



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Case Comment: The Johnny Depp v Amber Heard Defamation Trial: A Legal Analysis of Celebrity, Media Spectacle and The Intersection of Defamation Law with Gender Dynamics

Shubham Pisaldeshmukh^a

^aMaharashtra National Law University, Mumbai, India

Received 25 October 2024; *Accepted* 26 November 2024; *Published* 29 November 2024

INTRODUCTION

The defamation trial between April and June 2022-Johnny Depp v Amber Heard-is a global phenomenon where the fray of celebrity culture has touched on legal discourse at a decisive point. It has become the moment in popular culture that unveiled the hidden interface at which defamation law intersects with gender dynamics in the issue of media control over the making of narratives. It started with an op-ed in the Washington Post by Heard, branding herself a ‘public figure representing domestic abuse,’ the very phrase Depp would later allege she libeled him with, suggesting he was the abuser. Claims of defamation against Depp and a counter-claim of \$50 million and \$100 million, respectively, by Heard, quickly turned into proxy battles for much wider debates over societal issues concerning domestic violence, gender roles, and the power imbalances that exist within relationships.

Nor was it the celebrity names that made this simple case of defamation sensational, but layers of complication were then unveiled in the tale itself. Then, there were two counter-narratives of

abuse and victimhood, hanging in the balance, balancing out erstwhile equations of invulnerability and vulnerable self. In this spate of making the world believe a victim, the case this day threw everything on the table to challenge long-standing presuppositions on gender and abuse rather than debate on credibility, bias, and accountability.

If the case had been live-streamed, what had almost turned into a drama inside the courtroom would have become a global media phenomenon because millions of viewers would be tuning into it every day. If both parties turn their social media sites into battlegrounds, that may escalate the polarisation of this case. This media circus underlines a change in the relations between public opinion and judicial processes, where often, the court of public opinion battles it out toe-to-toe with the authority of judgments.¹ The very nature of the trial goes to question the unprecedented power of media in defining reputations, very often becoming heavily blurred between media entertainment and the form of judicial assessment.

It was very clearly a defamation case, a broad brushstroke of law that protects private reputations but, in the same stroke, protects free speech as well. Proceedings in the United States, in which the trial took place, do require public figures to prove 'actual malice' to prevail on a claim of defamation-thus, the *New York Times Co. v Sullivan* decision. Much more far-reaching implications from the trial come out of themselves, though. It served to fuel celebrity reputational stakes in this world of digitised opinion, capable of turning overnight on the strength of one headline or a single viral tweet. In a way, it is emblematic of the problems legal systems face in dealing with profoundly personal and emotionally charged disputes in the bright light of global attention.²

This case is much talked about as one closest to the most followed courtroom drama in history and is rather telling of how a legal system intersects with broader conversations being heard across societies. So often, such defamation trials concerning public figures spill over from the court's jurisdiction into a deeper exploration of culture, media, and public consciousness.

¹ Ursula Smartt, *Media and Entertainment Law* (5th edn, Routledge 2022)

² Bianca Fileborn and Rachel Loney-Howes, *#MeToo and the Politics of Social Change* (Springer Nature 2019)

FACTS OF THE CASE

Johnny Depp and Amber Heard first met on the set of the 2011 movie *The Rum Diary* and began dating soon thereafter. The couple got married in 2015. In May 2016, though, Heard filed for divorce from Depp, citing irreconcilable differences and, on the same day, also filed a restraining order against him. Heard accused Depp of verbal and physical abuse during their marriage. However, Depp discussed extensively about dismissing such claims and said he never abused Heard throughout his life. The case was settled out of court with reports in August 2016, apparently to where Heard will get \$7 million, that Heard said she was going to donate to charity.

This is a case of libel over an opinion piece written by Heard in December 2018 and published in *The Washington Post*. In the article, Heard referred to herself as a ‘public figure representing domestic abuse’ without ever mentioning Depp's name. In turn, Depp filed a defamation lawsuit against Heard, which he had filed in 2019, seeking \$50 million in damages.

His main objection was that even though he was not mentioned by name in the op-ed, the write-up was self-evidently a veiled allusion to him, and he had his character under assault and serious damage done to his career by exclusion from such key film productions.

In retaliation, Heard filed a \$100 million counterclaim against the attorney, alleging that the legal team had itself orchestrated a concerted smear campaign against her, thereby more profoundly damaging her reputation and professional prospects. That counterclaim alleged that statements by Depp's attorney portrayed her as the fabricator of abuse allegations, which, of course, harmed her career negatively.

The trial was conducted in Virginia, where *The Washington Post* is based, even though Depp and Heard reside in California. The state became significant because defamation law in Virginia differs from that in California and, indeed, many other states, especially in the treatment of public figures and in the application of the standard of actual malice. Another dimension of the case was the unprecedented level of public and media scrutiny the trial received. Truly, the trial filled the media, while social networking sites were flooded with commentary and public

discourse regarding the case. This high-profile nature made the trial something of a spectacle, with much of the discourse being driven by public opinion rather than the legal intricacies surrounding defamation law. However, the social media conditioning of the perceptions regarding the case and the reputation of the parties cannot be over-emphasized since the latter had a tendency to overshadow all formal arguments produced before the courts of the judges.

DEFAMATION UNDER THE LAW

Considering the complicated nature of the case, Depp v Heard, at least an understanding of defamation should come first. According to a broad legal definition, defamation refers to a false statement that hurts or harms a person's reputation. Under U.S. law, this could be differentiated into two forms, such as libel-written and slander-oral words. In Depp v Heard, the issue here was libel, as it was Heard's written statements found in the op-ed that were the central element of Depp's reasons for filing his lawsuit.³

A defamation case will be won only if all the above conditions are met. These conditions include that a statement must be false and defamatory; there must be a publication to a third party by the defendant, who should have caused harm to his reputation and acted negligently or with actual malice. This relates particularly to cases involving public figures because the plaintiff must prove that the defendant either knew the statement was false or had reckless disregard for the truth. Indeed, the benchmark for proving defamation against public figures was first set down by the US Supreme Court in *New York Times Co. v Sullivan* in 1964. The Depp v Heard case also largely depended on this very issue.

Still, in the United States, such laws place defamation within the confines of the First Amendment, which protects free speech. However, such a free speech right is never absolute; this open-mindedness rather excludes protection for speech labeled defamation that actually harms a person's reputation. Hence, cases of defamation would then become very nuanced when it comes to public figures, with much of the balance made between allowing free speech and bringing accountability when words are highly offending.⁴

³ Matthew Collins, *The Law of Defamation and the Internet* (3rd edn, OUP 2010)

⁴ David Price et al., *Defamation: Law, Procedure and Practice* (4th edn, Sweet and Maxwell 2010)

ISSUES

The Johnny Depp defamation case is characterised by several weighty legal issues, mainly on the interpretation and application of defamation law under U.S. jurisprudence. At the heart of the case are issues of defamation, credibility to the claims of abuse, truth to the claims of abuse, and several other broad concerns regarding how gender bias may impact the perception and outcome of the law. Each of these matters is pivotal for understanding the intricacies and implications of the case.⁵

1. Was Amber Heard's Op-Ed Defamatory Under Virginia Law?

At the bottom of the legal issue in the case, the central issue in this whole affair was whether Amber Heard's 2018 op-ed published in The Washington Post constituted defamation under Virginia law. Although the piece made no direct mention of Johnny Depp, Depp argued the article was unmistakably about him and that it made clear he was an abuser, which had damaged his reputation and career.

Under Virginia law, a prima facie case for defamation is established when a plaintiff proves that the defendant published a false statement of fact regarding the plaintiff that resulted in harm to his or her reputation. There were several important elements that Depp's lawyers had to establish:

- **Publication:** Heard's op-ed appeared in the country's largest national newspaper, which would satisfy this criterion easily
- **Falsity:** Depp alleged his attorneys had contended that Heard made false claims that connected him to abusing female individuals. That is a very big space because, under defamation law, a statement has to be demonstrably false for it to be deemed defamatory. This is a defamatory claim because Heard testified that her words directly harmed Depp's reputation since they branded him an abuser and led to the cancellation of several film

⁵ David Pritchard, 'The Social Foundations of Defamation in Trial Court: Why Cases Begin and How They End' (2022) 27(2) Communication Law and Policy <<https://doi.org/10.1080/10811680.2022.2075178>> accessed 20 October 2024

projects, among them *Pirates of the Caribbean*. If the words are proven injurious, then this requirement will be met.

- **Reputation Damage:** The defense side required him to demonstrate that, after all, these statements indeed caused serious damage to his public and professional life; this is the very basis of his \$50 million case. Third, more stringent standards for U.S. defamation law apply because Depp is a public figure; thus, he will have the burden of proving that Heard acted in reckless disregard for the truth or with knowledge of the falsity when she published these statements. The actual malice standard comes from a landmark decision issued by the U.S. The court in *New York Times Co. v Sullivan* in the year 1964 further made requirements more rigid for a public figure to win a defamation case with enough concrete evidence to ensure speech free of restriction on matters of public interest.

2. Was Johnny Depp the Victim of Domestic Abuse or Amber Heard?

The loudest argument of conflict in the case includes mutually exclusive claims of domestic abuse made by the complainant and the defendant, Depp and Heard, respectively. According to Heard, she was bullied by Depp on many occasions in the marriage through physical and verbal attacks. However, Depp stipulated that he is the victim who was abused by Heard. It makes both parties' testimonies credible, as well as the evidence each of them presented. One side had testimonies, text messages, photographs, and statements from a witness, while the other side had testimonies and whatever evidence they could muster. Questions that it poses include:

Was Heard's claim of abuse valid? Heard had also, in public, claimed that Depp was violently physical with her and her 2018 op-ed puts her firmly in the role of survivor victim of such domestic abuse. Her lawyers argued such claims are valid based on past events and corroborating evidence. Was Heard's counter-claim of abuse believable? Depp's lawyers have produced evidence that showed how Depp was indeed the victim of Heard's abuse, both physical and emotional. There are witnesses who testify that Depp sustained injuries, allegedly at the hands of Heard; also, instances of Heard being violent or manipulative. Those abuse allegations formed the core of the question of whether Heard's op-ed was defamatory. And if the court were able to find that Heard, indeed, had been abused by Depp, then perhaps the truth

would salvage her words or at least would suggest they did not charge him with false accusations of abuse. If Depp can prove he is not an abuser or even that Heard was the more significant aggressor, then the implications of the op-ed would be considered defamatory and false.

ARGUMENTS

Johnny Depp's Arguments -

Probably the strongest defenses are in the very weakness of the defamation claim by Depp.

Implications of the Op-Ed: Even though Heard did not name Depp, his lawyers said that is precisely what the article was about because of the publicity surrounding their relationship. Readers would understand it was about Depp, they said, whom it 'falsely' cast as a domestic abuser.

Reputational Damage: According to Depp's attorneys, the story caused him reputational damage, and therefore, he backed out of top mainstream film projects, most particularly the character of Captain Jack Sparrow for the film series *Pirates of the Caribbean*. He argued that he suffered financial and personal harm due to the publication of this piece.

False Accusations: Depp claimed that Heard's accusations of domestic abuse were false and defaming. He produced several testimonies of witnesses along with some audio recordings that prove Heard had been an abuser in their relationship and not him.

Liberty of Speech and Libel: Liberty of speech is a kind of freedom, but false or damaging words about another person cannot be called liberty of speech, agreed Depp's lawyers. The op-ed by Heard was libellous, as it is a false statement concerning the damaging character of Depp towards his reputation and career.⁶

⁶ Robin Levinson-King, 'Depp-Heard trial: Why Johnny Depp lost in the UK but won in the US' *BBC* (02 June 2022) <<https://www.bbc.com/news/world-us-canada-61673676>> accessed 20 October 2024

Amber Heard's Arguments -

Defense and Rebuttals of Counterclaims presented by Heard's Defense: Truth as a Defense: Heard's attorneys moved to argue that each and every statement of the op-ed is true and that truth generally constitutes a defense to defamation. They argued that Heard was a victim of domestic abuse in the course of her relationship with Depp and was well within her rights to speak about her experiences even if she didn't mention Depp. First Amendment Rights: Heard's lawyers sounded the bell on her free speech rights and specifically the concerns of public matters like domestic violence. They argued that she was merely contributing towards much-needed discussion in society about domestic abuse and should not suffer because of that. Counterclaim against Defamation. Heard counterclaimed that Depp's lawyers defamed her when calling her a liar and stating falsely that she had made up claims of domestic violence against him. She maintained that Depp's lawyers had designed such a litigation course to subdue and intimidate her, which would hurt her reputation and professional career further. Claims of abuse against Depp: The defense lawyers of Heard presented evidence showing that Heard was, in fact, abused on both physical and emotional levels by Depp during their relationship. Other witnesses, photographs, and medical records testified to prove the fact that indeed Heard was a victim of abuse.

OBSERVATIONS

The trial court made a few pertinent observations on the evidence and arguments advanced by both sides:

Media Influence and Public Perception: The court realised that both parties involved in this particular case had suffered reputational damage with the great publicity of the case. However, the case was well settled based on evidence presented in court rather than popular media narratives to spin the case.

Mutual Abuse Allegations: The court observed mutual abuse allegations were leveled against both Depp and Heard. Testimony and evidence exist for the fact that their relationship has

indeed been poisonous, with both of them engaging in such harmful conduct. However, to prove defamation, a much stiffer standard would be required, especially for public figures.⁷

Gender Dynamics: Even though the court did not essentially put its hand on the issue of gender bias, whatever has happened raises very pertinent questions regarding society's perception of abuse allegations when an accused woman looks at a male defendant. Public opinion appears to be divided along gender lines, with many rallying to favour Depp as a victim of false accusations.⁸

Comparative Legal Standards: The trial court was cognizant of the differences between U.S. and U.K. law with regard to defamation, particularly as it concerns the public figure. It matters that a defamation action by Depp against the Sun newspaper failed in the U.K. because there, the burden of proof for the defendant is less demanding than under U.S. law of defamation, which places a heavy burden upon a plaintiff to establish actual malice.

JUDGEMENT

The jury awarded \$15 million in damages to Johnny Depp (awarded \$10 million in compensatory damages and \$5 million in punitive damages), but his total award must drop to \$10.35 million because Virginia has a statutory cap on punitive damages. Amber Heard won \$2 million in compensatory damages in her countersuit after the jury determined one of Depp's lawyers had made defamatory statements about her.

Under the opinion, the jury ruled Heard's statements in the 2018 op-ed were false and defamatory because they were made with actual malice since Heard knew what she was saying was false or acted with reckless disregard for the truth. It is the biggest victory type in court for Depp, as he lost the other previous case to be heard by the U.K.⁹

⁷ Edward Jeremy Klaris and Alexia Bedat, 'Think Before You Retweet' (*American Bar Association*, 07 December 2018) <https://www.americanbar.org/groups/law_practice/resources/law-technology-today/2018/think-before-you-retweet/> accessed 15 September 2024

⁸ Sonia Moghe, 'Legal victory for Johnny Depp after he and Amber Heard found liable for defamation' *CNN* (01 June 2022) <<https://edition.cnn.com/2022/06/01/entertainment/johnny-depp-amber-heard-verdict/index.html>> accessed 10 September 2024

⁹ *New York Times Co v Sullivan* [1964] 376 US 254

PERSONAL ANALYSIS: GENDER BIAS

The Johnny Depp v Amber Heard defamation trial raises an important issue of gender bias and how the latter conditions public opinion on matters of domestic abuse. Traditionally, society had predisposed itself to believe in the female victim and male perpetrator of home violence. These are such deep-rooted gender biases that feature males as aggressive and females as passive. However, the Depp-Heard trial may turn things around. Many have gone silent, including males who have suffered abuse, who were not heard out on this very issue but are sure to positively resonate with the fact that he was a victim of domestic abuse. The trial has taken a much more battle for discourse on broader issues of males becoming victims of abuse and that natural treatment of being treated fairly and non-gender assumptions in allegations of domestic violence.¹⁰

The trial also depicted the extreme challenges that women face once they speak out against such abuse. Indeed, Heard's testimony was rather sceptical of and, in some ways, hostile to at times. Critics complain that the media and public opinion had been decidedly unfair to her, partly because of her gender. According to others, loss in court was the chilliest message to women who would otherwise come forward to tell their stories of abuse.

On one level, the Depp-Heard trial encapsulates all the paradoxes of gender bias in domestic violence cases. Framed for her under defamation laws and not the alleged abuse itself, it ultimately functioned as a proxy for wider debates about gender, power, and credibility in society.

COMPARISON OF INDIAN AND FOREIGN LAW IN RELATION TO THE DEPP-HEARD CASE

Defamation Law in the United States: It is both federal and state-based US law regarding defamation, but the First Amendment does offer great protections for free speech. Thus, public figures such as Johnny Depp have to demonstrate 'actual malice' to prove that there is a case of

¹⁰ Adam Banner, 'The Defamation Trial of Johnny Depp: When thespians testify, who can you believe?' (*ABA Journal*, 12 May 2022) <<https://www.abajournal.com/columns/article/johnny-depps-defamation-trial-when-thespians-testify-who-can-you-believe>> accessed 11 September 2024

defamation against them. Actual malice is defined as knowing the statements to be false or with reckless disregard for the truth.

As discussed above, this case was held in Virginia. That state also has its own defamation statutes. The plaintiff is authorised to file a defamation case in the courts of Virginia even though the defamatory statement was discovered in a publication that circulated extensively in that state. That is why the case was litigated in Virginia, although Depp and Heard are residents of California.¹¹

Defamation Law in the UK: On the other hand, the UK's defamation law is relatively weaker than free speech. The burden of proof in the U.K. lies on the defendant to prove that what they said was indeed true. Hence, there would be less likelihood of the plaintiff overcoming this in a suit for defamation because his burden to prove damage to his reputation is lower. The case was filed by Depp against the Sun newspaper in the UK. However, the court decides to uphold judgment in favour of the newspaper referring to Depp as the "wife-beater." The Defamation Act 2013 does indeed tweak the law a bit concerning U.K. law, which insists on serious harm to reputation in pleadings and offers even stronger free speech protections in matters of public interest. And even in the U.S., the U.K. is still plaintiff-friendly much more than the former.

Indian Law of Defamation: *The* Indian law of defamation is a mix of civil and criminal law. In India, the offense of defamation can be pursued both as a tort and a criminal offense under Sections 499 and 500 of the Indian Penal Code (IPC). However, normally, in the U.S., defamation remains largely a civil matter. It is possible in India to commit criminal defamation, where imprisonment forms one of the penalties.

The Indian standard of defamation is much closer to the U.K. model, whereby a defendant has to establish that the words in question were, in fact, true or said in good faith. Indian law does show greater significance to reputation protection, though it does recognise some of the more traditional common law defenses, including fair comment and qualified privilege. Had it been taken in India, then that verdict in Depp-Heard would have been different. India has defamation law more on the plaintiff side; therefore, Depp doesn't need to prove that there is actual malice.

¹¹ Code of Virginia 1950, s 8.01-45

Also, criminal defamation under Indian law could have assisted Depp in taking criminal charges against Heard.

CONCLUSION

The defamation case between Johnny Depp and Amber Heard has been a landmark trial, not just because of the celebrity status of the parties involved but also due to the complex legal, social, and cultural issues it raised. At its core, the trial explored the boundaries of defamation law, particularly as it applies to public figures, and it shed light on the intricate challenges involved in proving such claims in the context of domestic abuse allegations.

Legally, the case reinforced important principles within defamation law, especially the high threshold of proof required for public figures to prevail in such cases. Johnny Depp's victory, based on proving that Amber Heard acted with "actual malice," highlights the rigorous standards set by U.S. law to balance free speech rights with the protection of personal reputations. The case also demonstrates that defamation can occur even without explicit identification of the plaintiff if the implications are clear enough to harm their reputation.

Socially and culturally, the trial brought forward a broader conversation about the role of media in shaping public perception, particularly in high-profile legal disputes. The intense media scrutiny and social media discourse around the trial reveal how legal battles involving celebrities can become spectacles, influencing the public's understanding of the case even before a verdict is reached. The media's role in amplifying certain narratives also underscored the ethical challenges faced by journalists and commentators when reporting on sensitive, complex legal matters involving allegations of abuse.

On a deeper level, the case highlighted the complexities of domestic abuse in relationships where both parties claimed to be victims. This has significant implications for the public discourse on abuse, showing that it is not always easy to assign clear roles to victims and perpetrators. It also brought attention to the reality that men can be victims of abuse, a topic often overlooked in conversations around domestic violence.

In conclusion, the Depp v Heard case has lasting implications not only for defamation law but also for the way society views abuse allegations and the role of media in high-profile cases. The case serves as a cautionary tale for both celebrities and the general public about the power and consequences of public accusations. As legal scholars, media professionals, and society at large continue to reflect on this trial, it will undoubtedly remain a point of reference in discussions about defamation, domestic violence, and the complexities of public and private life in the digital age.