UNIT 4 LAW OF DEFAMATION AND JOURNALISTIC DEFENCE

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4.0 OBJECTIVES

After reading this unit, you should be able to:

- state what constitutes defamation;
- distinguish between slander and libel;
- identify the remedies available to the victim;
- state whether civil action is permissible in addition to the criminal proceedings;
- list the defences available in an action of defamation; and
- explain the precautions one should take before publishing reports and articles containing allegations against individuals or public organisations.

4.1 INTRODUCTION

So far, we have discussed the issue of freedom of speech and expression and media responsibilities. The salient features of the Indian constitution were considered in Unit-2 and we have had discussions on press legislation in the previous unit.

This is the last unit of course 2 on Mass Media and Society. This unit deals with the law of defamation. We shall consider the various kinds of defamation and their implications in our social set-up. In the next course, i.e. Course 3 we shall deal with reporting, writing and editing.
4.2 BACKGROUND

Defamation or taking away the fame from someone, is an offence punishable with imprisonment from the earliest times of civil government. Kautilya has called it "Vakarushyam" in his book Artha Sastra and prescribe punishment for 'man han' keeping in view the social conditions of that time. The modern law pundit have regarded defamation as an injury to the reputation of a person. Reputation is considered as property and any damage to it can give rise to both criminal and civil action.

There is no separate law of defamation in India. The Indian Penal Code (IPC) has four sections which define elaborately what constitutes defamation and what the defences and punishments are.

Section 499 defines the offence of defamation. It is very exhaustive with four Explanations and ten Exceptions. Obviously, defamation is treated as a criminal offence under this section. There is no codified civil law of defamation in our country, though the aggrieved person has the option to file a civil suit under common law. In the recent past there were attempts to enact a comprehensive law covering both the civil and criminal offences of defamation, but these attempts ended up in failures.

4.3 KINDS OF DEFAMATION

Defamation is of two kinds: (1) Verbal (2) Written. Verbal defamation is known as slander while written defamation is termed as libel. Both the offences are punishable under the same section of IPC.

Defamation gives rise to both civil and criminal action. The civil law relating to defamation is not codified in our country. Therefore civil action against defamation is based on the English Common Law, subject to statutory exceptions.

Criminal law of defamation is contained in Sections 499 to 502 of the IPC and is very exhaustive. There is no civil action if defamation is of the spoken word. The press, being a written and printed medium, is likely to commit an offence of libel only. The main difference between civil suit and criminal proceeding for defamation is pertaining to the compensation. While the object of civil action is to adequately
compensate the person defamed for the loss of reputation by damages, the object or criminal prosecution is to punish the offender, by way of imprisonment or fine or both.

Intention is irrelevant in civil liability for defamation. Truth of the statement is complete defence to a civil action for defamation.

In criminal law intention is essential for liability. Good faith is a defence in criminal law. But truth as such is no defence in criminal proceedings except under the first exception to Sec. 499 of IPC. It is necessary to prove further that the defamatory publication is for the public good.

The two remedies are not alternative but cumulative. The aggrieved person can bring a civil suit and also make a complaint before a criminal court at the same time. Even where the defendant has already been convicted in a criminal court under Sec. 499 of IPC, the aggrieved person may still seek damages through a civil suit.

4.3.1 What Constitutes an Offence of Defamation?

We have already learnt that defamation is an injury to a person’s reputation which is considered as his property. Let us now study the concerned Section in the Indian Penal Code. Sec. 499 of IPC says:

"Whoever by words either spoken or intended to be read, or by signs or by visible representation, makes or publishes any imputation concerning any person intending to harm, or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."
There are four explanations and ten exceptions in this section. We will discuss them later. Let us first examine the implications of the first part of this section.

It becomes clear from a reading of this part of the Section that an offence of defamation can be committed not only by spoken word or written statement but also by signs and visible representations. That means an offending cartoon or photograph may also give rise to action for defamation. What are the ingredients of the offence of defamation? They are:

i) An imputation concerning the person must have been made.

ii) Such imputation must have harmed, or there is reason to believe that it has the tendency to harm, the reputation of the person concerning whom it is made.

Imputation means an accusation against a person and implies an allegation of fact and not merely a term of abuse or insult. In order to constitute the offence of defamation, it is not necessary that an injury to the reputation of the complainant must have been actually caused. It is enough if the offending statement is made with the intention of harming the reputation of the complainant or with knowledge or reason to believe that it will harm his reputation.

Check Your Progress 1

Note: i) Use the space below for your answers.
    ii) Compare your answers with those given at the end of this unit.

1) Four statements are given below. Please indicate whether they are ‘True’ or ‘False’?
   a) Defamation means hurting someone’s reputation.
      [ ] True     [ ] False
   b) The reputation of a person is not considered as property.
      [ ] True     [ ] False
   c) In independent India, separate civil law on defamation has been enacted.
      [ ] True     [ ] False
   d) The Indian Penal Code has indicated aspects of defamation by giving four explanations.
      [ ] True     [ ] False

2) a) There are two kinds of defamation. What are they?

2) b) Can a person who has been defamed bring both criminal and civil case to the court?
[ ] Yes    [ ] No
Justify your answer in two sentences.

3) A defamation is committed by the following (please only the appropriate):
  1) keeping quiet
  2) written words
  3) cartoons
  4) playing sports
  5) spoken words
  6) photographs
  7) acting in a film
  8) gestures
  9) gossip
4.3.2 What Does Not Constitute Defamation?

Once an imputation is proved to be defamatory, it is for the accused to show that he is protected by any of the exceptions to Sec. 499.

Therefore, let us now study the exceptions to Sec. 499 IPC.

**First Exception:** It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

The accused should establish two ingredients to avail the benefit under this exception. Both these ingredients are questions of fact. Therefore, he has to prove both ingredients strictly. The first one is to prove that the imputation is true. The second one is to prove that it is made for the public good.

**Second Exception:** It is not defamation to express in good faith any opinion regarding the conduct of a public servant in the discharge of his public functions or regarding his character, so far as his character appears in that conduct and no further.

This exception, as is obvious, relates to the defence of fair comment. The statement made by the accused is an opinion and not a statement of fact. It must have been made in good faith and in public interest. When the comment is on the character of the aggrieved person it must be related only to his conduct in public and the function he is performing.

**Third Exception:** It is not defamation to express in good faith any opinion regarding the conduct of any person touching a public question, and regarding his character so far as his character appears in that conduct and no further.

This exception, again is the one relating to fair comment. Only difference is that the opinion expressed relates to the conduct of a person touching a public question. So, as in the case of the second exception, the comment must have been made in good faith on a matter in which public interest is involved.

**Fourth Exception:** It is not defamation to publish a substantially true report of the proceedings of a court of justice or the result of any such proceedings. This exception comes under absolute privilege. Only thing is that it should be a mere report of the proceedings without any comment. And it should be substantially true.

**Fifth Exception:** It is not defamation to express in good faith any opinion regarding the merits of civil or criminal case, decided by a court of justice; or regarding the conduct of any person as party, witness or agent, in any such case; or regarding the character of such person, as far as the character appears in such performance and no further.

This exception gives immunity to the publication of comments on the merits of the case which has already been decided by a court or comments relating to the conduct or character of any party, agent or witness. Only thing is that the opinion or comment is expressed in good faith.

**Sixth Exception:** It is not defamation to express in good faith any opinion regarding the merits of any performance which its author has submitted to the judgement of the public or regarding the character of the author, so far as the character appears in such performance, and no further.

This exception safeguards the reviews, critiques of any artistic work or public performance. If the expression of the opinion is in good faith the newspaper or the journalist is not liable for action. Expression can either relate to the merits of such work or performance or the character of the author or performer in so far as such character appears in such work or performance. In this exception, the expression “submitted to the judgement of public” includes both expressed and implied submission. Publication of a book, public performance of a drama, music concert or release of a film are treated as implied submission to the public judgement, suffice that such expression of opinion should be in good faith.
Seventh Exception: It is not defamation if a person having authority over another, either conferred by law or arising out of a lawful contract, passes in good faith, any censure on the conduct of that person. This exception is not related to the work of a journalist and is related to an officer writing confidential reports about his subordinates.

Eighth Exception: It is not defamation to prefer in good faith an accusation against any person to those having lawful authority over that person, regarding the subject matter of accusation.

Journalists do not make accusations against any person to his/her higher officials. They publish whatever information they get expecting the lawful authority to act upon that. Therefore, the imputation must be made with due care after satisfying oneself with the truth about it. They must be able to show from the circumstances that there is a preponderance of probability.

Ninth Exception: It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Under this exception publication of matter concerning general public good are covered. If the public interest can be served by a private communication of the imputation, its publication is constructed by courts as indicating lack of good faith.

Tenth Exception: It is not defamation to convey a caution in good faith to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good. Here again imputation published for the public good in good faith is excepted.

4.4 SCOPE OF THE LAW

Let us now examine the four explanations given in Section 499 of IPC. This will help us in understanding the scope of the law. The explanations are:

- Explanation-1: It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living, and is intended to be hurtful to the feelings of his family or other near relatives.

- Explanation-2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

- Explanation-3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

- Explanation-4: No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste, his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered disrespectful.

Explanation-1 given above, makes it clear that imputation against a deceased person, if that imputation would have harmed the reputation of that person if living and intended to hurt the feelings of that person’s family or near relatives, amounts to defamation.

Explanation-2 given above, provides that there can be defamation of a group or collection of persons. In the case of Sahib Singh Vs State of UP (1965) the Supreme Court has held that imputations made against an identifiable group of persons, in this case the proctorial staff at Aligarh, a specified place, amounts to defamation.

An association or collection of persons can maintain a complaint only when they are distinguishable from the rest of the community. A statement alleging generally that journalists are prone to undesirable influences may not be an offence. But if the same imputation is made referring to, say the journalists of Hyderabad, it is against a well-defined group and therefore becomes an offence. Any journalist of Hyderabad can file a complaint even though he was not mentioned by his name.
Explanation-3 given above, makes it clear that innuendos and ironical statements may also become cause of action if the complainant could prove that in the eyes of a person of ordinary intelligence, the imputation refers to him.

A says Z is an honest man, he never stole B's watch intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

Explanation-4 given above, refers to imputation which lowers the moral or intellectual character of a person or creates an impression that the body of that person is in a loathsome state given later in this unit.

A says that we should sympathise with B because he is suffering from syphilis. This amounts to defamation unless it falls within one of the exceptions given later in the unit.

So, it is now clear that once an imputation is proved to be defamatory, it is for the accused to show that he is protected by any of the exceptions to section 499 IPC.

Check Your Progress 2
Note: i) Use the space below for your answers.
   ii) Compare your answers with those given at the end of this unit.

1) What is an imputation?

2) The following are fiction summaries of some incidents. Could these be considered as defamatory? In each case, please give reasons for your decision.
   a) Prof. X is a Vice-Chancellor of an Indian University. Recently, his school mate, Mr. Y, a famous personality, said in public that Prof. X used to copy in the examinations.
   b) Mr. P of M Village was a very generous and honest man. He helped many landless farmers to acquire lands. He built a small health centre for the people and established a primary school. He died six months ago. Mrs. S has recently said that Mr. P had forced her to have sex with him when she was a young girl.

4.5 MEANING OF PUBLIC GOOD AND GOOD FAITH

The student must have noticed expressions such as 'public good' and 'good faith'. We must know the meaning of these words. Both these are questions of fact and must be proved like any other fact.

A publication is said to be for public good if it has rendered or sought to render some benefit to the public or a section thereof.

A thing shall be deemed to be done in good faith when it is done honestly. A mere belief in the truth of an allegation itself does not amount to good faith. The belief must have a rational basis. That means before publishing a defamatory statement the journalist must make inquiries with due care and attention as is laid down by Sec. 52 of the IPC. Reckless statements will not get the protection of the plea of good faith. Similarly, imputation actuated by personal ill-will or malice or to scandalise the person against whom it is made, are also excluded.

'Good Faith' is also defined in Sec.: 3 (22) of the General Clauses Act. The Section states that a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not.
4.6 JOURNALISTIC DEFENCES

In addition to the defences available in cases already stated (private or civil wrong for which the wronged person may get redress in a law court) there are four special defences available to journalists in an action for defamation. They are:

1) Justification
2) Fair comment
3) Privilege
4) Apology

In an action for defamation the complainant has to first prove:

1) that the defamatory statement is published;
2) that it refers to him; and
3) that it is false.

Check Your Progress 3

Note: 

i) Use the space provided below for your answer.

ii) Compare your answer with the one given at the end of this unit.

1) The 'exceptions' discussed in the preceding paragraphs are very important. The ground for exception is 'good faith' and 'public interest'. Explain these two concepts briefly.

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The defendant in his defence can prove that

1) the statement does not bear defamatory meaning;
2) that it does not refer to the complainant or to any other person on behalf of whom the complainant can initiate criminal proceedings under Cr.P.C.;
3) that the statement is privileged;
4) that the case is time-barred;
5) that the suit is barred by res judicata.

These defences are available to any person making an imputation against the other. In addition to these, the special defences mentioned above are also available.

Justification

The defence that the statement is true is called the plea of justification. We have observed in the exception given in Sec. 499 IPC studied earlier, that truth of the imputation by itself is not sufficient in a criminal proceeding. Public good is also another ingredient that must have been involved. But in a civil suit, truth of the defamatory statement is a complete defence. The burden of proof is on the defendant. If the impugned statement is provided to be substantially true it is enough. But if the plea of justification is taken in a criminal complaint, the evidence rendered should be such as would result in the conviction of the complainant for the alleged offence.

The plea of justification is like the razor’s edge, for if the defendant does not use it properly it may cause injury to him. If the defendant does not succeed in proving every material part of his statement, the very fact that he has taken the plea of justification, may be treated as aggravation of the offence and may result in the award of increased damages.

Fair Comment

Fair comment on a matter of public interest does not amount to libel. In a plea of fair comment three points arise:
i) The comment relates to a matter of public interest.
ii) It is only a comment and not a statement of fact.
iii) The comment is fair.

Any matter that affects the public at large is a matter of public interest. Conduct of persons in public office or sanitary conditions, public performances of dance, drama or publication of books or release of films for public exhibition etc., are all matters of public interest. Everyone is entitled to comment on such matters. Comment, being a matter of opinion, is enough if it is fair and honest. Others may agree with the comment but the commentator is not called upon by the law to justify it. The comment or criticism is said to be fair if an ordinary set of men with ordinary judgement, would think so. Criticism should not be actuated by malice. It should be a reasonable inference from the facts, which must be truly stated.

Privilege

There are some occasions when a person will not incur the liability even if the report or statement published is defamatory. Such immunity is conferred by law for protection of public interest. A defence founded on such immunity is called the 'privilege'. Privilege is of two kinds (i) Absolute Privilege (2) Qualified Privilege.

Absolute Privilege: On grounds of public policy no action is taken for publication of reports or statements, however false they may be in cases covered by absolute privilege. Reports of parliamentary proceedings and coverage of proceedings of state legislatures, are protected by Art. 361-A of the constitution itself. So no action can be taken for publishing statements made by members of either House of Parliament or legislature however damaging they may be to the interests of any person. But the report must be substantially true. This protection will not be available for publication of statements made by M.P.'s or M.L.A.'s outside Parliament or legislature, and also to the expunged portions of the proceedings of the House.

Qualified Privilege: Judges, counsels and parties in judicial proceedings are absolutely privileged and immune from liability for statements made even if they are defamatory. But newspaper reports of court proceedings come under qualified privilege in our country. Publication of statements relating to affairs of state and reports of public meetings are also given protection of qualified privilege. As far as reports of public meetings are concerned, care should be taken that (a) the meeting is lawful; (b) the proceedings relate to matters of public importance; and (c) the report is fair and accurate.

The defence of qualified privilege will not be available if the defendant is actuated by malice. Malice need not be express malice. It includes indirect or improper motive or any motive other than a sense of duty.

Check Your Progress 4

Note: i) Use the space given below for your answers.
   ii) Compare your answers with those given at the end of this unit.

1) A Member of Parliament makes false and malicious statements about a third party in the House. Do you think a newspaper can get protection from prosecution, if it publishes that false and malicious statement?
[  ] Yes [  ] No
Give reason for your answer.

2) Accusations were hurled at one another by participants at a public meeting to discuss prohibition policy. The newspaper publishes substantially true report of the meeting. Can any participant sue the paper for defamation? Give reasons for your answer.
4.7 WHO MAY FILE COMPLAINTS?

The Criminal Procedure Code, 1973, lays down the procedure for filing complaints for defamation. Section 199 (1) says:

No court shall take cognizance of an offence punishable under chapter xxi of the Indian Penal Code (Defamation) except upon a complaint made by the person aggrieved by the offence.

However, if such person is under the age of 18 years, or is an idiot or a lunatic or due to sickness or infirmity is unable to make a complaint, or is a woman who, according to the local customs, or manners ought not to be compelled to appear in public, some other on his or her behalf can make the complaint.

From Sec. 199 (1) it is clear that normally only the aggrieved person can file a complaint for defamation. This is at variance with the general rule which permits any person to file a complaint as to the commission of a criminal offence. A complaint for defamation filed by a person who is not the aggrieved person will not stand unless he is doing so on behalf of a minor, idiot, lunatic, infirm person or a woman observing "purdah", etc.

The expression "aggrieved person" postulates that the person or persons defamed is or are identifiable. Persons who form part of an indefinite or unidentifiable body or group, cannot make a complaint unless he or they can prove that the defamatory statement has a direct bearing on him or them. That means if the spiritual head of a community is defamed his follower cannot make a complaint on the plea that he belongs to that community.

But there may be cases where a person is directly defamed by a statement and another person is indirectly defamed by the same statement. In such cases both the persons can file a complaint. For example, if an imputation of unchastity is made against the daughter of a person, both father and daughter can complain, as "aggrieved person".

Section 199 (2) offers an exception in the case of dignitaries such as the President, Vice-President, Governor of a State or a Minister and also in the case of public servants. There is a special procedure laid down in such cases and the public prosecutor is permitted to make a complaint.

Civil Suit

Any person who has been defamed is entitled to file a civil suit. An heir or legal representative cannot, in the ordinary circumstances, sue on behalf of the deceased person, except where the libel is also defamatory to the heir. A corporation can sue for defamation only when it affects its business or property. For example, where a libel charges the corporation with insolvency, or with dishonesty or incompetence, which have the tendency to cause damage to business and property, the corporation can file a complaint. In other cases individual members of the Corporation have to sue in their individual capacity only.

4.8 WHO MAY BE SUED?

The Proprietor, Editor, Author, Publisher and Printer of a newspaper or journal would be jointly and separately, liable for any defamatory matter published in the
newspaper or journal and may be sued as such. But the aggrieved person may sue any one of them singly. The only thing is he cannot recover damages from the others for the same offence subsequently, though all are separately liable. A proprietor who does not generally supervise the work of the editorial department of a newspaper or journal may plead exemption from prosecution on that ground and the judge may grant his plea, depending on the circumstances.

Limitation: A complaint for defamation under Section 499 IPC should be lodged within three years of the date of commission (publication) of the offence. Otherwise it would be time-barred except where the delay has been condoned under Section 471 of the Cr. P.C. In the case of dignitaries public servants etc., the limitation for filing the complaint by Public Prosecutor is six months.

4.9 PUNISHMENT FOR DEFAMATION

Section 500 IPC prescribes the punishment for defamation. The section reads as follows:

"Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both".

Punishment for a journalist may be severe in view of the fact that the defamatory statement gets wide publicity. The offence may be further aggravated where a journalist makes reckless comment with an ulterior motive. His conduct subsequent to the publication and during the trial, will also have a bearing on determination of the sentence. The fact that the circulation of the newspaper is poor and the accused has no previous bad record may be mitigating circumstances.

Section 501 of IPC makes "printing or engraving matter known to be defamatory" and section 502 makes "sale of printed or engraved substance containing defamatory matter" also offences punishable with simple imprisonment which may extend to two years, or with fine, or with both.

4.10 DAMAGES IN A CIVIL SUIT

As has already been explained a civil action for defamation is an action for damages for injury caused to the reputation of a person. So damages depend on the assessment of the reputation of that person by the judge. There are certain principles laid down by case law. The amount of damages depend on the nature of imputation, mode of publication, social standing of a person defamed and mitigating circumstances. A person of high social position and the aggravating circumstances may call for exemplary damages. In cases such as loss of business etc., compensatory damages may be awarded. In other cases general damages are awarded for the annoyance or mental pain caused to the defamed person.
Activity 2

Now that you are almost through with this unit, you may like to sit back and recollect the whole gamut of complications that the law of defamation may create for a journalist if he/she does not have a clear understanding of the provisions of the law. Before you read the last section of this unit, you may like to create some laws for yourself, so that, you as a journalist may never fall into the libel trap.

Take a piece of paper and write down the laws on media ethics and press laws, namely “defamation”.

4.11 LET US SUM UP

Having gone through this unit, we now know what constitutes defamation and can differentiate between “libel” and “slander”. The discussion on the law pertaining to defamation, both civil and criminal was quite wide-ranging. The law of defamation contains ten exceptions and four explanations. We have also described the remedies available to the victim of defamation. In the explanation to the civil and criminal law of defamation, we have come to understand where civil law is permissible in addition to the launching of criminal proceedings. One important area that was explained in detail, and which is of high relevance to journalists, is the question: what are the defences available to an action of defamation launched against a journalist? You were made aware of the procedure and implication of various actions which help a journalist to face any proceeding of defamation. However, we also stated the precautions one should take before publishing reports and articles containing allegations against individuals or public organisations.

In the end, we explained to you about the person or persons, who could be sued for defamation and the punishment accruing to a person convicted of having committed defamation. This is the last nit of this course. Our next course, i.e. Course III is on Reporting, Writing and Editing.
4.12 FURTHER READING


4.13 CHECK YOUR PROGRESS : MODEL ANSWERS

Check Your Progress 1

1) a) True
   b) False
   c) False
   d) True

2) a) Verbal
   b) Written
   c) Yes

For defaming someone a person can be punished because it is considered a criminal offence. A person's reputation is considered as property, a civil case can be brought to compensate the damage caused by defamation.

3) 2 3 5 6 8 9

Check Your Progress 2

1) Imputation means to accuse someone for committing some irregularities with suggestion of proofs.

2) a) It is a case of defamation for Prof. X. His reputation has been put to question and his image has been marred.

   b) Though Mr. P is dead, his family members will definitely find it very damaging. Therefore, to restore the credibility of Mr. P and the image of the family his family members may bring a defamation case to the court against Mr. P.

Check Your Progress 3

1) Good Faith: A news story is deemed to be done in good faith if it is done honestly and due care has been taken in ascertaining facts and figures.

   Public Good: A news story is said to be for public good if it has rendered or sought to render some benefit to the society.

Check Your Progress 4

1) Yes, the newspaper can seek protection under 'absolute privilege', where no action lies for publication of reports or statements, however false, made by an MP in the House, as it is protected under Article 361-A of the Constitution.

2) No action lies in this against the newspaper because the story was on a matter of public importance, and substantially true report of the said meeting was published.

Check Your Progress 5

1) a) The aggrieved person
   b) Minor;
   Idiot;

   c) Death;
   d) Insane;

   e) Non-citizen;
Lunatic;
Sick; and
when social custom does not permit.

c) Property and business are affected.

2) a) The church member cannot file a libel case against the reporter. He belongs to the indefinite group and the criticism was not pointed at him personally.

b) The church member cannot do it either. The Pope has to file his own case unless he is sick as explained in the exceptions of IPC.