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IMPACT OF ONLINE DEFAMATION DEPEND ON SOCIAL MEDIA

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Abstract

The internet has transformed the basic right to freedom of speech and expression by acting as a worldwide computer network. In the days before the internet, it was a luxury for very few people to write an essay, book, or poetry and have it published. That time period prevented the masses from using their right to free speech and expression in its fullest sense. In contrast, the internet serves as a worldwide platform for communication. In front of a worldwide audience, it offers its netizens countless chances and forms of expression. The worldwide platform for the basic right to freedom of speech and expression is incredibly democratic and incredibly user-friendly. The internet's important properties of anonymity and invisibility encourage speech and expression without fear. The internet can be used and abused just as effectively as it can be used as a communication and expression medium. Defamation is the deliberate dissemination of false information that damages another person's reputation or good name, whether by writing or public speech. Defamation encompasses the common law torts of slander, which involves spoken comments, and libel, which involves written or printed claims. It is noteworthy that slander and libel may both be perpetrated online.

Keywords: Right to freedom of speech and expression, Democratic, Reputation, Dissemination and Defamation.

INTRODUCTION

Online defamation, also referred to as cyber defamation, is the practice of publishing untrue claims about someone online that damage their reputation. Posting offensive material on blogs, forums, social media, and other websites might fall under this category. Cyber defamation may take many different forms, such publishing unfavourable reviews, fabricating claims, or circulating falsehoods with the intention of damaging someone's reputation. The victim may suffer from mental health problems, lost career chances, or harm to their personal or professional life, among other severe repercussions. Although laws pertaining to cyber defamation differ from one region to another, people can generally sue others who disparage them online. To prevent inadvertently slandering someone, it's crucial to use caution while posting anything online and

to confirm the veracity of material before disseminating it. Defamation is both a criminal and civil offence. The civil law of defamation is not codified, but the criminal law is. In criminal law, defamation is covered under Sections 499 to 502 of IPC, 1860, while in civil law, it falls under the law of torts. According to Section 500 of the IPC, defamation is punishable by up to two years in jail or a fine. India has seen a sharp rise in defamation lawsuits in recent years.

Defamation is covered in Section 356 of Chapter XIX of the BNS, according to the Bharatiya Nyaya Sanhita. According to Section 356 (1), specifically, "Anyone who makes or publishes in any way 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 excepted, to defame that person," whether

through spoken or intended words, signs, or defamatory visible representations. This section can be explained in four ways:

Explanation 1: If a deceased person's reputation would be harmed if they were still alive and the imputation is meant to offend his family or other close relations, it may be considered defamation.

Explanation 2: Making an imputation about a business, association, or group of people as a whole may be considered defamatory.

Explanation 3: An imputation that is presented humorously or as an alternative might be considered defamatory.

Explanation 4: An imputation is not considered to be detrimental to someone's reputation unless it directly or indirectly diminishes that person's moral or intellectual character in the eyes of others, diminishes that person's character in relation to his caste or his calling, diminishes that person's credit, or creates the impression that person's body is in a loathsome or generally disgraceful state.

Additionally, a comprehensive list of things that are not considered defamatory and are therefore an exception is given. Here's what it is:

Exception 1: If an imputation is made or published for the benefit of the public, it is not defamatory to make a factual statement about a person. It is a matter of fact whether it is for the public interest or not.

Exception 2: Expressing any view in good faith on a public servant's behaviour while performing his official duties or regarding his character, to the extent that it manifests in that behaviour and no more, is not defamatory.

Exception 3: Expressing in good faith any view on a person's behaviour that touches on a public issue and their character, to the extent that it manifests in that behaviour and no more, is not defamatory.

Exception 4: Publishing a report that is essentially truthful about a court's proceedings

or the outcome of any such proceedings is not defamatory.

Exception 5: It is not defamatory to express in good faith any opinion regarding the merits of any civil or criminal case that has been decided by a court, or regarding the behaviour of any individual as a witness, agent, or party in such a case, or regarding the character of such individual, to the extent that it manifests in that behaviour, and nothing more.

Exception 6: The expression of an opinion in good faith on the merits of a performance that its creator has presented to public assessment, or regarding the author's character to the extent that it is visible in the performance, and no more, is not defamatory.

Exception 7: It is not defamatory for someone to have the right, either legally granted or derived from a legitimate contract, to sincerely criticise another person's behaviour in areas that are within the scope of that other's legitimate power.

Exception 8: Preferring, in good faith, an accusation against an individual to any of those with legal jurisdiction over that individual regarding the subject matter of the charge is not defamatory.

Exception 9: Making an imputation about someone else's character is not defamatory as long as it is done honestly to safeguard the interests of the person making it, of others, or of the general public.

Exception 10: Providing a warning against another person in good faith is not defamatory as long as it is done for the public good, the person to whom it is addressed, or someone in whom the recipient has an interest.

NUMEROUS LEGAL CONCERNS REGARDING ONLINE DEFAMATION

- **Publication's date and time:** Publication happens when the reader or hearer sees, hears, and understands the publication's contents, whether they be written, spoken, or oral. When he receives the

communication, the plaintiff considers the publication procedure to be finished.

- **Publication Mode:** It examines the publication or transmission medium, including text, multimedia, audio, and video. Publishing on the Internet is done in "electronic form." Creating, transmitting, or receiving "defamatory" emails, remarks posted on online bulletin boards, chat rooms, music downloads, audio files, screaming videos, digital photos, etc., are examples of defamation in "electronic form."
- **Jurisdictional Concerns and Publication Location:** Since a defamatory comment can be "published" anywhere in the globe with internet connection, it is difficult to pinpoint the exact location of the publishing. The question in this case is whether bringing a defendant into a certain jurisdiction just because he posted material that is accessible from anywhere in the globe would constitute due process of law. In the context of the internet, the plaintiff does not always have to directly demonstrate that the defamatory statement was known to someone other than the plaintiff; publication is only proven if the plaintiff establishes that it was reasonably foreseeable that the publication was available in the relevant jurisdiction. On the other hand, it is extremely unlikely that every website will be accessible in every jurisdiction where it is technically possible to do so. Therefore, it is not realistic to believe that every website that is posted online and potentially accessible from anywhere is really visited everywhere.
- **Liability of internet service providers (ISPs) or website promoters for posting:** Internet service providers are the representatives of interactive network services. It may provide a range of additional services or just an internet

connection. An ISP may perform as an information publisher or "information distributor," based on its functional attributes. By transmitting "electronic messages" from one place to another, an "information distributor" only acts as a conduit for information without critically examining its substance. Apart from publishing and sharing the information, an "information publisher" is also accountable for exercising reasonable prudence over the publication in issue.

DOES THE IMPACT OF ONLINE DEFAMATION DEPEND ON SOCIAL MEDIA REACH?

The Delhi High Court ruled in February that retweeting anything that is allegedly defamatory would be considered publishing it, making one liable under Section 499 of the Indian Penal Code (IPC), which deals with defamation offences. Chief Minister Arvind Kejriwal was arguing in court against a summons he received in a defamation case brought in 2019 by Vikas Sankritayan, the owner of the social media post "I Support Narendra Modi."

According to Justice Swarana Kanta Sharma, the degree of damage done to the victim's reputation in a defamation case would rely on elements such as the influence and reach of the individual who retweeted the item on social media. "The seriousness of the situation would also vary significantly in such cases, particularly in light of explanation 4 of Section 499 of the IPC, which states that an imputation must, among other things, directly or indirectly, in the opinion of others, diminish the moral or intellectual character or credit of the person who is being defamed in order to be considered defamatory in nature to harm one's reputation." Therefore, the Court noted that the person's social and political status, together with their social media reach, are very important factors when retweeting the defamatory imputation. It further stated that if someone with less followers retweets the item, the effect would be less pronounced and it will

be up for trial whether or not it qualifies as defamatory.

JURISDICTIONAL ISSUE

A judgement of damages for reputational harm will only be justified if the plaintiff is well-known in the community where the publication was made. In nations with common law, this has long been the recognised legal doctrine. Publication occurs when and when the publication's contents whether oral, spoken, or written are seen, heard, and understood by the reader or hearer. This is the same principle that has been followed in India. According to the ruling in *P. Lankesh v. H. Shivappa*, (1994 Cr. L. J. 3510), if a newspaper with a defamatory article is published in one location and distributed or sold in other locations by or on behalf of the accused who printed and published the newspaper, the defamatory article will be published in each of those locations. If the public may access the defamatory imputation in many locations, then the crime is committed at each of those locations.

The aforementioned notion would be extended in an online setting where a publishing would occur when the information is downloaded, i.e., a file (digital content) is retrieved from a distant computer, computer system, or computer network. The procedure is software-driven and involves sending a "downloading request" in the form of a "uniform resource locator" (URL) to the web browser and gaining access to an Internet Service Provider (information distributor or publisher). Once a webpage has been downloaded, it is possible to choose any of the links to download it again. Once the user has finished downloading, the publication takes place. Consequently, a publication is made to the user whenever they see or download any defamatory information the plaintiff has posted. It is required to consider the Information Technology Act of 2000 before determining whether an online "publisher" or "distributor" is liable for defamation under the aforementioned articles of the IPC. The

legislative aim to offer immunity to the network service provider is expressed in the aforementioned provision. Absolute immunity is granted if and only if he can demonstrate to any third party that:

- (i) He/ She was unaware that the information it was sending was illegal; or
- (ii) He/ She had taken every precaution to avoid publishing or transmitting illegal information.

CASE LAWS

The Hon'ble Supreme Court ruled in *Subramanian Swamy v. Union of India* (2016) that a person's reputation shouldn't limit their ability to express themselves freely. Several petitioners argued that the criminal defamation charge was unconstitutional because it restricted their freedom of speech. The court declared that the right to freedom of speech and expression is subject to reasonable limitations, even though it affirmed that right. In the matter at hand, the court highlighted that the criminal defamation legislation does not contradict with the right to free speech and expression, noting that reputation is protected under Article 21 of the Indian Constitution.

In *Chaman Lal v State of Punjab*, of 1970, the Honourable Supreme Court established the circumstances under which a good faith declaration might be exempted under Section 499 of the IPC. In order to preserve the interests of the person making the communication, it said that "the interest of the person must be real and legitimate." If so, good trust is naturally attracted to it and clearly does not need logical correctness.

Saket Gokhale v. Lakshmi Murdeshwar Puri, 2024 SCC Online Del 4446,

Saket Gokhale, the Rajya Sabha MP for the All-India Trinamool Congress (TMC), has been ordered by the Delhi High Court to compensate former Indian Assistant Secretary-General to the United Nations Lakshmi Murdeshwar Puri with Rs 50 lakhs for allegedly making defamatory remarks about her on the microblogging site X in 2021. In light of the tweets for which Puri had brought a defamation

lawsuit against Gokhale, Justice Anup Jairam Bhambhani barred him from posting any more tweets or other information on any social media site. Additionally, Gokhale has been ordered to apologise for his tweets against Puri on his X page and in the Times of India newspaper.

Dhruv Rathee v. Suresh Karamshi Nakhua, CS DJ 578/24

In a defamation complaint brought by Suresh Karamshi Nakhua, a spokesperson for the Bhartiya Janata Party Mumbai unit, YouTuber Dhruv Rathee and others have been summoned by the Saket Court of Delhi for allegedly calling him a violent and abusive troll in a video titled "My Reply to Godi Youtubers." In an order dated July 19, 2024, District Judge Gunjan Gupta sent notice of the application u/o 39 Rule 1 and 2 CPC and a summons of the suit to Dhruv Rathee and social media intermediaries for August 6, 2024.

Dr. Shashi Tharoor v State & Anr. on 29 August, 2024

The Supreme Court halted criminal defamation proceedings against Congress MP Shashi Tharoor on Tuesday, September 10, 2024, after receiving a complaint over his claimed "scorpion on Shivling" statements directed at Prime Minister Narendra Modi. The phrase "scorpion sitting on a Shivling," which he used to describe Prime Minister Narendra Modi and which may possibly be interpreted as a metaphor for "invincibility," was deemed offensive by the court.

CONCLUSION

There is no doubting that a defamatory comment, whether said orally or in writing, online or otherwise, may have a profound effect on a person. Social media's accessibility and anonymity increase vulnerability without holding those who make such false accusations truly accountable. It is crucial to understand your legal options in such a situation. The law offers a framework for handling such circumstances under IPC sections 499 and 500. It must be acknowledged, nevertheless, that

being alert, conscious, and knowledgeable is crucial. Knowing the privacy safeguards for social networking apps is important, but if this is insufficient, legal action may be very beneficial.

The legislation governing the many aspects of Internet use is still very much in its infancy. The rate of technological advancement is too rapid for the law to keep up with. However, there is one thing we know for sure: any online consumer is subject to worldwide responsibility for defamation. Given the seriousness of these acts, it seems that the current tendency in both legislation and the judiciary regarding them treats them lightly and that the penalties are insufficient. Therefore, the government must undertake the courageous duty of examining these crimes, which are at the threshold, and make recommendations to strengthen the current legal system's ability to combat them. Section 67 of the Information Technology Act, 2000 and Section 356 of the Bharatiya Nyaya Sanhita might be amended for the aforementioned purpose by specifically include offences like defamation in cybercrime under its purview, which is unquestionably a socioeconomic infraction.

RECOMMENDATION

- **Verify Privacy Settings:** You have the ability to modify your privacy settings as a user and manage who may view and interact with your profile on the internet. It is possible to employ new features, such as restricted access to certain comments that include inappropriate language.
- **Fact-Check:** Consider the veracity of whatever you submit before sharing it publicly or in any other way. A fact-check would aid in limiting false information and averting potential defamation.
- **Education and Awareness:** Learn about the laws pertaining to defamation and inform others about the grave penalties of doing so. You can act better and

avoid defamation by being aware of the legal system.

- **Report Abusive Content Online:** You may report any offensive or abusive content that is uploaded on the majority of social media sites. Take a moment to responsibly report any inappropriate stuff.
- **Get Legal Advice:** Do not be afraid to utilise the legal system and obtain legal counsel if you come across anything negative or slanderous about yourself online.
- **Think before you write and speak:** Although this may seem like basic advice, it's crucial to abide by. Thinking before you write or talk about other people will help you avoid perhaps slandering them and improve your behaviour.
- **Track Your Online Presence:** It's important to keep a close eye on one's social media presence and accounts. Take care of any unusual issues and follow the safety instructions provided by each social media app.

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