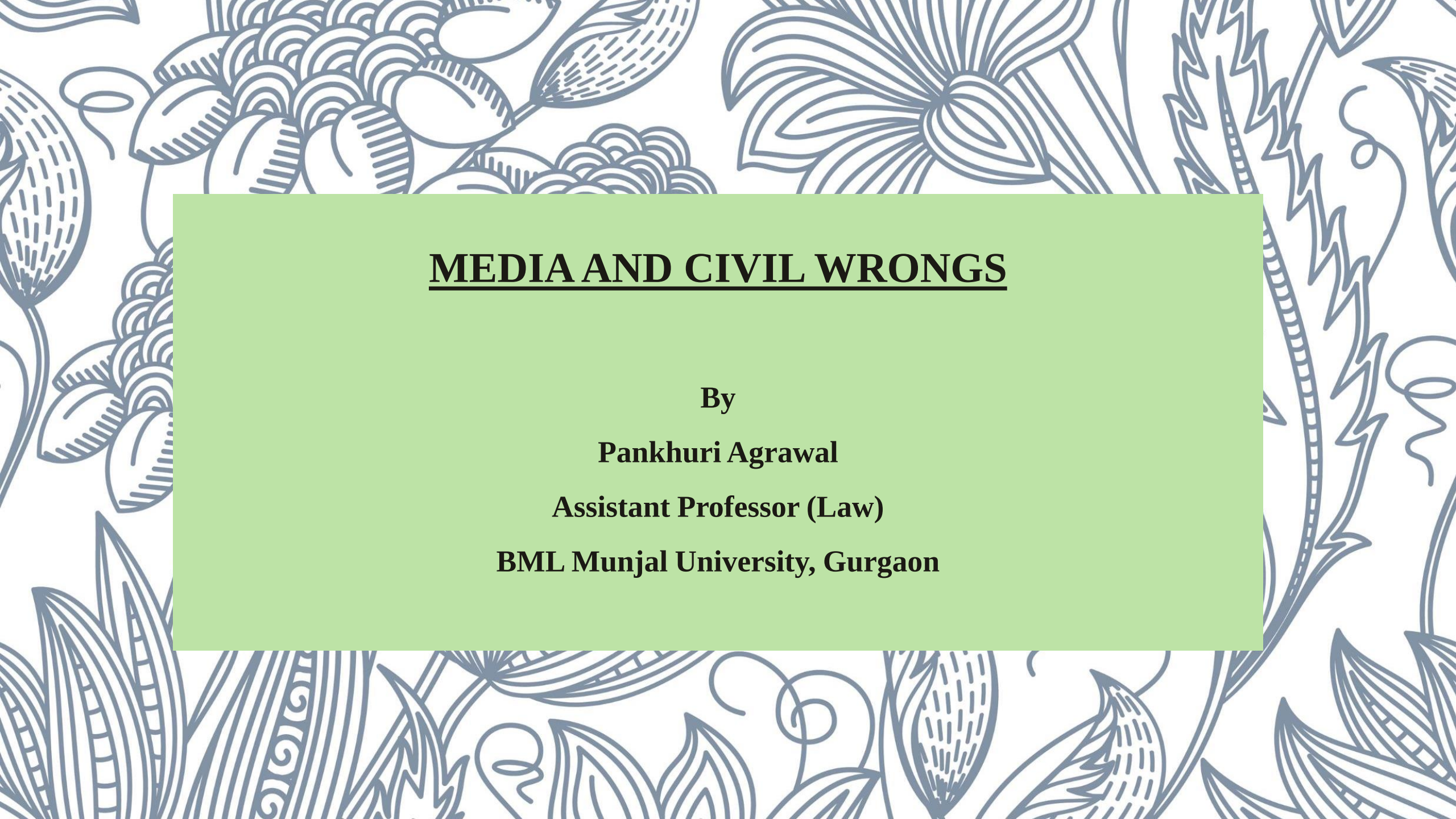




MEDIA AND CIVIL WRONGS

By

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- **Defamation – How?**
- Freedom of Speech and Expression v Reasonable Restrictions
- **Article 19(2) in The Constitution Of India 1949**
- (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, **defamation** or incitement to an offence.
- Thus the expression
—Defamation has been given constitutional status. This word includes expressions like libel and slander.

- **Defamation – Who?**

- The law relating to the tort of defamation, from the point of view of distribution of legislative power, would fall under —actionable wrongs‖ mentioned in Entry 8 of the Concurrent List in the Eleventh Schedule to the Constitution. Criminal law also falls under the Concurrent List. This would cover the offence of defamation. Questions of defamation frequently arise in regard to newspapers. The particular topic of —newspapers, books and reprinting presses‖ is also covered by entry 39 of the Concurrent List. Special forms of communication such as wireless, broad casting and the like find a mention in entry 31 of the Union List. The field of legislation relating to defamation is thus within parliament competence.

- **Defamation – Civil or Criminal wrong?**

- Defamation is both a crime as well as civil wrong. The criminal law of defamation is codified in India.
- However the civil wrong of defamation is not a codified law in India and the rules and principles of liability that are applied by our courts are mostly those borrowed from the common law as explained in UK.

Defamation – Definition

- False Information
 - Publication
 - Damage to reputation
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- Lord Atkin in the case of ***Sim. v. Stretch*** ((1936) 52 TLR 669) that a statement would be considered to be defamatory, if —the words tend to lower the complaint in the estimation of the right thinking members of society generally.

- **Defamation – Form**

Libel	Slander
In printed or fixed medium	Transitory (non-fixed) representation- oral (spoken) representation/gestures
Examples- publication in newspapers or magazines, a statue, a caricature, an effigy, chalk mark on a wall, sign or pictures.	Examples- reading from a published statement or dictation to a clerk, inarticulate expressions of disapproval such as hissing or booing, or cat calls and significant gestures, such as winking etc.
Libel is a criminal offence as well as a civil wrong.	Slander is a civil wrong only, unless they also fall within the domain of criminal law on grounds of being blasphemous, seditious, or obscene or as being a solicitation to commit a crime or being a contempt of court.
Libel is actionable per se.	Slander is actionable only when special damage can be proved or when it conveys certain imputations.
No actual damage need be proved in order to sustain an action	

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- In *Manson v. Tussauds* (1934 50 T.L.R. 581) : The plaintiff has been tried for murder in Scotland and released on a verdict of Not proven and a representation of the scene of the alleged murder was displayed in the chamber of horrors.

- **Remedies**

The Court of Appeal held that the exhibition was libel, because that was in permanent form.



Essentials of Defamation

- 1. Defamatory Statement**
- 2. Reference to plaintiff**

First Defence: Truth

- ***Miss Simi Garewal v. T.N. Ramachandran & Another***

The Bombay High Court held, once it was proved that a representation or statement in question was true in substance and in fact, it was utterly irrelevant to consider whether it was defamatory or not.

- Further the Court said that a person has no right to the protection of reputation to which that person is not entitled. As the photograph was a correct one and in no way showed the plaintiff less attractive or beautiful, or unfair, she has no reason to complain. The picture was also not torn out of context so as to make it misleading or to amount any misrepresentation.



First Defence: Truth

- Truth is absolute justification to a civil action for defamation. The defendant will succeed if he knows that what he has spoken of the plaintiff is substantially true.
- In criminal law, truth is not an absolute justification. Truth is a justification only when it is given out for public good. The reason for the distinction lies in the fact that in civil action the benefit or detriment to the public is not in issue while it is paramount that the public should have a concern in criminal matters.
- To succeed in a plea of justification, the defendant must prove that the defamatory imputation is true. It is not enough for him to prove that he believed that the imputation is true, even though it was published as belief only.

Second Defence: Fair Comment:

- A fair comment or bona fide comment is a statement of opinion based on facts of public matters which concern them. To say that 'the soldier is a deserter' is a statement of a fact while to say 'he is a deserter and hence a coward soldier' is an expression of opinion.
- Every citizen is having a right to make a legitimate and fair comment on public affairs like: public acts of Ministers and officers of state, administration of justice, public institutions and authorities including local authorities, religious matters, books, pictures and works of art, theaters, concerts and other public entertainments (not on private life of public figures), other affairs which appeal to the general public e.g., a medical man bringing some new methods of treatment and advertisement.



Second Defence: Fair Comment:

- There are three parts in fair comment. They are:
 1. An expression of opinion and not statement of fact,
 2. which is a fair comment,
 3. and about some matters of public interest.

The comment must be made on the basis of true facts.

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- The defence of fair comment is of more use to journalists. Expressions of opinion contained in editorials, critical articles, letters to the editor and news items of an analytical nature are covered chiefly by the defence of the right of fair comment is applied to a defamatory publication. The defence is based on public policy – the right of all persons and publications to comment and criticise without malicious intent the work of those who draw public attention.
 - In ***Dainik Bhaskar v. Madhusudan Bhasker***, (AIR 1991 MP 162) it was held that the Court must analyze the alleged defamatory news and views with due care, caution and circumspection and eschew hypersensitivity in doing so for the role of the press as crusader against social evil is progressively acquiring greater importance and newer dimensions with the niche found by investigative journalism.

Subba Ramier v. Hitchcock , 1924 I.L.W. 26

- In this case the defendants published in the newspaper Hindu a report under the heading Police Crimes in Ottapalem on the events which occurred at a student's conference there. The report charged the plaintiff, Superintendent of Police with having deliberately conspired with subordinate police officers to assault innocent people, when as a matter of fact he was not proved to have been aware of them.
- The Madras High Court held the defendants liable on the ground that the facts in the case did not justify the report which was deemed unfair and the defendant's belief of its truth was held to be bad plea. The true test to decide whether a particular criticism is unfair or not is not the correctness of the inference drawn by the critic but the following: —is the inference, the honest expression of the opinion which the defendant held upon the facts truly stated, and warranted by the facts in the sense that a fair minded man might reasonably draw from them - that inference.

Third Defence Privilege:

- *R.K. Karanjoia V. K.M.D. Thackersey*, A.I.R. 1970 Bom. 424

In the issue of 24th September 1960 of Blitz English weekly an article was published. It was an attack directed against the House of Thackersey, a business organisation, which constituted of the plaintiff's close friends and relations. The aim of the article was to suggest as to how the plaintiff, who was also the Chairman of the Textile Control Board, had exploited his position in amassing enormous wealth having recourse to unlawful and questionable means, involving tax-evasion on a colossal scale, financial jugglery, import, export rackets by resorting to foreign exchange violations. Reference was also made in the article to the inaction of the Government in tax evasion and that investigations into the operations of the 'house' and been bogged down for years enabling it to amass great wealth.



a) Absolute privilege:

- i) *Parliamentary proceedings*: Article 105(2) of our Constitution provides that (a) statements made by a member of either House in Parliament, or (b) the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings, cannot be questioned in a Court of law. A similar privilege exists in respect of State Legislatures, according to Art.194(2).
 - ii) *Judicial Proceedings*: No action for libel or slander lies whether against Judges, Counsels, Witnesses, or Parties, for words written or spoken in the course of any proceedings before any court recognized by law, even though the words written or spoken were written or spoken maliciously, without any justification of excuse, and from personal ill-will, and anger against the person defamed.
 - iii) *State Communications*: A statement made by one officer of the State to another in the course of official duty is absolutely privileged for reasons of public policy. Such privilege also extends to reports made in the course of military and naval duties in the publication.
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b) **Qualified Privilege:**

- The statement must have been made without malice. For such a defence to be available it is further necessary that there must be an occasion for making the statement.
- The statement was made on a privileged occasion, i.e., it was in discharge of a duty or protection of an interest; or it is a fair report of parliamentary, judicial or other public proceedings. And secondly, it must have been made without notice.
- A privileged occasion is in reference to qualified privilege, an occasion where the person who makes a communication has an interest or a duty legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it.

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- Against this decision the defendants preferred an appeal to the High Court. The only defence pleaded before the High Court was qualified privilege. The Council for Blitz argues that the subject matter of article was of great public interest. The public are vitally interested in being assured that great concentration of wealth which is discouraged by clauses (b) and (c) of Art.39 of the Constitution does not take place, and if it does, either because of Government's inaction or because of deliberate violation of the law on the part of any business organization. The public have a legitimate interest to know about it.

The New York Times Rule: (*The New York Times Co. V. Sullivan.*) 1964

1. The Constitutional guarantee requires, we think, a Federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice', that is with knowledge that it was false or with reckless disregard of whether it was false or not.
2. Actual malice must be proved with 'convincing clarity'
3. A juryman does not infer that criticism of the conduct of underlings is criticism of the supervising official.



Derbyshire County Council v, Times Newspapers Ltd (1992) 1. Q.B. 770

- Legal actions were brought by the council against the newspaper, its editor and the two journalists
- House of Lords affirmed and unanimously ruled that under the Common Law in England a local authority does not have the right to maintain an action for defamation. The major concern of the Law Lords in reaching that conclusion is the necessity of ensuring that Press freedom is not curtailed by the chilling effect of threats of criminal and civil action against it for defamatory statements concerning the functioning of local authorities and government departments.



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- A Tamil sensational weekly, —*Nakheeran*, proposed to publish the autobiography of a condemned prisoner by name Auto Shanker, with an advance announcement about sensational revelations, about nexus between criminals and the public officials like police and jail authorities.
 - Right to privacy is implicit in the right to life and liberty guaranteed under Article 21.
 - Government has no authority impose a prior restraint on publishing an auto biography because that is going to be defamatory or violation of a right to privacy etc. It cannot be said beforehand that a publication is going to be defamatory of some public officials. If it is alleged to be defamatory after its publication, the authorities have a remedy under the ordinary law.

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- **Freedom of the Press & Right of Privacy:** a right to be let alone
 - **New Exception under Article 19(2):** suggested an addition to the list of exceptions under Article 19(2) to restrict the press freedom.
 - **Matter of Public Record:** once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. However, in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz, a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the indecent being publicised in press/media.
 - **No privacy for public authority:**
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- **State cannot Sue for Defamation:**
 - **No prior restraints:**
 - The Supreme Court has set an agenda for development of law on the press freedom in *Auto Shankar*¹²⁷ case. It was in fact waiting for a right case to arrive to study the impact of Article 19(1)(a) on the provisions of criminal defamation in Indian Penal Code, i.e., Sections 499 and 500.
 - In principle the Supreme Court welcomed the wider interpretation of press freedom in *New York Times rule* of US Supreme Court and *Derbyshire* case in England. These judgments enhanced the scope of commenting on the public conduct of the public officials and reduced the scope of individuals occupying the public positions using the public office and public money for pursuing the actions for damages in defamation.

- **Remedies**

1. **Damages:** compensation.

The amount of damages depends upon the rank and social position of the parties and seriousness of the imputation. If defendant is able to show that the plaintiff's reputation was of little weight, that the plaintiff has provoked the utterance of defamatory statement, and that the newspaper has poor circulation or has offered the apology, the amount of damages will be mitigated.

The court would ordinarily award nominal damages, in the absence of aggravating circumstances, where, the award of damages will be substantial or damages equivalent to actual damage. Punitive or exemplary or vindictive punishment is to punish the wrongdoer.

- **Remedies**

2. Injunction

Where there is a danger of the defendant's reputation of the libel where e.g., the offending article itself contemplates the publication of a series of similar articles and (ii) where the offending matter is so palpably defamatory that a Court of Appeal would set aside unreasonable any contrary finding. No interim injunction would be granted where the matter is not *ex facie* defamatory.



Thank You !