law.”

The relationship between a *person and reputation* and the nature of the right to reputation in the Indian's constitutional scheme was examined by the Hon'ble Supreme Court of India in *Kishore Samrita Vs. State of U.P. reported at (2013) 2 SCC 398*. Upon consideration of past judicial authority in point, the scope of the right to reputation was defined as follows:

"The term **"person"** includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. "Reputation" is an element of personal security and is protected by the Constitution equally with the right to enjoyment of life, liberty and property. Although "character" and "reputation" are often used synonymously, but these terms are distinguishable. "Character" is what a man is and "reputation" is what he is supposed to be in what people say he is. "Character" depends on attributes possessed and "reputation" on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present."

"In *Corpus Juris Secundum, Vol. 77 at p. 268* is to be found the statement of law in the following terms:

“It is stated in the definition Person, 70 C.J.S. p. 688 note 66 that legally the term "person" includes not only the physical body and members, but also every bodily sense and personal attribute, among which is the reputation a man has acquired. Blackstone in his Commentaries classifies and distinguishes those rights which are annexed to the person, jura personarum, and acquired rights in external objects, jura rerum; and in the former he includes personal security, which consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. And he makes the corresponding classification of

remedies. The idea expressed is that a man's reputation is a part of himself, as his body and limbs are, and reputation is a sort of right to enjoy the good opinion of others, and it is capable of growth and real existence, as an arm or leg. Reputation is, therefore, a personal right, and the right to reputation is put among those absolute personal rights equal in dignity and importance to security from violence. According to Chancellor Kent as a part of the rights of personal security, the preservation of every person's good name from the vile arts of detraction is justly included. The laws of the ancients, no less than those of modern nations, made private reputation one of the objects of their protection.

The right to the enjoyment of a good reputation is a valuable privilege, of ancient origin, and necessary to human society, as stated in Libel and Slander Section 4, and this right is within the constitutional guaranty of personal security as stated in Constitutional Law Section 205, and a person may not be deprived of this right through falsehood and violence without liability for the injury as stated in Libel and Slander Section 4.

Detraction from a man's reputation is an injury to his personality, and thus an injury to reputation is a personal injury, that is, an injury to an absolute personal right

Pakistan is a signatory to multiple international conventions and protocols that safeguard fundamental human rights, including the right to life, liberty, privacy, and recourse to defamation.⁹⁻¹⁵ The ***Universal Declaration of Human Rights, 1948*** (UDHR) has explicit provisions for both, the right to free speech and right to reputation. Article 12 of the said Declaration provides that:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

The ***International Covenant on Civil and Political Rights*** (ICCPR) contains similar provisions. Article 19 of the Covenant expressly subjects the right of expression to the rights and reputation of others. It reads thus:

"19. (1) everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights provided for in Para (2) of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) for respect of the rights or reputations of others;

(b) for the protection of national security or of public order (order public), or of public health or morals."

The House of Lords in ***Reynolds Vs. Times Newspapers Ltd. and Others***, reported at (1999) 4 ALL ER 609, relying on the vast body of common law, stated, "Historically the common law has set much store by protection of reputation." Finally observing as under:

“Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed choice, the electorate needs to be able to identify the good as well as the bad. Consistently with these considerations, human rights conventions recognize that freedom of expression is not an absolute right. Its exercise may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of the reputations of others.”

The U.S. Supreme Court recognized the paramount importance of reputation as a fundamental value in a free society governed by law in the case of **Wisconsin v. Constantineau**, reported at (1971) SCCOnlineUSSC12. The Court observed as follows:

"Where a person's good name, reputation, honour, or integrity is at stake because of what the Government is doing to him, notice and an opportunity to be heard are essential."Posting" under the Wisconsin Act may to some be merely the mark of illness, to others it is a stigma, an official branding of a person. The label is a degrading one. Under the Wisconsin Act, a resident of Hartford is given no process at all. This appellee was not afforded a chance to defend herself. She may have been the victim of an official's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented."

In **Marion v. Davis**, 217 Ala. 16 (Ala. 1927), the Supreme Court of Alabama held:

“The right to the enjoyment of a private reputation, un-assailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution, equally with the right to the enjoyment of life, liberty and property.”

Thus the right to reputation is a vital aspect of the dignity and identity in domestic and international legal framework as well as in religious and literature and the right to defend one's reputation is fundamentally intertwined with the very essence of that reputation. The law of defamation has developed over time to protect individuals' reputations from false statements. Defamation law seeks to ensure that while individuals can express their views freely, they cannot do so at the expense of others' reputations.

An overview of Defamation Law and its Historical developments.

Defamation law serves to protect an individual's reputation from false statements that cause harm. It is rooted in the balance between two fundamental rights: *the right to free speech* and *the right to protect one's reputation*. Defamation law basic themes involve protecting individuals and entities from untruths that may injure their standing in the community or damage their personal or professional lives. The law of defamation dates back to ancient times, and although it has evolved dramatically, modern themes are apparent in its origins. The civil law version developed from the Roman *actio injuriarum*¹⁸, which focused on the "intentional and unjustified hurting of another's feelings" more than damage to public reputation¹. **In England**, the origins of defamation law trace back to medieval time, where reputation was protected by a mix of secular and ecclesiastical courts. With time, as royal authority expanded, the king's courts absorbed jurisdiction over defamation, especially by the late 16th century. During the 17th century, English defamation law underwent a significant transformation under the *Star Chamber*, which imposed severe penalties on written defamation (libel) as opposed to spoken defamation (slander), especially if it threatened public peace or targeted public officials. Influenced by Roman law, this distinction reflected concerns over the spread of critical ideas via the printing press, with libel regarded as more damaging due to its permanence and wider reach. By the 18th century, this distinction between libel and slander became firmly rooted in English common law and eventually extended to British colonies, including India².

In British India the Defamation Law closely followed the contours of English law, with adaptations to suit the colonial context. After Pakistan's partition in 1947, this framework continued as Pakistan, after independence adopted the defamation law of colonial era. In 2002, the Defamation Ordinance introduced civil remedies alongside criminal penalties, streamlining defamation procedures, establishing criteria for damages, and aiming for timely resolution. While these laws serve to protect personal reputation, they also face criticism for potential misuse in limiting political dissent, reflecting Pakistan's ongoing challenge of upholding the right to reputation while safeguarding freedom of expression.³

Key Provisions of the Defamation Ordinance, 2002

In the Ordinance, Section 3 of the Defamation Ordinance, 2002 explains defamation and its types. Being relevant in the present controversy, it is reproduced:-

- "3. Defamation.** - (1) *Any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form which injures the reputation of a person, tends to lower him in the estimation contempt or hatred shall be actionable as defamation.*
- (2) *Defamation is of two forms, namely: -*
- (i) **Slander;** and
 - (ii) **Libel**
- (3) *Any false oral statement or representation that amounts to defamation shall be actionable as slander.*
- (4) *Any false written, documentary or visual statement or representation made either by ordinary form or expression or by electronic or other modern means or devices that amounts to defamation shall be actionable as libel."*

Similarly, section 4 of the Defamation Ordinance, 2002 defines Defamation Actionable and being also relevant is reproduced:-

- "4. Defamation actionable:-***The publication of defamatory matter is an actionable wrong without proof of special damage to the person defamed and where defamation is proved, damage shall be presumed."*

Section 5 of the Defamation Ordinance, 2002, provides all possible defences that can be raised in response to the allegations or suit filed for damages. Since the appellants take cover under section 5, as such, it is also reproduced for reference:-

- "5. Defences:-***In defamation proceedings a person has a defence if he shows that -*
- (a) *He was not the author, editor, publisher or printer of the statement complained of;*
 - (b) *The matter commented on is fair and in the public interest and is an expression of opinion and not an assertion of fact and was published in good faith;*
 - (c) *It is based on truth and was made for public good;*
 - (d) *Assent was given for the publication by the plaintiff;*
 - (e) *Offer to tender a proper apology and publish the same was made by the defendant but was refused by the plaintiff.*
 - (f) *An offer to print or publish a contradiction or denial in the same manner and with the same prominence was made but was refused by the plaintiff;*
 - (g) *The matter complained of was privileged communication such as between lawyer and client or between having fiduciary relations;*
 - (h) *The matter is covered by absolute or qualified privilege. "*

Further if the claim of defamation is proved, the court under section 9 may give directions to the culprit; *to tender apology, publish the same defamatory statement in alike way, if the victim is satisfied*, pay the ordered amount of money as general damages and any special damages if proved.

Basic Elements

Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right thinking members of society generally or tends to make them shun or avoid him¹⁹. It is thus the act of someone publishing defamatory matter about another. This defamatory matter can be in many forms including but not limited to verbal, written, online, and video. To bring a defamation claim, the publication or statement must meet the following requirements:

The basic ingredients of defamation, as established in Pakistani law, include the following elements:

1. **Defamatory Imputation:** *There must be a statement or imputation that is defamatory in nature. This means that the statement must be such that it tends to lower the reputation of the person in the eyes of right-thinking members of society.*
2. **Identification of the Claimant:** *The statement must identify or refer to the claimant. It should be clear that the statement is about the person claiming defamation.*
3. **Publication:** *The defamatory statement must be published or communicated to at least one person other than the claimant. This means that the statement must be made known to a third party.*
4. **Falsity:** *The statement must be false. Truth is a defense to defamation, so if the statement can be proven true, it cannot be considered defamatory.*
5. **Harm:** *The claimant must demonstrate that the statement has caused harm to their reputation. In cases of libel, harm is often presumed, but in slander cases, the claimant may need to prove actual damage.¹⁹*

These elements are crucial for establishing a defamation claim under the Defamation Ordinance, 2002, and relevant case law in Pakistan⁷. In the course of trial. **In defamation cases, the essence of the claim lies in whether defamatory material is directed at an identifiable person.** Identification is a key element: if the plaintiff cannot be identified, they are not defamed. Identification can occur directly, where the plaintiff is named or *otherwise clearly identifiable*, or indirectly, *through inference or innuendo*. **Direct Identification:** A plaintiff is often directly identified by name, title, or photograph. Disputes sometimes arise over whether a photo alone suffices, though courts have taken varying positions on this issue. Direct identification simplifies establishing the

defamatory nature of a publication. **Indirect Identification:** *This involves subtler inferences, requiring extrinsic evidence to show that an ordinary reader could connect the content to the plaintiff.* Witnesses may reinforce this connection. Items like initials, caricatures, or *context can indirectly identify someone.* **Intent to Identify:** The defendant's intent is irrelevant; if the plaintiff is identified and harmed by the publication, defamation liability applies. **Same Name Plaintiffs:** *Defamation may occur if a person with the same name as another is mistakenly identified. In such cases, intent is also irrelevant, and courts have held defendants liable if multiple people could be identified from the same publication.* **Fictitious Characters:** Even when fictional, a publication can lead to defamation if real people are reasonably identifiable. Witnesses can support the identification, as demonstrated in cases where plaintiffs were associated with fictitious stories or characters. **Groups and Classes:** When defamatory statements target a group, identification complexity increases. For an individual claim, the statement must reasonably identify the plaintiff as part of the group. Courts have shown mixed results in such cases, depending on group size and context. **Prior and Subsequent Publications:** Courts typically consider whether identification was possible at the time of publication. Prior publications may help clarify identity, while later publications are rarely used unless they closely connect to the original content. Ultimately, *a plaintiff must be reasonably identifiable to establish a defamation claim. Direct or indirect identification, and the impact on reputation, are central to the court's determination of liability.*⁶

Case Law on Identification of the Plaintiff

In **Syed Mehmood Ali Vs. Network Television Marketing (Pvt.) Ltd.** (2005 PLD 399) the court held that a plaintiff can maintain a defamation action if it can be shown that the defamatory material was directed at them, even if the identification is not straightforward. The burden lies on the defendants to prove that the publication did not refer to the plaintiff.

“From the evidence that has come on record it appears that the defunct defendant No.1, produced and telecast a defamatory documentary, authored by the defendant No.2, seemingly against the Haleem vendors generally but, it was an innuendo against the plaintiff. Innuendo, in the context of action for tort of defamation, means oblique, subtle or indirect implication in words or expression usually reckless; insolent and derogatory ensuing harm, injury and damage to the reputation, goodwill and estimation of a person, goods or vocation

(see also *Tolley v. J. S Fry & Sons Ltd.*, 1931 A. C. 333 & *Charlston v. News Group Newspapers Ltd.* (1995 (2) A.C. 65).

Generally speaking a class or particular section or group of people cannot claim to be defamed as a class, section, group or community nor an individual can claim to be defamed by general reference to the class, section, group or community to which he belonged. **Exception to this generality could be claimed, where it is demonstrated that, the maligning or offensive defamation was directed, or innuendo angled' or obliquely aimed towards a particular individual, person and or concern or few identifiable individual, persons, goods or vocation.** Once the case is brought within the exception, action for libel or innuendo could be maintained by affected persons to vindicate the honour, compensate the loss and restore the image reference can be made to *Knupffer v. London Express Newspaper Ltd.*, 1944 AC 116, *Aspro Travel Ltd., v. Owners Abroad Group* (1995) 4 All E R 728 CA, *Hassan Razzaqi v. Mst. Mehrun Nisa Meher* 1972 PCr.LJ 1175, *Mst. Hussain Bibi v. Saleem Muhammad* PLD 1996 Lah. 50).

“From the tenor of the evidence that has come on record, it appears that documentary titled as "Zara Sochiyay" in the garb of general insinuations against the 'vendors' of Haleem, the Plaintiff's concern "Karachi Haleem" was focused in particular. In the background, images of plaintiff's concern were shown and in the foreground people were shown commenting on Plaintiff's Haleem, an average person with ordinary prudence would be led to believe, as if the documentary is specifically aimed and insinuate the plaintiff's concern and his Haleem. "Documentary" leaves a detestable, aversive and damaging impression, as regards the product (Haleem) of the plaintiff's concern.

Initial burden, to prove that defamatory material or innuendo was pointed towards the plaintiff or his goods (i.e: Haleem) was on the plaintiff to show that the documentary was obliquely aimed at the plaintiff's concern or his Haleem. Plaintiff has successfully demonstrated that in the documentary, shop of the plaintiff was shown, customers interviewed commented about the plaintiff's Haleem, therefore, ordinary viewer reasonably would be led to believe that the documentary is about the plaintiff's Haleem. Plaintiff successfully demonstrated that, the damaging, maligning and offensive defamation telecast and aired twice, was directed, referable or aimed towards the plaintiff's concern, the insinuating innuendo was covertly angled towards the plaintiff's Haleem. Therefore, the burden to establish that the "Documentary" carried the true story or for that matter it was not aimed or focused toward the plaintiff was on the defendants, which burden was not discharged. Defendant No.2 failed to prove that the story in the documentary film shown two times as mentioned in the plaint, by the defendant No. 1, is correct in respect of the plaintiff. Defendants are accordingly liable for consequence of defamation. Issue No. 1 answered accordingly.”

In this context the case **Morgan v. Odhams Press Limited (1971)** [1971]2All ER1156 MANU/UKHL/0020/1971, decided by **House of Lords** in the United Kingdom may serve true understanding of the test to identify the person

defamed. In this case, the appellant, Johnny Morgan, claimed he was defamed by a newspaper article that, while not mentioning him by name, allegedly suggested his involvement in criminal activities. The article described the kidnapping of a girl named Margo Murray, who had been forced to stay in a house associated with the plaintiff's address, suggesting an implication in a dog-doping gang. Morgan argued that readers with specific knowledge about his association with Murray could reasonably interpret the article as referring to him.

The primary issues revolved around whether the article could reasonably be seen to refer to Morgan based on extrinsic facts known to specific readers. Witnesses testified they believed the article referenced Morgan due to their awareness of his relationship with Murray and her presence in his home. The Court held that for a defamation claim, **an unnamed person could be defamed if those with specific knowledge could reasonably infer the individual's identity from the publication's content.** Although the jury found in favor of Morgan, the Court of Appeal reversed the decision, concluding that there was insufficient "pointer" in the article to identify him without speculation. Relevant Paragraph of the judgment is replicated for ready reference as under:-

"The principle was succinctly expressed by Viscount Simon L.C. in his speech in Knupper v. London Express Newspaper Ltd. [1944] A.C. 116: 'Where the plaintiff is not named, the test which decides whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to.'"

The **test for identifying a plaintiff in defamation cases, as outlined in Morgan requires that the defamatory content be reasonably understood by people who are familiar with the plaintiff to refer to them specifically.** The test does not demand that the plaintiff be explicitly named; rather, it is sufficient if the content, combined with specific extrinsic facts known to certain readers, logically points to the plaintiff. The assessment focuses on whether a reasonable person with relevant knowledge would naturally connect the defamatory statement to the plaintiff, without relying on mere speculation or assumption. This ensures that the identification arises from a clear and rational basis within the context, rather than from ambiguous or generalized implications.

In **Cross v. Denley (1952) 52 SR (NSW) 112 at 116 per Owen J.** the Supreme Court of New South Wales, Australia emphasized that in defamation

cases, the plaintiff must demonstrate that the defamatory material specifically references or can be identified as referring to them. **The plaintiff does not need to provide evidence of people recognizing the reference if the defamatory statement is widely recognizable as concerning the plaintiff by the general public.** However, if only a small subset of people familiar with the plaintiff and his activities could identify him, then the plaintiff must show that someone within that subset recognized the defamatory content as referring to him. This principle establishes the threshold for identification of the plaintiff in defamation claims. An excerpt of the relevant portion of the judgment is reproduced for ease of reference:

*"It was necessary for [the plaintiff] to prove also that the defamatory matter contained in the pamphlets was published 'of and concerning' him, and this he failed to do, **because no evidence was forthcoming that any member of the audience who read the pamphlet connected the 'Express Print, Auburn' with the plaintiff.** It is not only necessary that the words published should convey a defamatory meaning; they 'must also convey a defamatory meaning of the plaintiff.'"*

In the case of **David Syme & Co v Canavan (1918) 25 CLR 234**, the High Court of Australia addressed the issue of identification in defamation law. The court held that a plaintiff could be identified in a defamatory statement even if they were not named directly. Justice Isaacs emphasized the importance of the context in which the statement was made, asserting that the test for identification is whether a reasonable person would understand the statement as referring to the plaintiff. The court noted that implications drawn from the content and context of the statement, as well as the audience's knowledge, play a crucial role in establishing identification. The judgment underlines that defamation can occur through indirect references and associations, highlighting the need for a holistic approach when assessing claims. This principle is essential in subsequent defamation cases, guiding courts in evaluating whether a statement has the capacity to identify an individual based on its content and the reasonable interpretations of the audience familiar with the relevant circumstances.

In **Atlanta Journal Co. v. Farmer, 172 S.E. 647 (Ga. Ct. App. 1934)** decided by the Court of Appeals of Georgia in 1934 the court allowed a claim based on indirect references, as the plaintiff's connection to the published defamatory content was evident through surrounding circumstances. This approach established that a direct mention of the plaintiff's name is not necessary

for defamation, provided the audience could reasonably identify the individual from extrinsic factors.

Principle of Innuendo and the Role of Extrinsic Evidence

It may also be noted that in defamation law, "*innuendo*" refers to an indirect or subtle implication that can harm a person's reputation. It is a form of defamation where the words or expressions used may not be defamatory on their face but can be interpreted in a way that suggests something damaging about the plaintiff when considered in context or with additional knowledge.

In the context of *identifying a plaintiff*, *innuendo* can be crucial because it allows a plaintiff to claim defamation even if the statements made do not explicitly name them. In the case of **2005 PLD 399: Syed Mehmood Ali Plaintiff versus Network Television Marketing (Pvt.) Ltd.**, it was noted that the documentary produced by the defendants contained insinuations that were directed at the plaintiff's business, even though it appeared to address a broader category of Haleem vendors. The court recognized that the documentary's content could lead an average viewer to believe it specifically targeted the plaintiff, thus establishing the basis for a defamation claim through innuendo. The case states that:

"The principle of innuendo allows the plaintiff to demonstrate that the defamatory meaning was intended or could be reasonably inferred from the context, thereby supporting their claim for damages due to reputational harm."

In the case of **V. Subair vs. P.K. Sudhakaran 1987 CRILJ 736**, the Kerala High Court addressed the principle of innuendo concerning defamation. The petitioner, the editor of a newspaper, was found guilty under Section 501 of the Indian Penal Code for publishing a report that impliedly defamed a local medical practitioner (P.W. 1), who claimed that the article portrayed him as lecherous and tarnished his professional standing. The report, which discussed a woman's experience with a local physician, suggested inappropriate conduct without naming the doctor, leading the complainant to argue that the description unmistakably referred to him. Despite the defense's argument that other doctors could fit the description, the court upheld the conviction, noting that the surrounding context and the details of the report were sufficient to identify the complainant to the reasonable reader. The court reinforced that while the identity of a defamed individual does not need to be explicitly stated, if the circumstances

and descriptions lead a reasonable person to deduce the identity, it suffices for establishing defamation. This case illustrates the application of innuendo in defamation law, emphasizing that implications can be as damaging as direct accusations.

In defamation cases, *extrinsic evidence plays a significant role in identifying the plaintiff when defamatory statements is INNUENDO thus lacking explicit names or clear identification*. Courts generally allow plaintiffs to present external facts demonstrating that a defamatory publication, while not naming them directly, reasonably points to them as the subject. Such identification often relies on contextual elements, such as references to personal attributes, relationships, or specific circumstances associated with the plaintiff, that enable readers familiar with those details to recognize the person being defamed. This indirect approach allows plaintiffs to claim defamation even when the publication appears generic or ambiguous on its surface.

Extrinsic evidence must establish a clear link between the defamatory content and the plaintiff, typically verified through testimony or circumstantial details. Courts have allowed plaintiffs to introduce evidence showing how the publication was interpreted by a third party, often someone acquainted with the plaintiff, who perceived the statements as defamatory to them. This process of using external facts provides a means to ensure that defamatory claims are actionable even without explicit naming, as long as the implication sufficiently identifies the plaintiff to the intended audience.⁶

Principles of Burden of Proof in Defamation Cases

Initial Burden on the Plaintiff: In a defamation suit, the law presumes that the defamatory words published in the newspaper are false. The plaintiff's only burden is to prove that the defendants published the defamatory statements; it then falls on the defendants to demonstrate that the published words are true. In case of *Zafar Hijazji, Chief Editor, Daily Muhtasib Abbotabad and 4 vs Muhammad Ayaz Mushwani (2020 C L C 618)* the Peshawar (Abbottabad Bench) observed that:

“In a suit for defamation, the defamatory words published in the newspaper are presumed under the law to be false and only burden on the plaintiff is to prove that the defamatory words have been published by the defendants and then it is for the defendants to prove that the words so published are true.”

In **Syed Mehmood Ali v. Network Television Marketing (Pvt.) Ltd. & Another (P L D 2005 Karachi 399)**, the court addressed the burden of proof in defamation cases *ruling that the plaintiff bore the initial burden of proof to demonstrate that the defamatory material specifically targeted him. He met this by showing that his shop and product were portrayed in a derogatory manner. Consequently, the burden shifted to the defendants to prove the documentary's truth or that it was not aimed at the plaintiff. The defendants failed to discharge this burden, resulting in a finding of liability against them.*

In case of **Syed Mehmood Ali Plaintiff vs. Network Television Marketing (Pvt.) Ltd. and Another Defendants 2005 PLD 399** the Court ruled that once defamation is established, damage to reputation is presumed. The plaintiff successfully demonstrated that the documentary aired was specifically aimed at his business, leading to reputational harm. The judgment clarified that the initial burden to prove that the defamatory material was directed at the plaintiff rested on the plaintiff, which he successfully met.

In defamation cases if the defendant takes a statutory defense, he has to prove his defense. Once it is established that defamation has occurred, damage to the plaintiff's reputation is presumed. This principle is codified in the Defamation Ordinance, 2002, which states that once libel is proven, the injury to reputation is assumed, and the plaintiff does not need to provide further evidence of damage.

In view of the above position of law, underscored in case laws and codified law, in defamation cases while the plaintiff must first prove defamatory remarks or innuendo and direction of the defamatory material towards them, the onus then shifts to the defendants to establish justification or privilege or his plea that it was not aimed at the plaintiff.

Application of principles and case law on the current case

If in the case in hand, the defendant's plea that the individual in the image and the name in the caption do not refer to the plaintiff challenges the element of identification. The defendant's plea is not a statutory defense but rather a **factual rebuttal** to the plaintiff's identification element. By taking this plea, the defendant aims to **challenge the plaintiff's burden to establish that the image**

and name refer to them specifically, which is essential for proving defamation. Therefore, **the plaintiff must prove that the image refers to him personally and a reasonable observer would conclude that the image and caption referred to them in addition to the proof that the caption was defamatory by implying they were engaged in conspiracy.** On the other hand, if the defendant can prove that the person depicted or named in the article is not the plaintiff, the plaintiff's defamation claim could fail on the grounds of misidentification. Since the defendant has not taken any statutory defenses (e.g., truth, fair comment, or qualified privilege), their primary focus is disputing that the publication pertains to the plaintiff.

Reference

- 1- *Die Spoorbond v. South African Railways*, 1946 (2) SALR 999, 1010 (CC) (S. Afr.) (Schreiner, J.A., concurring).
- 2- Veeder, Van Vechten. "The History and Theory of the Law of Defamation." *Columbia Law Review*, vol. 3, no. 8, 1903, pp. 546-573.
- 3- *The Interplay of Defamation Laws and Individual Honor in Pakistan: A Critical Review of Common Law Applications* Muhammad Abid Nazir Ph.D. Law Scholar, TIMES Institute Multan, Pakistan.
- 4- ANALYTICAL RESEARCH. Award of Monetary Compensation for Intangible Damage with Special Reference to Defamation under Islamic & Pakistan Law
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- 5- <https://harrisdefamation.com.au/blog/identification-of-plaintiff-in-defamatory-material>
- 6- *Libel and Slander -- The Use of Extrinsic Facts to Identify the Plaintiff* John R. Jenkins Jr.
- 7- 2010 YLR 1647
- 8- *Faqeer Muhammad vs Muhammad Shakeel* (2014 PLD Lahore 177)
- 9- United Nations General Universal Declaration of Human Rights , 1948, Preamble. Office of the High Commissioner for Human Rights, UDHR and Its Impact on International Law.
- 10- The Constitution of Islamic Republic of Pakistan, 1973 Articles 8-28.
- 11- United Nations General Assembly, Universal Declaration of Human Rights, Article 3.
- 12- United Nations, International Covenant on Civil and Political Rights, Articles 6, 17, and 19.
- 13- United Nations, International Covenant on Civil and Political Rights, Article 5(2).
- 14- United Nations, Vienna Convention on the Law of Treaties, Article 27.
- 15- United Nations, Universal Human Rights System Overview.
- 16- *Sumpurnanand vs State Of U.P. And 2 Others* on 26 October, 2018 Equivalent citations: AIR ONLINE 2018 ALL 4880
- 17- *An American Perspective: Protecting Reputation and Privacy*, David A. Anderson (1994):
- 18- "Actio injuriarum" refers to a legal action aimed at seeking remedy for injury to a person's reputation or dignity, particularly in the context of defamation. This concept stems from Roman law, where it was designed to address grievances resulting from insults or harm to one's honor. The action allows individuals to claim damages for harm caused by defamatory statements or actions that undermine their reputation.
- 19- *Faqir Muhammad vs Muhammad Shakil* (PLD 2014 Lahore 177)

The End