

## BILL ESSENTIALS

### The Libel and Defamation (Amendment) Bill, 2013

#### Background

A defamatory statement is one which is untrue and which tends either (a) to lower a person in the estimation of right thinking members of society generally; or (b) to expose a person to hatred ridicule or contempt; or (c) to disparage a person in his or her office, profession, calling, trade or business. In order to give rise to liability in tort, the statement must also be published to someone other than the person to whom it relates. Libel refers to defamation expressed through the written word, while slander indicates oral defamation<sup>1</sup>.

The International Press Institute (IPI) visited Trinidad and Tobago in 2012 in an effort to campaign for the abolition of criminal libel. Criminal libel remains in force in many English-speaking Caribbean countries with the exception of Jamaica and Grenada. The current punishment for malicious defamatory libel in Trinidad and Tobago is one (1) year imprisonment and a fine. The law in Trinidad and Tobago with respect to treating with malicious defamatory libel was fashioned after the law of the United Kingdom at the time. However, the United Kingdom has since abolished criminal libel.

#### What is the purpose of the Bill?

This Bill seeks to repeal Section 9 of the Libel and Defamation Act, Chap. 11:16, consequently abolishing the offence of Malicious Defamatory Libel. The existing Section 9 imposes a fine and one (1) year imprisonment on a person convicted of maliciously publishing any defamatory libel.

### Libel and Defamation Legislation in other jurisdictions

(Kindly follow the links to view the legislation referenced)

<b>Country</b>	<b>Legislation</b>	<b>Remarks</b>
<b>United Kingdom</b>	<i>Defamation Act, 2013</i> <sup>2</sup>	<i>The UK recently passed the Defamation Act, 2013.</i>
<b>Antigua and Barbuda</b>	<i>Libel and Slander Act CAP248</i> <sup>3</sup>	<i>The Libel and Slander Act Cap 248 provides in Section 5 that:</i>

<sup>1</sup> <http://www.freemedia.at/home/singleview/article/ipi-special-report-criminal-defamation-laws-remain-widespread-in-the-caribbean.html>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2013/26/enacted/data.pdf>

<sup>3</sup> <http://www.laws.gov.ag/acts/chapters/cap-248.pdf>

		<i>5. If any person shall maliciously publish any defamatory libel, knowing the same to be false, every such person shall be liable to be imprisoned for any term not exceeding two years, and to pay such fine as the Court shall award.</i>
<b>Australia New South Wales</b>	<i>Defamation Act, 2005<sup>4</sup></i>	<i>Australia adopted a uniformed set of laws in 2006</i>
<b>Barbados</b>	<i>Defamation Act Chapter 199<sup>5</sup></i>	<i>The Barbadian Defamation Act provides that an action for defamation “shall arise where a person publishes any matter, by means of the whole or any part of which, the publisher makes an imputation defamatory of another person, whether by innuendo or otherwise.”</i>  <i>Section 34 of the Defamation Act allows for a criminal action for libel to be brought against a defendant. As well, prosecution for criminal libel cannot be made against a publisher or, editor unless consent is given by a specified public prosecutor.</i>
<b>Canada Ontario</b>	<i>Libel and Slander Act R.S.O. 1990, c. L.12<sup>6</sup></i>	<i>The Libel and Slander Act does not criminalise libel.</i>
<b>India</b>	<i>Article 19 of Constitution of India<sup>7</sup></i>  <i>Section 499 in The Indian Penal Code, 1860<sup>8</sup></i>	<i>Section 499 of The Indian Penal Code defines the term defamation</i>
<b>Jamaica</b>	<i>The Defamation Act, 2013<sup>9</sup></i>	<i>Jamaica recently passed the new Defamation Act 2013 which</i>

<sup>4</sup> [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/da200599/](http://www.austlii.edu.au/au/legis/nsw/consol_act/da200599/)

<sup>5</sup> <http://bajan.files.wordpress.com/2007/04/cap199.pdf>

<sup>6</sup> [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90l12\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l12_e.htm)

<sup>7</sup> <http://www.indiankanoon.org/doc/1218090/>

<sup>8</sup> <http://www.indiankanoon.org/doc/1041742/>

<sup>9</sup> [http://www.japarliament.gov.jm/attachments/339\\_The%20Defamation%20Act,%202013.pdf](http://www.japarliament.gov.jm/attachments/339_The%20Defamation%20Act,%202013.pdf)

		<i>repeals the Libel and Slander Act 1851 and the Defamation Act 1961 which abolished criminal libel.</i>
<b>New Zealand</b>	<i>Defamation Act 1992<sup>10</sup></i>	<i>The Defamation Act 1992 provides a few methods of compensation for a person genuinely wronged by defamation, after defamation has been proved such as:  Solution 1: Damages Solution 2: Injunction Solution 3: Declaration Solution 4: Recommendation of Correction</i>
<b>United States</b>	<i>US Constitution First Amendment<sup>11</sup></i>	<i>The United States has the most liberal press in the world</i>

#### Issues for consideration

- **The offence of defamatory libel was abolished in the United Kingdom with the passage of section 73 of the Coroners and Justice Act 2009.**
- **The Bill does not repeal the criminal offence of maliciously publishing defamatory libel knowing same to be false (section 8 of the Libel and Defamation Act Chap. 11:16).**

#### References:

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3. <http://www.ifj.org/assets/docs/009/153/a1b1809-3f65199.pdf>
4. [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/11.16.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.16.pdf)
5. <http://www.freemedia.at/home/singleview/article/ipi-special-report-criminal-defamation-laws-remain-widespread-in-the-caribbean.html>
6. <http://www.legislation.gov.uk/ukpga/2013/26/enacted/data.pdf>
7. <http://www.laws.gov.ag/acts/chapters/cap-248.pdf>

<sup>10</sup> <http://www.legislation.co.nz/act/public/1992/0105/latest/DLM280687.html>

<sup>11</sup> [http://www.law.cornell.edu/constitution/first\\_amendment](http://www.law.cornell.edu/constitution/first_amendment)

8. [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/da200599/](http://www.austlii.edu.au/au/legis/nsw/consol_act/da200599/)
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10. [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90l12\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l12_e.htm)
11. <http://www.indiankanoon.org/doc/1218090/>
12. <http://www.indiankanoon.org/doc/1041742/>
13. <http://www.moj.gov.jm/sites/default/files/laws/Libel%20and%20Slander%20Act.pdf>
14. <http://jamaicalaw.com.jm/law-reports/statutes/144.html>
15. [http://www.japarliament.gov.jm/attachments/339\\_The%20Defamation%20Act,%202013.pdf](http://www.japarliament.gov.jm/attachments/339_The%20Defamation%20Act,%202013.pdf)
16. <http://www.legislation.co.nz/act/public/1992/0105/latest/DLM280687.html>
17. [http://www.law.cornell.edu/constitution/first\\_amendment](http://www.law.cornell.edu/constitution/first_amendment)

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