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Defamation Law in the People's Republic of China*

H.L. Fu** and Richard Cullen***

I. INTRODUCTION

Defamation, under common law, is a tort—a wrong done by one person to another. It is a special sort of wrong in which the victim does not need to suffer the threat or actuality of any physical harm. This particular tort occurs when A says to C something about B that is false, derogatory and results in harm to B's reputation. Defamation is a wrong for which virtually all legal systems provide redress. Generally, this redress is available through private law actions taken by those who claim they were defamed. The People's Republic of China (PRC) is no exception to this rule. Defamation can be a crime, as well as a civil wrong. Criminal defamation has often been used as an instrument of political control.¹ Civil defamation can also be put to such uses. However, criminal defamation actions are much less frequently pursued than civil defamation actions. This pattern is also true for the PRC.

In most western countries, apart from the United States, defamation actions are a principal concern for media interests. An adverse judgement against a media source and its staff can have devastating financial consequences. The well-being of reporters and their employers is constantly overshadowed by this risk. In contrast, the major concern for media personnel in the PRC is regulation of state secrets.² Defamation is still very important, though, but the way these issues fit into the matrix of media operations has certain Chinese characteristics. The new law in the PRC relating to defamation dates from 1993 when the Supreme People's Court issued a detailed commentary which established China's current defamation regime.

* This article is based on a chapter for the book, H.L. FU AND RICHARD CULLEN, *MEDIA LAW IN THE PRC* (Asia Law and Practice, Hong Kong, 1996).

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1. In Zimbabwe, three journalists who publicized a relationship of Prime Minister Mugabe with his secretary (now wife) were jailed recently for criminal defamation. See *End of the Affair*, *THE ECONOMIST*, Aug. 31, 1996, at 34.

2. See H.L. FU AND RICHARD CULLEN, *MEDIA LAW IN THE PRC*, ch. 6 (Asia Law and Practice, Hong Kong, 1996) (For a further discussion with respect to state secrets regulation in the PRC).

In the course of narrating the PRC law on defamation, this paper will discuss numerous cases that illustrate important legal points as they are explained. The political role of defamation law in the PRC will be examined.

The next section explains the development of defamation law and its various elements as it has evolved in the principal common law jurisdictions of the United Kingdom and the United States. This overview sets out some of the important social and political forces which have shaped the development of defamation law. This, in turn, provides a useful framework for understanding defamation law in the PRC.

II. A COMPARATIVE OVERVIEW

A. *The General Position*

Laws against defamation in common law countries have traditionally treated this tort as comprising of two different branches, libel and slander. The clearest distinction between the two is that libel refers to written defamatory material and slander refers to oral defamatory material. This common-sense definition does reflect some element of truth but does not fully express their singular meaning. The two forms of defamation are more accurately distinguished as follows: libel involves making a defamatory statement in some permanent form (*e.g.*, in writing, on film, or in a picture), while slander involves making a defamatory statement using a transient form (*e.g.*, the spoken word, sign language, or mimicry).³

The distinction between libel and slander has its origins in the historical powers enjoyed by different courts in the United Kingdom. The ecclesiastical courts originally had jurisdiction over all general defamatory matters. The Common Law courts, meanwhile, had developed an action for slander by the 16th Century. The Court of Star Chamber took over the role of the ecclesiastical courts with respect to all types of libel during the 17th Century. When the Court of Star Chamber was abolished, the Common Law courts assumed the entire jurisdiction in defamation cases.⁴ The distinction between libel and slander today is slight and does not warrant an in depth analysis. What needs to be considered, though, are the basic elements of a defamation action.

There are three crucial elements in establishing defamatory behavior. First, there must be a defamatory statement. Second, any such statement must refer to the person who claims to have been defamed. Finally, the defamatory statement must be published.⁵ For a statement to be defamatory it needs to be false and derogatory in such a way as to expose the allegedly defamed person to hatred, ridicule or contempt, or which has a tendency to injure him in his profession or trade, or which

3. D. K. SRIVASTAVA & A. D. TENNEKONE, *THE LAW OF TORT IN HONG KONG* 385 (Butterworths, Hong Kong, 1995).

4. *Id.* at 378.

5. *Id.* at 379.

causes him to be shunned or avoided.⁶ The requirement that the plaintiff (the person claiming defamation) be identified does not mean they must be mentioned by name in the statement. The identification can be by implication or by description. Any legal person is capable of being defamed, including a corporation. However, one notable exception is that a dead person cannot be defamed. The requirement of publication means that the statement must be made to a third party. Publication can be made to a single person by word of mouth, or to the world at large through a book, newspaper, or the broadcast media. In certain cases no publication may occur even if the defamatory statement has been transmitted to a third party (*e.g.*, when mail is opened illegally, or when the defamatory statement is not understood because the third party is deaf and does not lip-read).⁷

Even when these conditions have been satisfied, there are certain defenses available for responding to defamation actions. The first defense is justification or truth. Justification is established when a defendant can demonstrate that the statement was true or substantially true even if the statement was motivated by spite or malice.⁸

The second defense is known as "fair comment." This defense allows for certain defamatory statements that are made in the public interest. The necessary showing for fair comment is that the statement expresses an opinion which is (1) based on fact, (2) fair (*i.e.*, not outrageous), and (3) not motivated by malice.⁹ The purpose of this defense is to support the principle of freedom of expression. That is, with fair comment an attempt has been made to reconcile the competing principles of defending a person's right to protect their reputation and defending freedom of expression. The two principles often find themselves in opposition. With the defense of fair comment, the law signifies that the right of an individual to protect his or her reputation is not absolute. Individual rights are subject to society's right to obtain information in the public interest.

Two other important defenses are absolute privilege and qualified privilege. Absolute privilege typically applies to statements made in government legislative bodies. For example, in the interest of promoting free debate, Members of Parliament from the United Kingdom can say what they want in a Parliamentary proceeding without exposing themselves to a defamation action. This level of protection is also given to individuals participating in judicial proceedings, including parties, witnesses, lawyers and judges.¹⁰ Qualified privilege typically attaches to certain writings like fair and accurate accounts of legislative and judicial

6. JOHN BURKE, *OSBORN'S CONCISE LAW DICTIONARY* 110 (Sweet and Maxwell, London, 1993). See SRIVASTAVA & TENNEKONE, *supra* note 3, at 379-88 (citing various examples of defamatory statements).

7. SRIVASTAVA & TENNEKONE, *supra* note 3, at 392.

8. *Alexander v. North E. Ry.* (1865) 6 B & S 340. See SRIVASTAVA & TENNEKONE, *supra* note 3, at 394-96.

9. SRIVASTAVA & TENNEKONE, *supra* note 3, at 396-400.

10. See *id.* at 401-03 (listing other categories of communication which also attract absolute privilege).

proceedings, statutorily exempted reports, and publications made under a legal, moral or social duty.¹¹ Finally, consent is also a defense. Where the person claiming defamation first agrees to publication of the information (*i.e.*, when the person gives the information to a newspaper), no action in defamation will lie.¹²

The usual remedies sought in defamation actions are damages and injunctions. Damages can cover actual financial loss and harm to a person's reputation. Sometimes exemplary damages can be paid, in order to punish the wrongdoer. What are known as special damages usually need to be shown in an action for slander. This means the plaintiff must prove both that particular damage has been suffered and the extent of that damage.¹³ Injunctions can be either temporary (interlocutory) or permanent. They are sought to stop the initial, continued or renewed publication of a defamatory statement.¹⁴ Additionally, in many common law jurisdictions, the law of defamation is now—at least in part—statutory. These statutes usually have codified or slightly modified the common law.¹⁵

B. The Position in the United States

The position in the United States, with respect to defamation, was much the same as other common law jurisdictions until 1964. That year, however, the Supreme Court transformed the law in the celebrated case *New York Times v Sullivan*.¹⁶ Some have argued that the guarantee of freedom of speech in the First Amendment of the Constitution of the United States¹⁷ was responsible for this transformation.¹⁸ Since it took well over a century and a half for the First Amendment to have this effect, such an argument seems mistaken. However, a more accurate assessment is that the First Amendment provided a medium by which the Supreme Court could overturn prior defamation law. The *New York Times* decision was a result of the Supreme Court's interest, recently manifested in the later half of the 20th Century, in taking greater efforts to protect freedom of the press under the First Amendment.¹⁹

The Supreme Court was strongly motivated to apply the First Amendment under the circumstances of the *New York Times* case. Sullivan was a police commissioner in Montgomery County, Alabama. At the height of the civil rights

11. *Id.* at 403-09.

12. *Id.* at 409-10.

13. BURKE, *supra* note 6, at 307.

14. SRIVASTAVA & TENNEKONE, *supra* note 3, at 416-18.

15. DEFAMATION ORDINANCE (Cap. 21 1986), LAWS OF HONG KONG (which is largely based on UK defamation legislation).

16. 376 U.S. 254 (1964).

17. U.S. CONST. amend. I.

18. Frederick Schauer, *Social Foundations of the Law of Defamation: A Comparative Analysis*, MEDIA L. 263, 264 (1993).

19. FU & CULLEN, *supra* note 2 (discussing in chapters 2 and 3 the development of this practice).

movement, Sullivan sued the New York Times newspaper after it published an advertisement charging that his police department had violated the civil rights of many black people in its jurisdiction. Sullivan was not identified by name in the advertisement. It was in this context that the Supreme Court decided that the First Amendment had an important role in determining where the balance should lie between protecting an individual's reputation and protecting the freedom of speech and freedom of the press. The First Amendment was invoked to argue that the balance must favor freedom of the press. It should be noted, the United States Constitution has no provision guaranteeing the protection of an individual's reputation.

The *New York Times* case and subsequent cases have established that public officers (widely defined) and public figures (*e.g.*, film stars), who are engaged in public or official activities, or activities relevant to those activities, can only bring a successful defamation action if they can prove both actual damage and actual malice with convincing clarity.²⁰ It is now almost impossible for public officials and public figures in the United States to obtain a remedy in a defamation action. This is the case even when the published statements contain false information. False reporting does not raise a cause of action unless the person publishing the statement knew the facts were false or showed reckless disregard as to whether they were false or not. Mere failure to investigate the truth of a statement is not enough to establish the requisite malice.²¹

Several justifications have been forwarded to support this dramatic change in the law. First, it is said that public officials and public figures assume the risk of unfavorable publicity when they decide to enter the limelight. Second, some argue that it is better for free speech to be overprotected so that it never becomes under protected. Finally, the press is said to enjoy a unique position in a democracy which deserves special protection.²²

Defamation actions are available in the United States under the usual rules for those who are not public officials or public figures. Those in these latter categories must live with the realization that the media enjoys an especially privileged position. The outcome of the *New York Times* case and those cases following it buttress the clearly identified role of the media as the fourth branch of government in the United States.²³

III. FORMER DEFAMATION REGULATION IN THE PRC

The right to reputation is protected by the Constitution of the People's Republic of China, 1982 (Constitution).²⁴ Article 38 of the Constitution provides that "[t]he

20. Schauer, *supra* note 18, at 264-70.

21. *Id.*

22. *Id.* at 268-78.

23. *See id.* (where the author makes this argument strongly).

24. XIANFA, art. 38 (1982) (Constitution of the People's Republic of China).

personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false accusation or false incrimination directed against citizens by any means is prohibited."²⁵

Before 1986, there were two laws which protected the right to reputation by applying criminal and administrative sanctions. Under Article 145 of the Criminal Law, 1979 (CL) insulting another person in public or fabricating facts to affect defamation by violence or other means were offenses punishable by up to three years in prison. The circumstances of the offense had to be serious. The court accepted each case only upon complaint by the victim, except where serious harm has been done to the public order or to the interests of the state. That is, these criminal prosecutions normally had to be private prosecutions. The Regulation of Penalties for Public Order, 1986 (RPPO), made it a public order offense for anyone "openly to insult other persons or fabricate stories to slander persons."²⁶ This offence was punishable by a maximum penalty of 15 days detention.²⁷

The first criminal prosecution did not occur under Article 145 of the CL until 1985. A criminal defamation action was brought against two reporters from the *Minzhu yu Fazhi* (Democracy and Rule of Law), a popular legal magazine based in Shanghai. The offending article, published in 1983, accused a resident of Wuhan, Mr. Du, of coercing his wife to feign mental illness. The article stated that Mr. Du wanted to transfer to Shanghai where his wife resided and that her sickness was a pretext for the transfer. Mr. Du prosecuted the two reporters for criminal defamation. The court dismissed the defense of the reporters that they had no requisite criminal intent and that their free speech was protected by the Constitution under Article 35. They were found guilty of criminal defamation. One of the reporters was sentenced to prison for one year and deprivation of political rights for six months. The other reporter was sentenced to deprivation of political rights for one year. Both defendants were ordered to pay damages.²⁸

It was not until 1986 that the National People's Congress passed the General Principles of Civil Law (General Principles). Article 101 of the General Principles recognized a personal right to reputation and provided legal protection against insult, libel or other means used to damage an individual's reputation. Article 120 of the General Principles further provided remedial relief—injunctions, apology and damages for defamation. In 1988, the Supreme People's Court issued a judicial

25. *Id.*

26. Regulation of Penalties for Public Order, art. 22(3) (1986).

27. *Id.*

28. See WEI YONGZHENG, BEIGAO XISHANGDE JIZHE (REPORTERS ON THE DEFENCE) 3-5, (Shanghai People's Publisher, Shanghai, 1994); see also Hilary K. Josephs, *Defamation, Invasion of Privacy, and the Press in the People's Republic of China*, 11 UCLA PAC. BASIN L.J. 191 (1993).

explanation of the General Principles, which provided further guidance for judges in deciding defamation cases.²⁹

Almost immediately after the General Principles became effective in 1987, they produced a wave of defamation lawsuits against journalists which came to be known as the "suing reporters fever." While no official statistics were kept on the number of cases filed, it was estimated that there were close to 1,000 defamation cases heard by the courts in the first half of 1988. In 20% of the cases, reporters were being sued. By the beginning of 1989, defamation suits against reporters numbered around 300.³⁰ The plaintiffs varied in background—they included high ranking officials; local committee members of the Chinese Communist Party (CCP); people's court members; police officers; authors, singers and actors; and ordinary citizens. The defendants in the lawsuits were as varied as the plaintiffs—they included the People's Daily (the paper with highest rank in China); the New China News Agency; the Liberation Daily (the official paper of the People's Liberation Army) (PLA); and an array of less prominent newspapers and periodicals.³¹

This fever abated somewhat before the second wave of defamation actions which involved cases brought by "public figures." In 1992, the best known defamation case in the PRC was brought by Li Guyi, a famous singer with a high ranking government position. The trial was covered by more than 300 journalists. The case was well publicized even though the damages awarded were relatively insignificant.³² The Li Guyi case was followed by a series of suits where public figures were named as either plaintiffs or defendants. The striking difference in this second wave of suits was that public officials chose not to involve themselves as plaintiffs. Government and CCP officials (i.e., public officials) restrained their penchant for suing the media for defamation. Another development was that awarded damages increased significantly. Since the new civil remedies provided effective protection, criminal prosecution for defamation remained rare.

29. SUPREME PEOPLE'S COURT, OPINIONS (FOR TRIAL USE) OF THE SUPREME PEOPLE'S COURT ON QUESTIONS CONCERNING THE IMPLEMENTATION OF THE GENERAL PRINCIPLES OF CIVIL LAW OF THE PEOPLE'S REPUBLIC OF CHINA (1988).

30. See WEI, *supra* note 28; see also Judy Polumbaum, *To Protect or Restrict? Points of Contention in China's Draft Press Law*, DOMESTIC LAW REFORMS IN POST-MAO CHINA 251 (Pitman B. Potter, ed. 1994).

31. WEI, *supra* note 28. See Josephs, *supra* note 28, at 201.

32. Li was awarded 2,500 yuan for economic loss and 500 yuan in "spiritual compensation." Case of Li Guyi, Applied Legal Research Center, 1 Renmin Fayan Anli Xuan 103 (People's Court Cases) (People's Court Press, Beijing, 1993).

IV. THE CURRENT DEFAMATION REGIME IN THE PRC

The Supreme People's Court was in the habit of issuing guidelines to local courts on a case by case basis in defamation matters.³³ In 1993, the Supreme People's Court issued a Reply on Several Problems in Trying Cases Relating to the Right to Reputation (the 1993 Reply). The 1993 Reply established the law on civil defamation in the PRC.

A. Parties

Any natural or legal person can sue or be sued in a defamation action under the 1993 Reply. In contrast to the position in most common law jurisdictions, the 1993 Reply provides that the reputation of a deceased person can be defamed and thus needs protection. The next of kin may bring a civil action against a perpetrator.³⁴ The term "next of kin" includes the deceased spouse, parents, children, brothers, sisters, grandparents, and grandchildren. The duration of this protection is limited to three generations after the death of the deceased person.

As a general principle, the plaintiff alone has the power to name the defendant: "[I]f only the author is sued, the author is the defendant; if only the news publishing unit is sued, the news publishing unit is the defendant; if both the author and news publishing unit are sued, both are the defendants."³⁵ An important exception is that, where the author is employed by a news publishing agency and the author publishes the defamatory statement in the course of his official duties, only the agency becomes the defendant.³⁶

B. Jurisdiction

The 1993 Reply reiterates the law on jurisdiction in civil litigation provided by Article 29 of the Civil Procedure Law, 1991 (CPL). A court has jurisdiction if it is located at the place where the defamatory act takes place or where the defendant resides. The place where the defamatory act takes place is broadly defined to include the place both where the act is executed and where the effect of the act occurs.³⁷ The court with competent jurisdiction should accept or reject the lawsuit in accordance with Article 108 of the CPL. Article 108 sets down the conditions which must be met when a lawsuit is brought: (1) the plaintiff must be a citizen, legal person or other organization that has a direct interest in the case; (2) there

33. LIXIN YANG, *RENSHENGCHUAN FA (ON THE LAW OF PERSONAL RIGHTS)* (China Procuratorate Press, Beijing, 1994).

34. 1993 Reply, § 5.

35. 1993 Reply, § 6.

36. *Id.*

37. 1993 Reply, § 4.

must be a definite defendant; (3) there must be a specific claim or claims, facts and cause or causes for the suit; and (4) the suit must be within the scope for civil actions of the people's courts and under the jurisdiction of the people's court where the suit is deliberated.

Those who have been punished criminally by the police under the RPPO for insulting or defaming others can be sued again in a civil action for the same act. However, when a person is prosecuted under the CL, the civil action for the same act should be suspended until the criminal trial is completed.³⁸ Further, foreigners, aliens, stateless people and foreign enterprises and organizations enjoy the same rights and obligations with respect to litigation as PRC citizens, legal persons and other organizations.³⁹ Few cases have been recorded with respect to foreigners involved in defamation actions, although one notable exception involving a Hong Kong plaintiff is discussed in the next section.

V. THE ELEMENTS OF DEFAMATION IN THE PRC

In the 1993 Reply, the Supreme People's Court asks the courts to consider the following four issues before holding a person liable for defamation: (1) was the reputation of the victim harmed; (2) was the act of the defendant unlawful; (3) did the unlawful act cause damage to reputation; and (4) was the defendant at fault? The decided cases show, however, that Chinese courts mainly consider the elements which are familiar to the common law: defamatory statement, publication, identification and defenses.

A. Defamatory Statements

There must first be a defamatory statement. A statement is defamatory per se if derogatory words are used to insult another person. The 1993 Reply specifies that if derogatory words are used in a statement, it is defamatory even if the statement is true. There is no defense when an individual is called a "bastard," "shameless," or "presumptuous," a "mad dog," a "monster," or a "hooligan," "Mickey Mouse," or when police officials are called "rotten," or "human scum."⁴⁰

Acts that can be considered defamatory include exaggerating someone's minor misconduct as a crime, falsely stating that someone is under a criminal investi-

38. 1993 Reply, § 3.

39. CIVIL PROCEDURE LAW [CPL], art. 5 (P.R.C.).

40. See Case of Wang Faying, *Zhonghua Renmin Gongheguo Falu Fenlei Zonglan* (Classified Review of PRC Laws), (Law Publisher, Beijing, 1994) 837; see also Case of Zheng Yingqiong, *Zhongguo Shenpan Yaolan 1993* (China Trial Review 1993) in (Judges' Training Center of the Supreme People's Court and the People's University of China eds.) (Public Security University of China Press, Beijing, 1994) 705; see also Case of the Railway Public Security Department, *Zhongguo Shenpan Yaolan 1993* (China Trial Review 1993) in (Judges' Training Center of the Supreme People's Court and the People's University of China eds.) (Public Security University of China Press, Beijing, 1994) 920; see also WEI, *supra* note 28, at 38.

gation, or mixing up the names of convicted criminals and innocent persons. In one case, without any evidence, Xu Shaoyong, the defendant, accused the plaintiff and her family of stealing her trousers.⁴¹ Xu also spread false information that the plaintiff had unusual relationships with some men. Since the defendant continued to “curse” the plaintiff even after the court warned her to stop, and she did not appear sufficiently penitent, the court determined that the defendant was liable for the serious emotional harm suffered by the plaintiff. In the case of the Chongqing No.1 Spinning and Weaving Factory, the defendant was also found liable in defamation for accusing the plaintiff of kidnaping when, in fact, the plaintiff had taken a lost girl home without any ill intent.⁴² In another case, the court decided that statements casting doubt on the plaintiff’s marital status and falsely claiming that the plaintiff was a ticket scalper constituted defamation on the part of the defendant.⁴³

It is also defamatory to impute immoral behavior. Thus, accusing a woman of seducing another’s husband, lack of chastity, or having an unusual relationship with her father is defamatory.⁴⁴ In another case, a patient was named as a defendant in a defamation action brought by a hospital after the patient, treated by the hospital for a skin disease, discovered the treatment left him with a facial scar. The defendant believed the scar was caused by misapplication of drugs by a doctor and expressed his grievance with the hospital by placing posters in the street, claiming that the hospital was experimenting on patients, and that the doctor in question had harmed patients intentionally. The court held that the doctor and the hospital had not violated any of their professional responsibilities. Rather, the defendant had fabricated the entire case and, therefore, was liable in defamation.⁴⁵ An accusation that an official had used his power for personal advantage was also found to be defamatory.⁴⁶ In a case in which a publisher negligently interchanged the work of two authors, the defendant, unaware of the true facts, arranged a press conference, where she accused the plaintiff of plagiarism. She also published a document containing defamatory remarks about the plaintiff. The plaintiff sued and received a favorable decision from the court. The defendant was ordered to pay 1227 yuan in damages.⁴⁷

Further, the reputation of corporate legal persons is also protected. It is defamatory to claim falsely that a company’s products are low in quality or high in

41. *Id.* Case of Zheng Yingqiong. See Case of Li Pailu and another, Classified Review of PRC Laws 835.

42. Case of Tan Zijing and another, Zhongguo Shenpan Yaolan 1992 (China Trial Review 1992) in JUDGES’ TRAINING CENTRE OF THE SUPREME PEOPLE’S COURT AND PEOPLE’S UNIVERSITY OF CHINA 781 (People’s Public Security University of China Press, Beijing, 1992).

43. Case of Song Jianping, China Trial Review 1994, *supra* note 40, at 911.

44. See Case of Zhang Lingyi, China Trial Review 1993, *supra* note 40, at 709; see also case of Huang Chaohui, China Trial Review 1994, *supra* note 40, at 890.

45. Case of Central Hospital of Lu Wan District, China Trial Review 1994, *supra* note 40, at 916.

46. Case of Jia Tianning, China Trial Review 1993, *supra* note 40, at 701.

47. Case of Zhu Jing, China Trial Review 1993, *supra* note 40, at 697.

price,⁴⁸ or that the low quality of a refrigerator was caused by poorly-made parts produced by a contracting supplier.⁴⁹ Damages awards in such cases can be substantial where serious economic loss has resulted.

Finally, a defamatory statement may be made indirectly, depending on the circumstances in which the statement was made. In the PRC, imputation of incorrect political belief (e.g., that a member of the CCP is religious) could be defamatory, given the importance of correct political belief in China. Yang Mo, a famous author in the PRC, was reported as saying in an interview that he met George Bush in 1989 during the former President's visit to China. Yang was never interviewed and he did not meet George Bush. Yang sued the author of the article and the periodical which published the article for defamation, on the grounds that even though it would be an honor to meet the President, his reputation could be harmed because the plaintiff would be regarded as a liar who boasted about himself. It was also alleged that there may be unspecified serious "adverse" political implications.⁵⁰

B. Publication

The defamatory statement must be published. A statement can be published orally, in writing, or by gestures, mimicry and signs. A plaintiff can sue once a defamatory statement has been transmitted to a third party. The number of copies printed or the number of times the utterance is repeated is only relevant in assessing the harm suffered by the plaintiff. The question of whether publication has occurred when a defamatory statement is made to someone who is incapable of understanding it (e.g., an oral statement made to a deaf person who cannot lip read, or an oral statement made in English to someone who does not understand English) apparently has not yet arisen in the PRC. When such issues are addressed, given the tendency of PRC defamation law to track common law defamation in many respects, courts may hold that such statements have *not* been published. Additionally, reproduction of the defamatory statement by another party—either reprinted in another newspaper, or reiterated by another person—provides a fresh cause of action against the third party. Any such third party is liable as a joint defendant.⁵¹

One particular problem in the PRC is whether publication in an "internal reference" publication comprises publication for the purposes of the law of defamation.⁵² In 1988, a reporter from Sichuan province wrote a letter to the New China

48. See Case of Shanghai Xingya Medical Rubber Factory Classified Review of PRC Laws, *supra* note 40, at 844; see also case of Kangda Medical Apparatus Company, Classified Review of PRC Laws, *supra* note 40, at 843.

49. WEI, *supra* note 28, at 39-40.

50. *Id.* at 50. The case was accepted by the court but the result is unknown. *Id.*

51. Case of Wang Faying, Classified Review of PRC Laws, *supra* note 40, at 837.

52. Internal reference publications are described in FU & CULLEN, *supra* note 2, ch. 2. These are publications produced for the internal reference of leading political figures. By definition, they are not circulated publicly.

News Agency raising doubts about the credibility of a deceased Shaolin monk, Haideng Master.⁵³ The Agency published the letter in its Selection of Internal References, a classified journal prepared for the CCP and ranking government officials. The reporter also published similar articles in two periodicals which were publicly circulated. One of the students of the Master sued the reporter for defamation. A court in Sichuan found the statement defamatory and held the reporter liable for the publication in the two public periodicals. But the court also held that publication in a "secret journal" does not comprise publication in a defamation context.⁵⁴

The decision in the Sichuan case was supported by two other decisions. In the first case, a judge was named for being involved in the torture of a person detained by the court. In the second case, a bank official was identified for being involved in corruption. Both cases were reported in internal reference publications. The court found against the plaintiffs in each case on the grounds that a journalist has a right and duty to report to the CCP and the government through this classified channel. The purpose of internal reference publications is to aid the understanding of senior officials. The materials in question were for the eyes of senior officials only. Therefore, the statements had not been "published" within the meaning of the defamation law.⁵⁵ However, the outcome in each of these cases was partly based on the finding that the reports were substantially true. The immunity from suit of items contained in internal reference journals, regardless of the accuracy of those items, is thus not established beyond doubt. In at least one case, reporters from Jiangxi Daily were found liable for defamation for publishing false stories in an internal journal called Internal Information.⁵⁶ It seems that internal reference journals enjoy a type of qualified privilege but they do not enjoy absolute privilege.⁵⁷

There is a further concern. Given the widespread use of internal publications in the PRC, it is difficult to distinguish "real" internal reference publications from routine, internally circulated materials. That is, many enterprises and units have internally circulating materials which are not true internal reference publications but simply notices that are circulated throughout their organization. In theory, these latter materials are not covered by the internal reference exception, however, establishing that they are outside that exception is not entirely a straightforward process.⁵⁸

53. The Shaolin Monastery, near Luoyang, Henan Province is the home of (northern) Gung Fu (Wu Shu).

54. WEI, *supra* note 28, at 93-94.

55. *Id.* at 94-95.

56. Liu Tianyun, *The Demarcation between Supervision by Public Opinion and Defamation*, 4 XINWEN ZHISHI (News Knowledge) 31 (1992).

57. Lin Baoquan, *Defamation Lawsuits Against the Press Soaring*, 4 XINWEN CHUAN (Window on the Press) 38 (1992).

58. RENGECUAN YU XINWEN QINCHUAN (Personality Rights and Defamation by the Press) ch. 21 (Wang Limin and Yang Lixin eds.) (China Fangzheng Press, Beijing, 1995).

C. Identification

A published defamatory statement must refer to a particular person, directly or indirectly. In some cases, the plaintiffs can easily be identified by the clues given in the statement (*e.g.*, a famous female singer from Sichuan, who is a member of the Chinese People's Political Consultative Conference,⁵⁹ or a senior official in the state music administration who became famous ten years ago for a specified song⁶⁰). In another case, the defendant used the words "thief," "prostitute," "evil," and many other unfavorable words to describe the leading figure of his supposedly fictional story. Although the plaintiff was not mentioned by name, other information disclosed in the story, such as home address, occupation, an office address and even the unfortunate experiences of the leading figure, was so distinctive that those who knew him would well understand that the story referred to the plaintiff. The court held that the defendant was liable for defamation because identification was established.⁶¹ One similar example concerned the defamation of a dead person. In that case, the leading figure of the defendant's "story" had the same name and the same rank in the army as the plaintiff's deceased father. The story portrayed this figure as a corrupt army officer. The plaintiff brought a defamation action against the defendant. The court held that, although the story was fictional, by using historical events as background to the story together with the name of the plaintiff's father, any negative statement about the "fictitious" person could be attributed to the deceased; therefore, the defendant was liable for defaming the plaintiff's father.⁶²

At other times, this identification requirement has caused considerable controversy. In some cases the defamatory statements are made in "docu-fiction" films or publications. In these instances, real names often appear but facts are changed or are partly fictionalized.⁶³ In one such case, the defendant portrayed certain characters as drug traffickers, owners of a vice establishment and hooligans. Although the identities of these figures and the background of the story were different from those of the plaintiffs, it was possible for a third party to believe that the characters in the story referred to the plaintiffs because the characters used the names of the plaintiffs and their features fitted descriptions of the plaintiffs. The court held that the defendant had to make an apology to the plaintiffs. The defendant was also required to delete the defamatory part of his story and pay damages of 900 yuan to the plaintiffs.⁶⁴ While docu-fiction is also popular elsewhere, it is a particularly serious

59. WEI, *supra* note 28, at 72.

60. *Id.* Case of Li Guyi, 1 People's Court Cases (1993), *supra* note 32, at 103.

61. Case of Chen Qiong, China Trial Review 1994, *supra* note 40, at 899.

62. Case of Jia Tianning, China Trial Review 1993, *supra* note 40, at 701.

63. See Case of Jin Guangzhong, People's Court Cases (1992), *supra* note 40, at 64 (discussing defamatory statements made in "docu-fiction" films or publications); see also Josephs, *supra* note 28.

64. Case of Hu Jichao and others, Classified Review of PRC Laws, *supra* note 38, at 840.

problem in the PRC because of the cultural tradition of using indirect methods of communication in China.⁶⁵

According to the 1993 Reply, defamation is not actionable in certain situations where the subject is not apparent from the context of the defamatory statement. For example, in 1991, a law review article falsely claimed that human flesh had been used as filling in buns in a Wuhan restaurant. The publication of the article aroused public fear and concern but, because the article did not mention any identifiable persons, the author was not liable in defamation.⁶⁶ While similarity is not always actionable if a work is based upon "a particular person," the "specific facts of a particular person," or "of and concerning" a particular party, it will become actionable if a defamatory statement has been made.

VI. DEFENSES IN DEFAMATION ACTIONS IN THE PRC

A. *Privilege*

Chinese law does not explicitly provide a defense of absolute privilege. Nor does it explicitly provide a defense of qualified privilege for fair and accurate reporting of legislative, judicial and other public proceedings, or for reports based upon information released by government officials in performing their public functions. This is a complex area as the media in the PRC is part of the state and the state itself provides many of the sources for reports in the media.

The courts in the PRC have not yet dealt directly with the issue of to what extent is the media liable when it repeats false information originating from government or the courts or other official institutions. However, sporadic cases decided in the courts tend to indicate that, as a general rule, the press is not liable for fair and accurate reports based on information provided by the government. Thus, it is not defamatory to report that, according to a government decision, a person failed to pay tax in arrears in the amount of 180,000 yuan, even though the decision was later overruled on appeal.⁶⁷ The impact of this court-crafted principle, however, is significantly confined. First, the information must be formally released by the government. It was not a defense, for example, when the defamatory statement about a singer demanding excessive fees was provided at a conference organized by the government.⁶⁸ Second, the information released by a government authority must be compatible with its function. Thus it is not a defense when the defamatory

65. MICHAEL HARRIS BOND, *BEYOND THE CHINESE FACE* ch. 5 (Oxford University Press, Hong Kong, 1991). See DANIEL K. BERMAN, *WORDS LIKE COLOURED GLASS—THE ROLE OF THE PRESS IN TAIWAN'S DEMOCRATIZATION PROCESS* (Westview Press, Boulder, 1992) (providing a study of indirectness in political dissidence in Taiwan).

66. XINWEN QINCHUAN (DEFAMATION BY THE PRESS) 498-99 (Wang Limin ed., Jilin People's Press, Changchun, 1994).

67. WEI, *supra* note 28, at 174.

68. *Id.* at 175.

information was released by a member of the people's procuratorate but concerned a matter relating to another procurator accused of refusing to help his neighbor in an accidental fire.⁶⁹

Finally, since a government authority should only release information after careful investigation, information released as a result of serious negligence on the part of the authority would leave both the releasing authority and the reporting media agency and its personnel open to an action in defamation. For example, after police began a crackdown on ticket scalping, the police informed a local newspaper that a female ticket scalper named Song Jianping had been detained by the police and that they had also detained her husband, another ticket scalper. A local newspaper published this story on the front page. In fact, Song was a telephonist who had never scalped tickets. Moreover, she was not married. At trial it was discovered that the police had been misled by a ticket scalper claiming to be Song. The court held both the press and the police liable for defamation because of their negligence.⁷⁰

B. *The Right to Criticize*

The Constitution protects the rights of the public to criticize government. Article 41 provides that:

Citizens of the People's Republic of China have the right to criticize and make suggestions regarding any state organ or functionary. Citizens have the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for purposes of libel or false incrimination is prohibited.

The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges or exposures or retaliate against the citizens making them.

Citizens who have suffered losses as a result of infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law.

Article 41 raises the need to reconcile the right to criticize with the right to reputation protected under Article 38. Article 38 needs, also, to be balanced against Article 35 of the Constitution which provides, *inter alia*, that citizens of the PRC are

69. *Id.*

70. Case of Song Jianping. *China Trial Review* 1994, *supra* note 40, at 911.

to enjoy freedom of speech and freedom of the press. Under what circumstances, then, is criticism of a public official still actionable under the law of defamation?⁷¹

The civil law of defamation will be overridden by the Constitution if the following three elements are satisfied: (1) the defamed person is a public official; (2) the criticism is related to the official responsibility of that official; and (3) there is no fabrication or distortion of facts for the purpose of libel or false incrimination. Even if the first two elements are established, an otherwise sound defamation suit must fail unless the plaintiff can prove that the defendant made the defamatory statement for the purpose of libel or false incrimination. That is, the defendant must have published the defamatory words which damaged the plaintiff's reputation, knowing that the words were false or the defendant was reckless in determining their truth or falsity. This protection for the media closely approximates the protection provided in the United States under *New York Times* (mentioned earlier). Although the courts in the PRC have never discussed the applicability of the Constitution in defamation litigation, they have, nevertheless, placed defamation in a constitutional context by protecting false statements in certain media reports.

There have been numerous political and judicial policies clarifying the protection of journalistic criticism. After dismissing a lawsuit against the People's Daily in 1989, a court in Shanxi province issued a five-point guidance note to judges. The guidance note essentially benefitted the media. It called upon judges to listen actively to the opinions of the press, and requested that the press first handle defamation disputes before the courts accepted these cases for trial. The policy suggested that, even when a person's reputation was harmed, courts should allow the press to explain and correct any defamatory statements before applying penalties. Finally, courts should firmly support journalistic criticism.⁷² In Shanghai, the courts have begun to use journalists as People's Assessors in trying defamation cases concerning the press. This step, favorable to the press, is consistent with this pro-media stance of the courts.⁷³

The 1993 Reply also reiterates that there is no defamation if critical comments are basically true.⁷⁴ Essentially, this policy means that all facts do not have to be literally true. Thus, it is not defamatory to say that a group of three cadres had a feast on public money at a cost of 117 yuan, when actually a group of four cadres spent 112 yuan.⁷⁵ In a case which occurred in Hunan province, officials of a township refused to offer assistance in a murder investigation after a murder took place in the township. A local newspaper reported the case stating that after hearing

71. Although, as a general rule, constitutional provisions are not legally enforceable in the courts in the PRC, they nevertheless have begun to have some impact on the outcome of legal disputes as litigation has become increasingly more common. Some examples of how this has occurred are given in the text.

72. GUANMIN RIBAO (Enlightenment Daily), Feb. 20 1989.

73. WEI, *supra* note 28, at 20.

74. 1993 Reply, § 8.

75. WEI, *supra* note 28, at 52.

requests for assistance, several cadres in the township office put their heads out of the windows, claiming that: "nobody is in the office." The officials of the township sued the newspaper on the basis that the windows were structured in a way that no one could stick their head outside the windows.⁷⁶ This argument was rightly rejected by the court.

The degree of truthfulness necessary to preclude an action in defamation is a matter of fact to be decided by the court. In the dinner case mentioned above, a difference of five yuan certainly did not render the report false, as the thrust of the criticism about the abuse of power on the part of the government officials was accurate. Nor is it directly relevant to the criticism whether the officials had put their heads out the windows. The real issue was that the officials refused to offer assistance when requested. The factual falsity was not relevant.

The courts have also gone beyond protecting journalistic criticism of government officials. Protection has been extended to wider categories of journalistic criticism. In this regard, Chinese law differs from that in the United States, reflecting the different relationship between the media and the government in the two countries. The media in China is an official instrument. It represents the voice of the PRC. Article 41 of the Constitution thus works, in effect, to allow the media to criticize on behalf of the government. A good example of this extra protection can be found in case where the Liberation Army Daily (the official daily of the PLA) alleged that a newly recruited serviceman, Liu Xianbao, changed his identity to hide prior criminal offences of "gang rape" and "theft." The army dismissed Liu immediately and Liu's father brought a lawsuit against the newspaper for defaming his son. A government investigation found out that there were records in a police station which showed that the son had been involved in "theft" and "hooliganism" but was never convicted of a crime. Based on this investigation, the court held that the lawsuit must fail because there was no substantial difference between a bad police record and a criminal record in the context of this defamation action.⁷⁷

Further clarification may be found in another case. The Wenzhou Daily criticized a singer in 1988 as a convicted rapist. The singer sued in defamation on the basis that, although he had been convicted of an offense before, he had served his term and thus was not a criminal any longer. He also pointed out that he had been convicted of hooliganism not rape. The court's decision to reject the claim was based on the presumption that, in the public's eye, hooliganism is the same or as bad as rape and the context of the article indicated that the singer was an ex-convict.⁷⁸

In another case, the Beijing Evening News reported in 1988 that a soft-drink factory in Beijing was fined by the government for poor sanitary maintenance. The government inspection team said that "a few flies" had been found in the factory.

76. *Id.*

77. Liu, *supra* note 56.

78. WEI, *supra* note 28, at 52.

The reporter wrote a story which claimed that “a lot of flies” were found in the factory. The editor of the newspaper altered the report to read that “the factory was full of flies.” The factory's lawsuit for defamation against the newspaper failed (presumably because flies were found in the factory), but the court cautioned the newspaper's recklessness in its use of words.⁷⁹

Finally, when a PRC newspaper in 1988 criticized a Hong Kong businessman who sold back to China machinery which had been exported from China, it used the term “zhapian” (deception or fraud) to describe his activities. This was a criminal offense. The businessman, in fact, had engaged in “qipian” (misrepresentation) which was not a criminal offence. The court rejected the businessman's argument that he had been defamed. The court held that, as far as the defendant's defamation action was concerned, deception and misrepresentation could be equated.⁸⁰

In these cases, the courts allowed the press to exaggerate the facts provided that the statement has some factual basis. Where the plaintiff had committed a wrong which was of the same nature as the wrong described in the statement, the statement would not be defamatory. The courts according to the Chief Justice of the Supreme People's Court, were balancing the right to protection of reputation and the right of free expression and especially the right to criticize unlawful and immoral activities.⁸¹ In the same year, 1988, Lin Yun, Chief Justice of Sichuan provincial High Court noted the role of the press in reflecting public opinion. He pointed out that courts should offer special protection for works which intend to expose bad practices and unlawful activities and should not provide opportunities to reproached organizations and individuals to “use laws” to resist criticism.⁸²

VII. REMEDIES IN DEFAMATION ACTIONS IN THE PRC

Civil remedies are generally provided for in Articles 120 and 134 of the General Principles. When an individual's right to reputation is infringed, that person has the right to demand that the infringement be enjoined. Thus far, this injunctive remedy provided in the PRC has only been used to prevent continued publication of defamatory materials. The courts have not yet dealt with a situation where a potential victim has petitioned the court for injunctive relief to prevent a statement from being published for the first time.

The 1993 Reply provides a remedy of correction, retraction and apology. The remedy can be performed either in writing or orally, but the proposed content, length, and location (in a newspaper for example) have to be examined and approved by the court prior to publication. The general requirement is that the

79. *Id.* at 16.

80. *Id.* at 61-62.

81. FAZHI RIBAO (Legal Daily), July 19, 1988.

82. FAZHI RIBAO (Legal Daily), Oct. 14, 1988.

remedy should be published in equivalent terms of prominence as the original defamatory statement.⁸³

If the defendant refuses to correct, retract, or apologize, as ordered by the court, the court may itself issue public notices in newspapers to publicize the judgment. All expenses will be borne by the defendant. A court may also impose further penalties, including a fine and detention, or pursue the defendant's criminal liability according to Article 102(6) of the CPL. Research in the PRC indicates that, when newspapers voluntarily correct their mistakes and apologize immediately, they have a better chance of avoiding lawsuits altogether. Further, even when a lawsuit cannot be avoided, if newspapers take such actions to expiate for the defamation, they are more likely to win the case.⁸⁴

Damages are frequently awarded for direct or indirect economic loss caused by a defamatory statement. What has proved difficult to assess is "spiritual damage." The 1993 Reply listed three elements for the court to consider in assessing spiritual damage: (1) the seriousness of fault on the part of the defendant; (2) the circumstances surrounding the defamatory act; and (3) the actual spiritual harm caused by the defamatory act. Spiritual harm in the PRC includes both the plaintiff's lowered reputation in the community and the actual emotional stress and psychological pain and suffering endured by the plaintiff. Without a developed psychological and psychiatric assessment system in the PRC, however, Chinese courts tend to stress the first two elements, cautioning that spiritual damage is a very subjective matter.⁸⁵ The courts are still relatively generous in making awards for spiritual damage.⁸⁶ One high award of 3,300 yuan was made to a woman in 1988.⁸⁷ A woman who was defamed when she was called in a periodical, a "thief," a "prostitute," and a "ghost," among other things, was awarded 2,000 yuan.⁸⁸ The woman who was wrongly identified by the police and a newspaper as a "ticket scalper" (mentioned above) was awarded 800 yuan.⁸⁹

VIII. THE ROLE OF DEFAMATION LAW IN THE PRC

The increased employment of China's defamation law is clearly driven by aggrieved plaintiffs seeking redress. However, this primary reality does not adequately relay some of the underlying motives. The media, and particularly the print media, is a crucial instrument of the CCP's rule in the PRC. The practice of

83. *Id.* at 211. See YANG, *supra* note 33, ch.11.

84. WEI, *supra* note 28, at 180.

85. *Id.* at 212. See GUAN, JINHUA, JINGSHEN SUNHAI DERENDING YU PEISHANG, THE IDENTIFICATION AND COMPENSATION OF SPIRITUAL DAMAGE (People's Court Press, Beijing, 1996).

86. It has been proposed that the award of spiritual damage should normally be limited to the range of 100 to 500 yuan and not exceed 1,000 yuan.

87. Case of Wang Faying, *supra* note 40, at 837.

88. Case of Chen Qiong, China Trial Review 1994, *supra* note 40, at 899.

89. Case of Song Jianping, *supra* note 40, at 911.

journalism is greatly affected and severely distorted by this relationship. Sometimes it appears as if there is an unspoken conspiracy between officials and defamation plaintiffs in which they plan to further undermine journalistic freedom in the PRC. The use of the civil law of defamation by citizens is encouraged by the authorities to help tighten media control, thus supplementing the existing criminal, administrative, bureaucratic and political control systems.

With the continuing liberation of daily life in the PRC, blatant and direct political control of the media is not so easily employed. The use of sedition (and subversion) to suppress the media—effective as it may be—realistically can only be used in emergencies when the regime is facing a crisis. CCP officials recognize that continuous attempts to suppress the media with claims of sedition, places the regime's fragile legitimacy in further danger. Regulation of the media through state secrets regulation is gradually becoming a primary instrument of state control. However, this regulation is also limited in practical application. Laws relating to state secrets are not only vague and subject to broad judicial interpretation, but they also do not address stinging criticisms against the CCP, the government and their officials.

Therefore, an additional indirect method of control is useful to the government's objectives. This is the role of defamation law: it is a private remedy and does not involve the government. Private lawsuits can help control the press, while leaving the government's role largely invisible. Defamation actions involve a balancing of the right of reputation against the right to a free press and the right to criticize officials. Such balancing accords with internationally accepted standards. Further, a third party (*viz.*, the judiciary) is the final arbitrator, thus giving the appearance of neutrality. Finally, defamation suits are economically effective in controlling the media. The cost of censorship is shifted from the government to the parties involved in the action. The press will become more cautious when they are faced with the cost of litigation and risk of paying damages. This is especially important today as media outlets in PRC gain more financial independence from the CCP and the government.⁹⁰

For a greater understanding of the role of defamation law in the PRC, the status of the media in Chinese society must also be considered. The relationship between the media and the government is complex. In a directed culture like the PRC, the media assumes a dual role in communication: it is the "eyes" and "ears" (through which confidential reports in internal reference journals are channeled to the CCP) and the "throat" and "tongue" (through which information and misinformation is channeled to the public). Moreover, after manipulating words for over a decade during the Cultural Revolution, the press is capable of maximizing the assaultive power of words. Criticism in the press is often not objective. Rather, it is deliberate and intending to cause harm.

90. FU & CULLEN, *supra* note 2, Ch. 13.

Another factor in this complex fusion of influences on defamation law is the court system's tendency to provide a form of qualified privilege for the media so that media agencies generally enjoy considerable protection for their criticism of public officials. However, this freedom is not as broad as it first may appear. In the PRC, the sensitivity of government officials over criticism remains extreme compared with the west, and the penalties for transgressing these broadly stipulated sensitivities can be severe. Moreover, the supposed independent arbitrator of defamation actions, the court system, remains dependant on the government due to resource and competency problems and because they have been deeply woven into the fabric of the one party state.

Finally, it should be mentioned that the political overtones of defamation law in the PRC are not a uniquely Chinese phenomenon. Defamation laws, both civil and criminal, have also been used by officials in the West to suppress criticism.

IX. CONCLUSION

Defamation, in the West, especially in common law countries, has a long and colorful history. The elements of this civil wrong are now fairly well settled, although in the United States defamation actions have been reduced to being a "paper tiger" in the case of public officials or public figures engaged in public or related activities.

In jurisdictions outside of the United States, media agencies and their personnel generally find potential defamation suits their single greatest day to day legal concern. Defamation suits retain great scope as devices for deflecting or suppressing political criticism. Outside of the United States, the right to protect one's reputation has been given considerable weight at the expense of freedom of expression and freedom of the press.

The development of defamation law in the PRC has followed, in important respects, its development in common law jurisdictions. Civil defamation actions are far more common than criminal defamation actions, for example. The principles governing defamation actions are also quite similar, although the fact that a dead person can be defamed is a significant difference. The law of defamation clearly is still at a formative stage in the PRC. This formative process of development is made significantly more complicated by the fact that both the media, the most common offender in defamation actions, and the judiciary, the final arbitrator in such actions, remain components in China's vast one party state. Moreover, although defamation law in all jurisdictions has a political sheen, in the PRC this is especially noticeable given its utility as a component in China's rickety but sometimes brutal censorship apparatus.

The PRC is engaged in a legalism project unprecedented in recent legal history given the extent of lawmaking and the numbers subject to these laws. This is but one of the many developments which may be traced back to the introduction of the "open-door" policy by Deng Xiaoping in the late 1970s. Over the last two decades,

applied Marxism in the PRC has been in relentless retreat. Leninist principles of authoritarian governance have not, however. The tension between these principles, the first, which resonates with China's long history of Imperial authoritarianism, and the second, the "rule according to law" rhetoric more recently embraced in the PRC, is palpable. This tension will, over time, be played out, in part, within China's rapidly developing legal system. Within this context, the development of defamation law will bear watching. Many factors are at work, including the expanded interest in litigation. Already, one can observe incipient constitutionalism gaining a shaky toehold in a few cases. It is conceivable that defamation litigation may help forge wider legal principles as China's cumbersome one-party state struggles to marry legalism with Leninism.