

THE REGULATION OF DEFAMATION IN SOCIAL MEDIA SITES: JURISDICTION ISSUES

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ABSTRACT

The availability of the internet to people has changed the point of views towards the activities happening in their daily life. The manifesto or the opportunities provided by the internet has made social interest easier than ever before. Origin of several social networks, many content collection sites and online commentary, the possibility of defamatory content and false declaration reaching to the people at large has increased immensely in recent decades. Sites are basically formed to motivate or inspire and boost the people to share the information without even checking the facts or regulations. However, such an increase in using social media networking sites has ultimately led to an increasing rate of inconvenience caused by the abuse of the mediums of communication. Removal of obstacles to liberty to interact has given unconstrained potentiality, mainly on social networking sites, to the people who generally post uncertain comments or information about any other person which harms the goodwill and reputation of that him or her, such an act can be terminated under as “trolls”, which actually leads to cyber defamation.

Keyword: social networks, networking, bloggers, cyber defamation, media

1. INTRODUCTION

In the modern world of social networks, bloggers and online users are easier and more useful than ever just to share the wrongful information about individuals or companies. Although online content is sometimes adjusted for other inappropriate elements and pornography or legal issues, most content about slanderous elements is not regulated. This is because it is important for consumers, shareholders, and potential victims to better understand the environment of defamation laws.

2. WHAT IS CYBER DEFAMATION?

Defamation has been defined under Section 499 of The Indian Penal Code (IPC), as an act of a person done by words, either spoken or deliberately to scrutinize, or through the mode of illustration, makes or publish any accusation with the main motive to harm the other person or with the clear knowledge that such an act can cause distress to him or her, also defaming the reputation of that particular person comes under an act.

Defamation can be categorised into two pillars-

- Libel- Any defamatory statement which has been published particularly in a written form comes under such category.

- Slander- Any defamatory statement made through the words not particularly in a written word but through an oral mode.

Although, a basic defamatory statement does not always lead to defamation. The announcement of such statements is a pre-conditional while establishing defamation.

Any act which has taken place through online or on cyberspace leads to the Cyber defamation. It occurs mainly when a computer is connected to the internet and is used as an instrument or a device to defame a person or his or her entity. As in the case, a person is posting something irrelevant or any defamatory statement against a person on any social media networking sites may be on Facebook, Twitter or etc. or any defamatory emails just to defame the person with the clear intention. Moreover, given the all-inclusive coverage of the internet or the rate of spreading information on such platforms, it is tough to discover the extent of damage in any of the financial value.

The media that do this in the physical and digital world are different, but defamation laws apply the same.

India's responsibility for undermining cyberspace is as follows:

- Slanderous authors online.

- However, in the event that a service provider or retailer acts as an intermediary without launching or modifying the content of defamation, the intermediary is not liable in accordance with Section 79 of the Information Technology Act, 2000. In addition, this protection depends on the provision that the intermediary agency must comply with due diligence and arbitration requirements imposed by the central government and that such illegal content must be removed after the government or agency has noticed or received the actual content.

3. WHAT CONSTITUTES DEFAMATION ONLINE?

Defamation is defined as the false statement or any statement being published on any social media networking sites which are injurious to the plaintiff's reputation is termed as defamation. An online posting, even on an obscure website, which can be seen by a few people but satisfying the publication requirements.

STATEMENT OF FACTS

A plaintiff cannot accomplish in his or her online defamation asserts if the defendant's defamatory statement was accurate. For example, if the customer posts an analysis of your business, stating that there was a rat pest, you may sue them for defamation. After such an act you have to prove that there was no rat pest and thus the defendant statement was totally incorrect.

OPINIONS

The defendant may argue that the alleged infection with rats is an opinion. Opinions are privileged by law. As a result, the applicant is not allowed to file defamation. However, it is important that opinions that reasonable people can regard as facts are generally considered as a statement of facts.

MODIFICATION

Modified photos that disgust the individuals or companies are a clear violation of defamation and are very popular on social media. Usually, the modified photo or video got "viral" on social media very easily. The more obscure and absurd changes are the more likely that the court will find it defamatory.

As a shareholder or content creator, always ensure that all information about a person or organization is true and is not considered to damage their reputation.

4. LAWS IMPLEMENTED ON CYBER DEFAMATION IN INDIA

In India, Section 499 of the Indian Penal Code generally construes the law of defamation, moreover, it is important to know that now the law has been extended to "electronic documents" as well. Section 469 of the Indian Penal Code has been formed just to include "electronic record forge" and now it states as a whole in the sense as in whosoever tried committing forgery with the clear intention or motive that the document or electronic rods forged shall distress the reputation or the image of the party, shall be punished with the imprisonment of either description for a term which may extend to three years, and shall also be liable to some amount of fine.

Section 66A of Information Technology Act, 2000 was repealed by the Supreme Court of India in the case of Shreya Singhal v. Union of India, 2015 because of the vagueness in the word "offensive" in the section. The section itself states that any message which is offensive in nature sent via computer or any other technical device would lead to an offence. Such a power, under Section 66A, was overused by the Government in dominating or suppressing people's freedom of speech and expression and hence repealed.

5. WHO CAN WE SUE FOR DEFAMATION?

Plaintiffs who have undergone the online defamation often go after their Internet Service Provider or the sites which put on the defamatory content at issue like Facebook, twitter etc. The reason being these companies are rich enough that they can bear to pay the plaintiff's damages demanded or recalled in the defamation cases. In 1955, Congress passed the Communication Decency Act which protects the Internet Service Providers (ISP), and various social media networking sites from defamation asserts.

People who firmly suspect that they have been defamed online should bring a claim against the person that they actually made a defamatory statement. While doing such an act, the plaintiff will have to file a suit in a relevant State court. Such a state court should be acknowledged after the jurisdiction overview is conducted by an attorney.

DEFAMATION V. FREE SPEECH

Freedom of Speech and Expression, as provided by the Constitution under Article 19 (1) (a), provides that citizens shall hold the right to speak whatever they feel like and

express their opinion. However, such inventiveness is subject to quite a good restriction. The safety of reputation of a different individuality spray contained by the ambit of passable restriction and any note or state which hampers the reputation of any other person (unless the announcement is true) would invite liability under the formula of offence.

6. JUDICIARY ON SOCIAL MEDIA DEFAMATION

In the case of *SMC Pneumatics Pvt Ltd. v. Jogesh Kwatra* 2014 however, in this case, a dissatisfied employee sent diminishing or vulgar or abusive mail to the person who was working as an employee in the company with an intention to defame the company and the director, the High Court of Delhi lifted ex-parte and interim injunctions restraining the defendant from defaming the plaintiff's in both physical and cyberspace.

Recently in the case of *Swami Ramdev and Anne v. Facebook Inc. & Ors* 2019, Judge Pratibha Singh has ordered all defamatory content committed against yoga teacher Baba Ramdev to be removed online without any territorial restrictions. It states that if the content is uploaded from India or on computer resources in India, then courts in India must have international jurisdiction to issue decisions worldwide.

Facebook has filed complaints against decisions issued by the Supreme Court Department division in Delhi. The reason for this complaint is that although he knows the people who uploaded the content, the applicant was not involved in the case. It is also controversial that Baba Ramdev has not shown strong prima facie evidence of irreparable loss. In its complaint, Facebook also believes, among other things, that global seizure regulations are contrary to national sovereignty and the international community because they violate defamation laws in other countries. In addition, this order undermines the immunity granted to them in other jurisdictions.

The cases above focus on various aspects of cases where cyber defamation can occur and laws that can be passed to solve this problem. However, there are certain restrictions in cyberspace that have not yet passed currently with global laws. However, if the complaint is submitted on time and in the right forum, cyber defamation and the damage it causes can be limited.

7. SOCIAL MEDIA AND JURISDICTION

Where did the article appear? The place where the publication takes place is very important because the law

of the place where the lawsuit was made regulates the formation of defamatory claims. Each defamation message creates a separate cause for the action that occurred in the country where the message was read or heard, regardless of the location of the server where it was stored. This leads directly to social media and jurisdiction.

Social media has created the potential to shop at forums for defamation claims more than print media or radio broadcasts. You start by considering why a shopping dispute in a forum might be interesting-

- The court may be praised because the court is impartial and denies that it will be more possible to get a fair trial there.
- It might be more convincing to judge others in one jurisdiction to clarify names based on one's status and influence, such as the jurisdiction in which they live.
- This can be one of several jurisdictions where actions are taken against the international reputation of the victim.
- The law in the jurisdiction may be more favourable for potential disputes and he wants to take advantage of it.

In the case of defamation, the Court may decide as an initial question of whether Kitts and Nevis is an appropriate forum to examine this claim based on the subject matter and evidence of the claim. Our court takes jurisdiction as a right of citizens and entities involved in this jurisdiction. The test for organizing forums in the process of deformation resulting from defamatory posts or social media broadcasts is the same as forum disputes in other contracts or tort tortious. The eastern Caribbean follows the principles of *Spiliada Maritime Corporation and Cansulex Limited*, *The Spiliada*, given what at first sight is the more appropriate forum and the connection factors that make one forum more suitable than another. Lawsuits must demonstrate that they are subject to genuine and material defamation claims in the jurisdiction.

Protecting information, even when there is a material that is defamatory, does not guarantee the disclosure of information automatically, which can result in someone being exposed behind this material. People still have the right not to be too annoying. In *Totalise Ltd v Motley Food Ltd*, the UK Court of Appeals stated: "First of all it must be examined whether the disclosure is justified by considering the rights and freedoms or the legitimate interests of the data subject." The publishers of *Gentle* for

Defamation Argue that “the reality is that such applications are almost always approved by the internet service provider or the web host interviewed, who usually does not even appear (safely) in court and know that the cost of implementing the contract is at in each case borne by the applicant), but satisfied to maintain a neutral position and stated that it would obey any orders deemed appropriate by the court.”

8. CONCLUSION

With the coming of the internet, comfort in correspondence has expanded immensely. Nonetheless, such comfort accompanies a catch. The easy exchange of information and data over the web has made it a basic hotspot for slander. Despite the fact that there are laws set up which forbid individuals from posting such substance on the web, a great many people don't know about the equivalent or are too careless to even consider realizing whether such substance is abusive or not. On occasion, when free discourse runs opposed to an individual's notoriety it gets relevant for the State to build up a limit, in case that free discourse turns into a weapon in the possession of specific individuals. There is a desperate need of a framework which instructs and makes individuals mindful of what to do and what not to do, what's going on and what is correct and what is abusive and what isn't disparaging on the internet. Further, the go-betweens which give such an open stage should screen the substance posted on it and take proper activities against such clients who post such abusive substance so as to maintain a strategic distance from redundancy later on.

REFERENCE

1. <https://bradscholars.brad.ac.uk/bitstream/handle/10454/17461/Usman%2C%20m.pdf?sequence=1&isAllowed=y>
2. <https://injury.findlaw.com/torts-and-personal-injuries/defamation-and-social-media-what-you-need-to-know.html>
3. <https://www.justia.com/injury/defamation/online-defamation-and-social-media/>