REVIEW OF DEFAMATION LAWS IN THAILAND: A COMPARATIVE STUDY OF CIVIL LIABILITY IN ENGLISH LAW

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Abstract - Thailand's Criminal Code defines defamation offenses in two categories which are general defamation and defamation through advertising. Additionally, the law outlines exceptions to liability and penalties for these offenses. However, a growing number of criminal defamation cases in Thailand highlights issues stemming from the inappropriate criminalization of defamation because defamation is classified as a criminal offense with disproportionate penalties that do not align with the gravity of the acts committed. This has led to a significant backlog in criminal defamation cases, prolonging proceedings in both the preliminary and trial stages, and consequently delaying the judicial process. Defamation as a criminal offense in Thailand adversely affects the reputation of victims, subjecting them to contempt, hatred, humiliation, and a loss of credibility in society. A comparative analysis with English law reveals significant differences in the legal framework governing defamation. In England, verbal defamation is treated as a civil matter, while defamation through advertising primarily incurs civil liability but may also attract criminal penalties in specific circumstances. According to the study, criminal defamation laws in Thailand impose penalties that are neither necessary nor proportionate. If Thailand adopts the English approach by decriminalizing general defamation and addressing it through civil law, it could alleviate the burden on the criminal justice system. Such a reform would also align the country's legal framework with principles of fairness and efficiency, addressing defamation cases more effectively while reducing the strain on state resources.

Keywords - Defamation Offenses, Advertising, Civil Liability

I. INTRODUCTION

Criminal law is defined as "all laws stipulating criminal offenses, penalties, methods for safety, and other criminal enforcement measures, and it is the law that establishes the offense as a condition for applying penalties, safety methods, and other criminal enforcement measures" [1]. According to Section 2 of the Thai Penal Code, a person shall be subject to criminal penalties only when they have committed an act that is defined as an offense under the law applicable at the time of the act, with the prescribed penalty applied. The punishment imposed must be one prescribed by law. Section 59 further states that a person shall be criminally liable only when acting with intent, unless the act was committed negligently in cases where the law specifies liability for negligent acts, or unless the law explicitly states liability even for unintentional acts. Essentially, the determination of what constitutes a criminal offense under Thai law is not predetermined or explicitly defined, but must be analyzed based on the provisions of each law article or offense, to determine what constitutes an offense and consequently leads to the prescribed penalty [2].

Defamation offenses are generally specified in Section 326 of the Penal Code, which states that whoever imputes anything to another person to a third party in a manner likely to impair the other's reputation, expose them to hatred, or contempt, commits the offense of defamation, punishable by imprisonment for not more than one year, or a fine not exceeding twenty thousand baht, or both. The seriousness of the criminal penalty for defamation offenses, which do not align with the severity of the act, has led to an increase in criminal defamation cases within the judicial system, with prosecutors and private entities prosecuting 1,466 cases in the courts of first instance in 2020 (B.E. 2563), causing delays in the justice process. Defamation is a personal matter typically involving two disputing parties and does not have widespread detrimental societal effects. Civil compensation for damages to reputation should suffice for the harm caused.

Thus, it becomes a matter worthy of study to determine the appropriate way defamation should be defined and penalized in Thailand.

II. LITERATURE REVIEW

A. Principles of Defamation Offense in Thailand

Section 2 of the Penal Code establishes the fundamental principle delineating the scope of criminal liability. An act is considered an offense only if it aligns with the elements specified by the law, interpreted from legal texts. The general defamation offense under Section 326 of the Penal Code states: "Whoever imputes anything to another person to a third party in a manner likely to impair the other's reputation, expose them to hatred, or contempt, commits the offense of defamation, punishable by imprisonment for not more than one year, or a fine not exceeding twenty thousand baht, or both."

Defamation is defined as "uttering words that harm or destroy the reputation of another, so that the individual becomes despised, insulted, hated, and loses respect, even if the words spoken are polite or truthful" [3].
Elements of the Offense:

1. “Whoever” refers to either a natural person or a legal entity.
2. “Imputes” involves making allegations or affirming facts about past or ongoing events, whether true or false. Predictions about future events do not constitute defamation because they are speculative. The facts alleged must be clear and believable to society, such as accusing someone of having dog-like features, which is obviously untrue. Defamation can occur through various methods, including phone conversations or written words, with the intention of conveying such facts to a third party.
3. “Another person” pertains to the subject of defamation, which can be a living natural person or a legal entity. The subject may be one or several individuals or a group that is not explicitly named but can be understood from the context—still constituting defamation if identifiable. However, if the accused cannot be specifically identified, it is not considered defamation.
4. “To a third party” means the defamation must be conveyed to external persons who can comprehend and recognize the message. For example, defaming someone to a hearing-impaired individual might not constitute defamation since no external entity can perceive it. Alternatively, if the defamation is accidentally heard by others, such as during a public altercation, it may be considered defamation.
5. “Circumstantial act” is judged on objective facts and not based on the personal feelings of the defamed. It is assessed whether a reasonable person would deem the statements damaging enough to impact reputation. If not, it does not qualify as defamation, despite the victim perceiving it as such [4].

Defamation by advertising under Section 328 of the Penal Code states: "If the defamation offense is carried out through advertising via documents, drawings, paintings, films, expressions of figures or letters made apparent by any means, sound or image recordings, or any other method announcing through any media, the offender shall be liable to imprisonment for not more than two years and a fine of up to two hundred thousand baht."
Defamation by advertising under Section 328 is a severe form of the general defamation offense under Section 326, imposing harsher penalties due to the significant impact of spreading defamatory statements to a wider audience, resulting in widespread societal condemnation of the defamed individual.

Elements of the Offense:

1. The defamation is complete when at least one person recognizes it.
2. The act involves advertising, incorporating any textual representation on paper, drawings, paintings using likenesses to damage the defamed, films, sound recordings, image recordings, text recordings, and so forth. It also includes public broadcasting through various media or public announcements in art exhibits, speeches, or online dissemination—all considered methods of publicizing.

Thailand provides two exceptions to defamation offenses: those outlined in Section 329 and Section 331, and an exception to punishment specified in Section 330, as follows:

The exception to defamation offenses under Section 329 states: "Whoever expresses any opinion or statement in good faith:

1. For justification or self-defense or for rightful protection of interests concerning oneself,
2. As an officer performing duties,
3. Fair criticism regarding a person or entity, customary among the public,
4. Fair news reporting on open court proceedings or meetings, shall not be guilty of defamation." This implies that if the defendant can establish compliance with these exceptions, they are exempt from defamation liability.

The exception to defamation offenses under Section 331 states: "Parties or their legal representatives, expressing any opinion or statement during judicial proceedings for the benefit of their case, shall not be guilty of defamation." This provision protects factual representation within the judicial process to ensure genuine examination, exempting such statements from defamation liability.
The exception to punishment for defamation offenses under Section 330 states: "In defamation cases, if the accused can prove the truth of the allegedly defamatory statement, they shall not be punished. However, proof is not allowed in cases involving personal matters unless it benefits the public.” This means that the accuser must prove the truth of their statement to avoid punishment. Prohibition on proof applies to personal matters which do not serve societal interest, to prevent misuse of personal, familial, or societal status as a means of harassment through defamation [5].

Regarding defamation lawsuits, the aggrieved party has the right to file a civil suit for damages to mend the harmed reputation or file a criminal suit to ensure

legal penalties for the perpetrator, or undertake both civil and criminal actions. In criminal suits, the victim may report to the police for investigation and prosecution by the public prosecutor or directly file a lawsuit in court, bypassing police and prosecutor intervention [6].

Table 1: Outcomes of cases under Sections 322-328 of the Penal Code prosecuted by public prosecutors from 2015-2020

Year	Conviction	Dismissal	Withdrawal	Others	Total cases
2015	1,234	37	11	104	**1,386**
2016	1,426	39	15	110	**1,590**
2017	1,530	55	13	249	**1,847**
2018	1,639	49	29	297	**2,014**
2019	1,635	39	19	330	**2,023**
Jan.-Sep. 2020	933	22	13	313	**1,281**
Total (cases)	**8,397**	**241**	**100**	**1,403**	**10,141**

Table 2: The Number of Criminal Defamation Cases Charged Under Sections 326-333 of the Penal Code Across the Country from B.E. 2558 (2015) to B.E. 2563 (2020) [8].

Year	Supreme Court	Appeal Court	Court of the First Instance	Total (cases)
2015	40	315	3,104	**3,459**
2016	46	400	3,579	**4,025**
2017	50	440	3,869	**4,359**
2018	59	523	3,860	**4,442**
2019	62	548	4,001	**4,611**
2020	61	558	4,570	**5,189**
Total (cases)	**318**	**2,784**	**22,983**	**26,085**

B. Principles of Defamation Offense in the UK

(1) "Slander" refers to defamation through speech or actions that are not enduring. It is considered less severe and therefore only results in civil liability. Spoken defamation is viewed as distinct from defamation through advertising via enduring assets because spoken words dissipate without evidence. It is unlikely for someone to remember defamatory statements in such detail that it harms the victim. Thus, the victim must prove that the defamation directly caused damage, such as being fired because an accuser said the victim stole company money. If the damage cannot be proven, the accused does not bear defamation liability.

Exceptions where the victim does not need to prove damage, but simply that prohibited words were spoken, termed "words actionable per se," include:

1. Accusations of committing a criminal offense, such as murder.
2. Statements suggesting the victim has a socially stigmatized illness, affirmed as current, like being afflicted with HPV.
3. Claims that a female victim is sexually unchaste.
4. Accusations of lacking essential knowledge in one's profession, such as being unethical or dishonest professionally.

(2) "Libel" involves defamation through the publication of statements via enduring mediums like documents or images. It primarily results in civil liability, requiring the perpetrator to compensate for reputational damage. However, it can result in criminal liability if the plaintiff shows at preliminary hearings how the libel causes public disorder. If libel is a private matter with no social disorder potential, it remains a civil issue. Victims need only prove the use of enduring assets to spread defamation, with the content visibly causing damage. Durable assets are mere tools for expressing defamation; absent a defamatory message, no liability arises.

Exceptions to liability apply under conditions like:

1. If the accused proves the statement true, no civil liability ensues, irrespective of their knowledge of its truth. Criminal liability cannot be excused without public benefit in the claim's truth.
2. Protection applies to duty bearers like judges and lawyers, and for community benefit broadcast, such as reporting corporate wrongdoing, if done genuinely without intent to damage reputations.
3. Laws grant free expression rights for public-impact issues, maintaining truthfulness [9].

III. ANALYSIS

The literature review highlights that Thai defamation offenses are bifurcated into general defamation and defamation through advertisement, with detailed exceptions to liability and punishment. General defamation is criminal, whereas English law classifies defamation into "slander" (civil liability only) and "libel," with accompanying exceptions. Slander being a civil matter differs from Thailand's criminal approach.

IV. SYNTHESIS

The comparative analysis reveals similarities between Thai and English law in separating defamation types. However, England handles slander as a civil matter with compensation obligations, contrasting with

Thailand's criminal and civil approach. Data tables from Sections 322-328 of the Penal Code indicate rising criminal defamation cases (B.E. 2558 - B.E. 2563), escalating workloads for involved personnel. Increasing court filings suggest judicial burdens, urging a shift to civil proceedings akin to English practices, easing state criminal case burdens.

V.CONCLUSION AND FUTURE WORK

Thailand's adaptation of English principles, specifically civil handling of verbal defamation—proposes decriminalizing general defamation, transitioning to civil redress. Present legislation mismatches offense severity, hence procedural reforms align with recommended civil proceedings, alleviating judicial workload.

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