

DEFAMATION AND ROLE OF MEDIA

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ABSTRACT

In India, there are no rules or regulations regarding online defamation. Online defamation is considered libel, and the rules governing libel apply to online defamation as well. However, the issue of cause of action becomes more complicated in the case of defamation. This is because "every click, like, comment, and even sharing of the material" triggers the statement on the homepage. The internet has grown into a strong communication tool in the twenty-first century. It offers a wide range of accessibility choices. Any message published on the social networking website may instantly reach a million persons in a fraction of the time due to its feature of mass communication with a single click. Because of the Internet, the way businesses and individuals interact has changed drastically. The majority of people regard this as a positive accomplishment and believe that everyone can post online and obtain useful information. We've discovered that while social media allows people to communicate their views, ideas, and opinions, these statements may occasionally morph into nasty defamatory charges. We can now share our opinion with the rest of the world thanks to the internet.

Unfortunately, people are growing increasingly exposed to cyberbullying as technology progresses. Politicians are using them to increase their popularity and disseminate their views, and they are also becoming a place for online defamation. Every coin has two sides, as the expression goes. Social media may be used to make a good difference in our lives, but it can also be used to trash someone's reputation. Sting operations and the spreading of cartoon pictures of persons are examples of this. However, these benefits are accompanied by the increasing harm caused by people who publish bogus company ratings, personal insults, and manipulated photographs and videos.

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OBJECTIVES

- To examine the balance between defamation laws and the right to free speech and expression as it relates to the press and social media.
- Investigate the critical variables that will be used to show defamation through social media and the press.
- Learn about the defenses to a slander claim.

INTRODUCTION

A person treasures their reputation and image in the eyes of society just after their death. Defamation is the publication of false remarks that harm a person's reputation in the eyes of other members of society. According to Section 499 of the Indian Penal Code, "whoever, by words either spoken or intended to be read, or by sign or by visible representation, makes or publishes any imputation concerning any person intended to harm, or knowing or having reason to believe that such imputations will harm the reputation of such person, is said to defame that person, except in the cases hereinafter excepted." In layman's terms, defamation is defined as the publication of a false statement or accusation that exposes one to disgrace or contempt. As a result, anybody who causes illegal harm to another person's reputation is liable in a court of law. Article 19(1) (a) of the constitution talks about freedom of speech and expression with reasonable restrictions and media now providing a platform for people to exercise their right to free speech and expression, but with such positives comes the flip side of the coin, where social media users or media personnel may be held liable for the claim of defamatory sentences.

"Defamation is worse than death for a man of honor."

— Bhagwat Gita

The internet and social media are unquestionably beneficial to people and society as a whole, but they are also a very efficient breeding ground for potentially defamatory claims. Many of us have discovered (much to their dismay) that the internet allows individuals to express themselves far too easily. The internet is teeming with intriguing places where someone may purposefully or unintentionally make a potentially defamatory comment or message.

Some of these places include:

- Local newspaper letters to the editor.
- Public comments on media websites. (e.g., newspapers or magazines).
- Blogs and Blog Posting Comments.
- Social networking platforms such as Facebook, LinkedIn, and Twitter, as well as chat rooms and list servers.

While some websites screen submissions for inflammatory or unsuitable information, the screening algorithms do not appear to be double-gearred to review every post for damaging content, resulting in a large number of defamatory remarks appearing online.

TYPES OF DEFAMATION

Libel is a lasting expression, such as words, a video, or a photograph. For example, X may have run an ad claiming that Y was bankrupt, while Y was not. Slander, on the other hand, is the dissemination of a brief defamatory comment, such as spoken words or gestures. When A, for example, queries B's chastity in an interview, A is slanderous. Libel is aimed at the eyes, whereas the slander is aimed at the ears. Only libel is recognized as a criminal violation under English criminal law; slander is not. Both of these offenses are punishable under Indian law under IPC sections 499 and 500.

ELEMENTS OF DEFAMATION

You must demonstrate that the individual criticizing you issued, uttered, or circulated a message to anybody other than yourself. This implies that defamatory parts in private conversations will not be considered as defamation. This also implies that the comment does not have to reach 500 people to be slandered. You have published a statement that provides enough information to identify you to the broader public. If there is insufficient information in the defamation statement, the comment may not be defamatory. This is because the general public must conduct an extra investigation on you for the comment to have a negative impact. I made a comment that harmed your reputation in some way. I forgot to post the statement. In other words, they didn't bother to do an adequate investigation before deciding to defame you. If the person's evidence does not match all of the above criteria, the court treats it as an opinion rather than a defamatory remark. For example, if someone thinks you're bothersome, it's only a personal opinion, not a defamatory comment.

Plaintiffs must also demonstrate that they were specifically named in a defamatory remark. In many circumstances, it's pretty simple to figure out. If a person is identified, he or she will very surely fit the conditions for identification; otherwise, the situation is murkier. Even if the individual's name is not directly mentioned and any sensible person may deduce who it is, these are particular enough to determine who the statement refers to. Details. As a result, the identification requirements are satisfied. For example, if he slanders a former government official who was formerly a Chaiwala, he might legitimately be recognized as India's Prime Minister. You cannot sue for defamation if you are not identifiable, even if you feel your reputation is being harmed.

Finally, only false assertions are defamatory. In the event of defamation, the truth is an absolute defense. The fourth consideration is that defamation remarks should be factual assertions rather than views. Unfortunately, distinguishing one from the other can be difficult. One of the reasons why cyberbullying and internet trolling are so difficult to control is this. The majority of cyberbullying involves disparaging insults such as "fat Raffle" and "fatly Sheila." They are cruel and can cause harm to others, but they are not defamatory. The last issue is that plaintiffs must justify their loss, and their reputation has suffered as a result of that statement. In the instance of defamation, a little insult or embarrassment is insufficient.

FREEDOM OF SPEECH AND EXPRESSION

Freedom of Speech and Expression, as embodied in Article 19 of the Constitution, guarantees all people the right to freely express one's viewpoint without pressure, danger, or fear, whether by oral, written, electronic, broadcasting, or the press. In any event, such liberty is conditional on limitation. Article 21's right to a live person's reputation cannot be sacrificed or crucified on the altar of another's right to free expression. Both must be balanced because no amount of damage can compensate for the detrimental impact on a person's reputation. The insurance of someone else's reputation falls within the scope of reasonable limitation, and any statement or speech that jeopardizes someone else's notoriety would be considered a risk under the law.

There was discussion in the Drafting Committee about how the freedom of the press is not mentioned in the article, which is a serious drafting committee omission, but Doctor Ambedkar responded in this context by saying that the "Press" has no special rights that are not granted to an individual or a citizen. "Editors or press managers are all citizens of the country," Dr.

Ambedkar added, "and when they choose to write in newspapers, they just express their thoughts as a right of expression, therefore the right of speech includes the right of the press."

Freedom of expression has long been established and widely acknowledged as one of the most essential fundamental rights of every individual in any democratic society. Traditional modes of communication such as print, television, and radio were the dominant methods of expression prior to the internet and social media. Social media has significantly impacted people's capacity to express and trade ideas, transmit information, and interact socially. It is a crucial feature of how individuals communicate in modern culture, particularly through the use of the Internet. As the usage of social media has risen, traditional media and methods of communication have been devalued as channels of choice for exercising one's freedom of expression. While social media is similar to other conventional channels of expression and communication, it has unique qualities. Social media is described as "a collection of internet-based programs that enable the production and exchange of user-generated content." It is the fusion of traditional telecoms media's technology, applications, features, and capabilities. This convergence is what sets social media apart.

REVIEW OF LITERATURE

Defamation is a crime in which false and malicious words harm a person's character, renown, or reputation. (from the Black Law Dictionary) Individuals and society are at odds under the law of defamation. It's been called "a story of two interests." These interests include the individual's interest in his or her reputation and the society's interest in the free flow of information. It may be argued that when a person has the right to free speech and expression, he also gains the right to his reputation, which is considered property. (Freedom of the Press and Defamation Law)

METHODOLOGY

Secondary data is data that has been obtained and evaluated by someone else for a purpose other than the present one. It is less expensive, takes less time, and requires less work. This project is based on secondary sources such as newspapers, the internet, magazines, books, and so on. For this article, the secondary data technique was used, and the following procedures were done to give a complete and comprehensive evaluation of Defamation and the Role of the Media.

- Investigating Defamation Tort Law.
- Invoking defamation laws, as well as the formal definition and explanation provided in the Indian Penal Code.
- Citing different research papers and publications by famous institutes and writers in the fields of tort and cyber law.
- Referring to too many major defamation cases in India.

RESEARCH ANALYSIS

Tv Channels:

Defamation through the media is a serious problem in today's society. At times, news outlets serve as a conduit between the government and the general population, disseminating alerts and vital information, instructions, and cautions. Since the covid attack, news networks have flourished; the epidemic has boosted their business like no other. However, as the saying goes, every coin has two sides, and news outlets, although beneficial to society, may be objective be utilized incorrectly. News networks will go to any length to earn television rating points (TRP) and views, whether it's making harsh statements about a person's character or embarrassing the individual in front of the public.

One of the most recent incidents of press defamation was filed by Mumbai Police against Arnab Goswami, in which they filed a criminal defamation suit against Republic TV's editor-in-chief over coverage of the Sushant Singh Rajput death case. During the broadcast of actor Sushant Singh Rajput's suicide last year, Goswami made "grossly inaccurate," "malicious," and defamatory allegations about DCP Abhishek Trimukhe. These defamatory claims were made during a discussion regarding actor Rhea Chakraborty's phone records on Republic Bharat.

Print Media:

This is a print media firm that publishes newspapers containing libelous content. Because printed material may be entirely altered, the editor is legally liable for it. As a result, it is anticipated that defamatory information can be monitored. As recent court verdicts on sysops show, many sysops are significantly more suited to this position than distributors or co-network operators. The print media comparison is useful.

In this example, the distributor would be a newspaper kiosk, which might sell newspapers with libelous material. The kiosk is not aware of the content of the publications it sells and is not liable for them. However, in some situations, the newsstand may discover defamatory information. You may be held accountable for future dissemination of this content in this case. Traders are often not responsible since they have a passive part in potential defamation. The dealer will be held accountable only if willful wrongdoing is proved, such as a refusal to erase defamatory content. We've already learnt that social media allows people to share their thoughts, ideas, and opinions, yet these remarks can occasionally evolve into nasty defamatory claims. Cyber Defamation is the term used to describe defamation through social media.

CYBER DEFAMATION

Cyber Slander refers to defamation that happens on social media platforms. Cyber defamation is described as the deliberate insulting, defaming, or offending of another person or party using virtual media. It can take both written and verbal forms and is known as Libel and Slander. We can now share our opinions with the rest of the world thanks to the internet. Unfortunately, people are growing increasingly exposed to cyberbullying as technology progresses. Under Indian law, you can be both the person who defames you and the person who shares and reposts such content. All of these activities, such as sharing, liking, retweeting, and/or commenting, might be regarded as defamatory content. republication – the act of republishing from social media is so straightforward that people give no attention to the significant implications that may occur. Images that have been altered to harm another person's reputation are likewise clearly defamatory. Defamation through an online medium is considered libel because electronic recordings, whether written text, audio, or video files, are categorized as documents.

PROVISIONS GOVERNING ONLINE DEFAMATION IN INDIA

Section 499 of Indian Penal Code says that “Whoever by words either spoken or intended to be read or by signs and visual representations makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person is said, except in the cases hereinafter expected to defame that person.”

Section 500 of the Indian Penal Code provides for punishment wherein “any person held liable under Section 499 will be punishable with imprisonment of two years or fine or both.”

Section 469 deals with forgery. If anyone creates a false, document, or fake account it harms the reputation of a person. The punishment of this offense often extends up to 3 years and is fine.

Section 503 of IPC deals with the offense of criminal intimidation by the use of electronic means to damage one’s reputation in society.

SOCIAL MEDIA INTERMEDIARIES AND DEFAMATION

Section 79 of the IT Act provides a safe harbor for intermediaries from any act of defamation. According to Section 79, an intermediary is not accountable for third-party information, data, or connections housed on its platform. However, safe harbor protection is restricted to particular circumstances, such as when an intermediary initiates the transmission of defamatory material, chooses the destination of such content, or changes such content. Given the circumstances it is fair to believe that an intermediary's liability can be reduced by adhering to specified duties, such as imposing "notice and takedown methods."

CASES

Kalandi Charan Lenka v. the State of Odisha: The petitioner was harassed frequently in this instance, and the culprit set up a false account for her and sent obscene messages to her acquaintances. A modified naked photo was also plastered on the walls of the victim's hostel. The culprit was found guilty by the court of his crime.

SMC Pneumatics (India) Pvt. Ltd. V. Jogesh Kwatra (CS (OS) No. 1279/2001): It was the first case of cyber defamation in India in which the court issued an interim, ex-parte injunction order, and as a result, the Delhi High Court barred the defendant from sending derogatory, defamatory, obscene, vulgar, humiliating, and abusive emails to the plaintiffs or its sister subsidiaries around the world, including their Managing Directors and Sales and Marketing departments.

M/S Spentex Industries Ltd. & ANR vs. Pulak Chowdhury: The petitioner requested a permanent injunction as well as Rs. 50,00,000 in damages for loss of reputation and business

as a result of the defendant's defamatory emails addressed to the International Finance Corporation, the World Bank, the President of the Republic of Uzbekistan, and UZEREPORT (a news website portal and publisher of monthly news reports). The action was launched in 2006 and terminated in 2019, with the Hon'ble Delhi District Court declaring that the Plaintiffs should be awarded 1/10th of the cost (Rs. 5,00,000/-) as well as the cost of the litigation, which should be borne by the defendants. It further forbade the defendant from making any false or defamatory claims, whether written or spoken.

Rajiv Dinesh Gadkari through P.A. Depamala Gadkari vs. Smt. Nilangi Rajiv Gadkari:

After receiving a divorce notification, the respondent filed a case against her spouse, stating that he harassed her by disseminating sexual photographs and defaming her. The violation has already been reported, and the wife has asked Rs. 75,000 per month in maintenance (respondent).

Swami Ramdev and Others vs. Facebook: The plaintiffs (Swami Ramdev and Patanjali Ayurveda Ltd.) filed a lawsuit in Delhi High Court against the defendants, Facebook Inc, Google Inc, YouTube LLC, Google Plus and Twitter International Company, alleging that defamatory information was circulated through social media platforms. The plaintiffs focused particularly on the High Court's current interim order, which forbids the publishing of Priyanka Pathak Narain's book, Godman to Swamiji: The Untold Story of Baba Ramdev since it contains defamatory allegations about the plaintiff. Justice Pratibha Singh issued an order requiring the removal of all defamatory information posted online against yoga teacher Baba Ramdev, regardless of geographical restrictions, noting that if the item is published from India or is stored on a computer resource in India.

Shreya Singhal vs. Union of India: The Supreme Court of India ruled that Section 66A of the Information Technology Act of 2000 was completely unconstitutional. The Petitioners contended that Section 66A was unconstitutionally vague and that its intended protection from annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, or will fell outside the scope of permissible restrictions under Article 19(2) of the Indian Constitution. The Court determined that the limitation on using a computer resource or a communication device to distribute content to cause annoyance, discomfort, or insult did not fall within any reasonable exceptions to exercising the right to free expression. It went on to declare that because the rule didn't define terms like discomfort or irritation, "a large amount of protected and harmless

expression" was protected. It went on to declare that because the clause didn't define terms like discomfort or irritation, "a large quantity of protected and harmless expression" may be limited and that its reach was too broad and imprecise.

Priya Ramani vs. MJ Akbar: M.J. Akbar resigned as Minister of External Affairs after filing a criminal defamation case against Priya Ramani. Priya Ramani was accused by M.J. Akbar of deliberately, purposefully, and maliciously defaming him with an entirely false claim. Akbar filed a complaint against Priya Ramani under Section 499 (defamation) of the Indian Penal Code and was sentenced under Section 500. Priya was granted bail by the Delhi House Court in Patiala on a personal bond and a payment of 10,000 rupees. She was later accused of defamation, but she proved her innocence. The court said in Akbar v Priya Ramani, at the discretion of M.J. that "a guy of social position might also be a sexual predator." A woman's right to life and dignity cannot be surrendered to defend another man's right to his reputation.

Bachchan vs. India Abroad Publication: Bachchan sued Indian Abroad Publications in the High Court of Justice in London, alleging defamation as a consequence of an article written in London, as well as in the United States and the United Kingdom. The plaintiff was awarded £4,000 in damages, including legal expenses, by the English Court. The plaintiff requested that the judgment be enforced in New York.

RESULTS AND FINDINGS

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Innuendo doctrine: Derived from the Latin term 'inner,' which means 'to nod forward.' The comment may not look defamatory at first glance, yet it may be ruled defamatory due to some hidden or secondary connotation. When the typical and standard meaning is not defamatory, but the complainant wants to pursue a defamation case, he must demonstrate the latent or concealed meaning that renders the remark defamatory. Purpose to defame is not required; nonetheless, if someone has harmed a person's reputation, the defendant's intention is not to be considered for determining damages. For instance, the Indian Express reports, 'Saif and Kareena wed in a lovely ceremony, and their son Taimur was the sweetest flower boy!' Indian Express has no intention of slandering Kareena or Saif. However, the article's headline implies that Kareena and Saif had Taimur outside of marriage. This is false and defamatory.

POSSIBLE PRIVILEGES AND DEFENCES INCLUDE

- **Wire Service Defense:** If you republish information from a reputable news source (such as the Associated Press) you may be entitled to the wire service defense if it turns out that the information was false.
- **Fair Report Privilege:** This very important privilege may apply if you relied on a public document or a statement by a public official for the incorrect information, made clear that the public document or statement was your source, and fairly and accurately used the source.
- **Neutral Reportage Privilege:** The neutral reportage privilege applies to unverified accusations made by one public figure about another on a matter of legitimate public interest, such as when a politician opposing a healthcare bill claims that the bill's sponsor is taking money from the pharmaceutical industry.
- **Opinion and Fair Comment Privileges:** Statements of opinion, even if egregious or widely off the mark, cannot ordinarily sustain a cause of action for defamation. "Fair remark on an issue of public interest" is a defense akin to opinion. If the mayor is accused of being implicated in a corruption scandal, stating your belief that the charges are accurate is unlikely to sustain a defamation claim.
- **Substantial Truth:** "Truth" is an absolute defense in a defamation lawsuit. Even if you are not certain that what you have written is accurate, you should read this section.
- **Statute of Limitations:** If the plaintiff waits too long to file a case, the defamation claim may be barred by the statute of limitations, which establishes the maximum period plaintiffs can wait before initiating a lawsuit after the events they are suing over have transpired.

LIMITATIONS

The main drawback that the researchers encountered was a lack of material due to a scarcity of literature on these specific issues. Furthermore, the research was done using secondary data methods, therefore the legitimacy of this publication cannot be proven. Due to the government's constraints and prohibitions regarding the current epidemic, it is not based on real research.

RECOMMENDATIONS

The advancement of technology throughout the world has advanced the way people communicate with one another. However, our conventional defamation laws were unable to keep up with the rate of technological innovation. In comparison to other affluent countries, such as the United States, where internet rules are harsh. In India, there are no special cyber defamation laws. As a result, courts interpret several additional statutes order torto matters involving cyber defamation. There is a need to amend such defamation rules so that they may be used on the internet as well. This is necessary since the internet and media have evolved into critical platforms for communication and public opinion.

CONCLUSION

The easy exchange of data and information via the Internet has become a significant defamation hotspot. There are laws that ban defamatory information from being uploaded online, but most individuals are uninformed of these rules and are negligent in determining whether the text is defamatory. If the freedom of expression jeopardizes a person's reputation, the state must impose limits so that freedom of expression does not become a weapon in the hands of some individuals. There is an urgent need for a system to educate and enlighten people on what to do and what not to do in cyberspace, as well as what is wrong and what is right, and what is defamatory and what is not defamatory. In this day and age, media has become an important channel for the public to communicate their perspectives, ideas, thoughts, viewpoints, views, and even criticism, which may sometimes lead to character assassination. In such circumstances, a balance must be struck between freedom of expression and opinion, as well as the right to reputation, both of which are highly prized in contemporary culture.

References:

1. Nirma University Law Journal, 2011
2. National University of Study and Research in Law
3. A Critical Analysis of Cyber Defamation Laws in India Rishita Naredi Kirit P. Mehta (School of Law, India)
4. Defamation on social media: An Adoption of Single Publication Rule
5 Pages Posted: 7 Jun 2016
5. <https://www.legalserviceindia.com/legal/article-207-defamation-in-law-of-torts-meaning-essentials-and-defences.html>
6. <https://lawtimesjournal.in/revisiting-cyber-defamation-laws-in-india-comparison-with-english-law/>
7. <https://www.lexisnexis.co.uk/legal/guidance/defamation-social-media>

8. <https://blog.ipleaders.in/cyber-defamation-india-issues/>
9. <https://www.latestlaws.com/articles/cyber-defamation-the-court-of-social-media>
10. <http://law.cornell.edu/wex/innuendo>

