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Defamation in Cyberspace

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ABSTRACT

Technology's advancement has resulted in significant changes in people's daily lives. Through modes such as e-mails, online chat groups, numerous social media platforms, and other means, the internet has paved the way for easy and effective communication. The simple entry into the medium can sometimes lead to people misusing it to make defamatory comments in cyberspace. The term "defamation" refers to the publication of a false assertion that damages an individual's reputation. Libel or slander can tarnish a person's image. Libel is a written or published declaration in some permanent form, although slander is essentially spoken remarks. Cyber defamation is described as the practice of offending, defaming, humiliating, or somehow harming a person in cyberspace using false remarks.¹ The act of defamation in cyberspace is done when a person uses the internet and other sources to publish false defamatory remarks. Cyberspace is anonymous in nature. Since it is anonymous, anyone can misuse this feature and exert their own right to speech and expression to defame a person. However, defamation through the internet is not protected by the Information Technology Act (IT Act,2000) of 2000², and much less so by the 2008 Amendment (IT Act, 2000), therefore it is left to the conventional judicial process to safeguard and protect the interests of the aggrieved party.

¹ Dr.Farooq Ahmed: 'Cyber Law in India' New Era Law Publications 4th Edition 2011, accessed on 18th Nov, 2021.

² Information Technology Act (IT Act,2000) of 2000, Act of Parliament (India).

INTRODUCTION

Defamation can really only occur as a result of publications which has been viewed by a 3rd party excluding the individual who defamed and the individual being defamed. If an individual just types defamatory text and does not even publish or convey it to someone else, the defamation act may not be prosecuted. Such publishing might take the shape of a vocal slander/a written libel.

The definition of defamation in the IPC (Indian Penal Code) applies to cyber-defamation. Cyber-Defamation is simply defamation committed in virtual world/cyberspace by the use of a pc or other internet-connected device. Such a gadget is the method via which whatever defamatory comment is made public in the virtual space. Internet defamation is classified as libel, with online records classified as papers. Given the broad definitions of documents & evidence in the modified Section (3) of the Evidence Act³, read in conjunction with Sections 2 (o) and (t) of the Information Technology Act, there is little dispute that a digital record is a document. In reality, cyber-defamation is far more serious since it is impossible to determine the financial damages experienced by the offended party owing to its widespread coverage & high-rate of circulation. Cyber- defamation differs from its fewer common siblings in terms of its capacity to harm individuals' & companies' reputations, particularly because of its interactive character, propensity for being accepted at face value, and total and instantaneous international availability & accessibility.

LEGISLATIVE ASPECT OF CYBER LAWS IN INDIA

The solution for defamation can be pursued in both criminal and civil law, as a penalty for the defendant and the compensation of financial damages by the defendant. Defamation is defined

³ Indian Evidence Act, 1872, Act of Parliament (India).

under Section 499 of the Indian Penal Code, 1860⁴, which also extends to defamation in digital mode. The penalty for committing such a crime is simple imprisonment for up to two years, or a fine, or both. Criminal intimidation occurs when someone attempts to damage another man's character or property.

Any man who committed fabrication of any instrument with the intent to hurt the character of another person faces a sentence of up to three years in prison and a fine under Section 469 of the Indian Penal Code, 1860⁵. The Information Technology Act of 2000 modified this provision to include the words "document and electronic record" in its text. The Information Technology Act of 2000 was enacted to regulate the nation's dot-com boom. However, because to its highly specialized character, there is a gap in understanding of its laws among laypeople, attorneys, and the court. In the landmark case of *Shreya Singhal V. Union of India*⁶, the Supreme Court struck down Section 66A of the Act.

Any "offensive" item delivered to a computer device is a crime, according to the terms of the. The term "offensive" had a broad definition, which helped the government limit people's freedom of speech and expression. Section 79 of the IT Act⁷ provides a solution to the topic of the accountability of networks that act as an intermediary or medium on which defamatory information is disseminated in situations of cyber defamation. These middlemen are shielded under the guise

⁴ Indian Penal Code, 1860, § 499, Act of Parliament (India).

⁵ Indian Penal Code, 1860, § 469, Act of Parliament (India).

⁶ *Shreya Singhal V. Union of India* 12 S.C.C. 73.

⁷ Indian Penal Code, 1860, § 79, Act of Parliament (India).

of adhering to statutory laws and government takedown demands. The intermediary, on the other hand, should not originate or edit any such material.

JUDICIAL TRENDS

SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra (Suit No.1279/2001⁸, District Court of Delhi):

The famous online defamation case concerns Indian courts' ability to order that information that has been ruled unlawful be prohibited from being distributed internationally. The case followed *Shreya Singhal v. Union of India* (2015), which addressed issues of online expression and intermediary liability in India. It was argued on behalf of the plaintiffs that the defendant's emails were clearly obscene, vulgar, abusive, threatening, humiliating, and defamatory.

Shreya Singhal vs U.O.I on 24 March, 2015: Section 66A of the Information Technology Act, 2000, set forth by the Supreme Court a historic decision, which permitted for the arrest of people who publish supposedly aggressive Internet content defending freedom of expression. In Section 66A, the punishment for the transmission of "offensive" communications using a computer or any other communication device such a mobile or tablet is defined.

M/S Spentex Industries Ltd. & Anr. vs . Pulak Chowdhary on 1 May, 2019⁹: The Court of Delhi limited the defendant to further defamatory action or comments until proceedings were resolved and questions were brought before the court when the matter was transferred to the courts of Dwarka. As the Ld. District and Sessions Judge observes, Dwarka Courts, N.D.: "Loss of honor and reputation typically reduces a person's image in the sight of friends and family and suffers from social isolation. In that case,

⁸ SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra Suit No.1279/2001.

⁹ M/S Spentex Industries Ltd. & Anr. vs . Pulak Chowdhary on 1 May, 2019,

defendant Shri Pulak Chowdhary made personal charges concerning conspiracy and attempted to kill him by poisonment and striking his automobile against claimant No.2 of Shri Mukund Chowdhary. This is one of India's highest legal rulings.

*Swami Ramdev v. Facebook Inc.*¹⁰ is by far the most recent high-profile case involving internet defamation. In this case, the Trial conducted worldwide authority by issuing global injunctions prohibiting the publication of any internet offensive content against the plaintiff's only source of support, the book "Godman to Tycoon- The Untold Story of Baba Ramdev." If the material is transported or is located in India on a computer system, the Indian courts should have International Authority to issue global injunctions.

BALANCING CYBER DEFAMATION AND RIGHT TO SPEECH AND EXPRESSION

Free expression is by far the most fundamental right of people where the nation attempts to guarantee democratic values. The Indian Constitution guarantees this right under Article 19(1)(a)¹¹. Over time, the ambit of this right has expanded to encompass the right to speech, right to an advertisement, and other rights as people have become more conscious of their rights, and judicial activism has increased. This liberty, however, is unrestricted. The reasonable constraints on this right are outlined in Article 19(2). The term 'defamation' is included in the scope of these limitations. Free expression and speech cannot be exploited to slander others. The legitimate limitation of this freedom by instituting criminal defamation cannot be argued to control force,

¹⁰ Swami Ramdev v. Facebook Inc CS(OS) 449/ 2018.

¹¹ INDIA CONST. Art. 19(1)(a).

bind popular sentiment, judgment, and critique, so jeopardize the democracy's vitality. Defamation and the right to character are inextricably linked. Defamation perpetrated on whatever forum violates the other's right to character, as provided by Article 21¹² of the Constitution. One's right to reputation cannot be jeopardized because of one's democracy and free speech. When a novel on Jayalalithaa has not undergone adequate scrutiny, it is a smear on her political standing and a violation of her right to character and privacy, therefore it cannot be released. Baba Ramdev's unauthorized biography, "Godman to Tycoon: The Untold Story of Baba Ramdev," which contains disparaging and insulting information, infringes his right to reputation and privacy under Article 21 of the Constitution, and its publishing in all domains must be prohibited. Cyber defamation has become a divisive subject due to the exchange of data and messages through the internet. Notwithstanding the precision of the laws, people frequently engage in harassing, leaving comments, photographs, as well as other materials about individuals without even thinking about the laws that are in place to prosecute them. The percent of users are ignorant that the stuff they have uploaded is illegal and has severely harmed the rights of the potential victim.

LACUNA WHICH NEEDS CONSIDERATION

Difficulty in identifying the user- With both the internet's widespread use & over 3.97 billion users, the most difficult difficulty is identifying and locating the true identity of the individual who has caused defamation. The confidentiality of users is a concerning problem that has led to the growth in incidents of cyber-defamation. Users using bogus accounts are unafraid of the

¹² INDIA CONST. Art.21.

repercussions of their abusive posts. On the other hand, there are several platforms that provide anonymous use. Even though if one asks for validation of your name/email address, it is always possible to fill it out incorrectly. In such a case, it is extremely difficult to identify the source, halt the quick spread, & evaluate the harm to the defamed person's character.

Censorship of websites- Throughout the procedure, it is critical to identify and segregate the site that must remove the defamatory information. Any material on any website may be duplicated & uploaded on other websites in a couple of seconds. This makes it difficult for authorities to detect such sites & cope with their consequences. It is also technically impossible to sift through all of the comments on such content, which frequently allow such people who comments in the clear. Because material is migrating at such a quick pace, the state must deal with ambiguity while guaranteeing security.

Lack of Technical Expertise- In a nation such As india, which lacks lot of technical skills is a hindrance in eradicating the threat posed by this crime over a few years. It has resulted in a new fearful situation in which numerous anti-social & anti-national acts are carried out behind various kinds of technology that are unable to regulate it.

Surveillance- Every effort to expand surveillance, even if it is necessary, is passionately opposed by writers, authors & other users as a violation of their right to speech & expression. In the world's largest democracy, the legitimacy of journals, opinions & reviews may all be called into doubt.

Cyber Jurisdiction- Since there is no barrier to the dissemination of knowledge throughout the world, cyberspace has transnational jurisdiction. This uni-jurisdictional branch frequently makes reaching the Court with adequate jurisdiction problematic. Whichever Court has the authority, whether it is in the state or nation where the source is situated or where the victim resides, is a topic that has yet to be resolved.

Quantum of Damages- The victim of internet defamation anticipates irreversible harm to his reputation in society as a result of personal attacks on his propriety. The level to which such content has gone viral cannot be measured in monetary terms. As a result, determining the amount of compensation is a herculean undertaking for the Court, given that it cannot even fairly estimate the distribution of the defamatory information.

THE WAY AHEAD

In light of the changing condition, where cyber defamation has devolved to harassing, publishing, and remarking on other people's personal information, it is a pressing need to correct the issue. The government should adopt detailed and stringent monitoring procedures for determining whether or not anything on the internet is libelous. Individual cases of defamation must not be left to the courts to assess whether or not they are defamatory. The rules for what may and cannot be uploaded should be laid forth in full. The government should also design a strategy for censoring any such information that comes to light in order to safeguard and defend the rights of those who lose their reputation and renown in the realm of cyber defamation rather than in any other way. Webpages must also design criteria to make these actions unattractive. For example, Facebook and

Instagram regulate its users' actions and suspend their accounts if they violate company standards, such as publishing child pornography. India's cyber security architecture and execution still have a long way to go. It is necessary to take steps to raise awareness about cyber security and to begin cyber security research.

The legal framework for cyber defamation is likewise ineffective and needs to improve in response to the rapid changes in the cyber world. India's cyber regulations are governed under the Information Technology Act of 2000. Nevertheless, it fails to enact any strict cyber-defamation legislation in the nation. On the first finding of guilt, anyone who publicizes, communicates or induces to be published or broadcasted in digital mode any outrageous information shall be penalized with imprisonment of either description for a term up to three years and a fine up to five lakh rupees, and on a subsequent offense conviction with imprisonment of either description for a term up to three years and a fine up to five lakh rupees.

The term obscene does not encompass all forms of internet defamation. To slow the spread of this crime, regulations must be amended to reflect changes in technology and society.

To ensure cyber security, the Government of India should work to remove the divided structure of government and private watchdogs. The development of a statewide evaluation process for cybercrimes, particularly cyber defamation, requires unity in command. As a result, a cybercrime investigative cell under the CBI should be formed, reporting directly to the Central Government. Every district should establish a cyber police headquarters with investigative personnel who are well-versed in cyber legislation. The judicial system cannot be left behind.

CONCLUSION

The picture depicted by the legal structure and legislative perspective reveal that cyber defamation is regarded casually and that there are no rules or appropriate punishments in place to prevent it. The IT revolution has brought together companies and individuals from all around the world, increasing the risk of fraud and crime. The twenty-first century ushers in protected by the constitution free expression. However, freedoms have given way to online lingo in our day. On social media, the freedom to share, remark, and write anything you want is limited. Without a doubt, given the pervasiveness and complexities of cyberspace, there is a pressing need to evaluate the nation's legislative structure and execution of cyber laws. Since India has yet to identify cyber defamation as a serious threat in the present era, measures to address the problem face a long road ahead.



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