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DEFAMATION IN CYBER SPACE: A SPECIAL REFERENCE TO SOCIAL MEDIA.

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ABSTRACT

In the past decade, social media platforms have gone from being a novelty to becoming an essential part of many people's personal and professional lives. It is not limited to how business is sourced and conducted, but also, how facts are shared, how opinions are shared, how life as a whole is displayed and operates. With the rise of social networks, content aggregation sites, and online commentary, the risk of defamatory content and false statements reaching a broad audience has increased tremendously, because of the novelty of anonymity related to it, people can hide behind their devices to commit an act which they are unable to do in the real world. Though online content is occasionally moderated for pornographic or other inappropriate elements involving legal issues, most content is unregulated for defamatory elements. Many times, people ignore the negative comments in the purview of "trolling", but ignorance may not be an acceptable option always. It's important for users, sharers, and potential victims better understand the landscape of online defamation and defamation laws. The article elaborates about what constituent online defamation, Indian laws to punish for these crimes and mentions the need for amendments to existing acts or new legislations.

Keywords: Social Media, Defamation, Cybercrime, False Statements

"Do not leave your reputation to chance or gossip, it is your life's artwork and you must craft it, hone it, and display it with the care of an artist.

- Robert Greene

INTRODUCTION TO 'CYBER SPACE' AND 'SOCIAL MEDIA'

The term "cyberspace" first appeared in fiction in the 1980s in the work of cyberpunk science fiction author William Gibson, first in his 1982 short story "Burning Chrome" and later in his 1984 novel Neuromancer.¹ In the next few years, the word became conspicuously identified with online computer networks.

“Web-2”² in the new era of the web, it is a sign of the development of cyberspace in human life.

The web-2 has considerably increased the interactions among users and the possibility to share and distribute information and content via some internet tools, which are called “social media”

In other words, Social Media forms of electronic communication such as websites for social networking and microblogging, through which users create online communities to share information, ideas, personal messages, and other content (such as videos).³

Cyberspace has become the hub of a vast amount of sensitive data, personally identifiable information, protected health information, personal information, intellectual property, data, and governmental and industry information systems because of which there arises an immense necessity for keeping cyberspace secure from any malicious activity such as theft or damage attempted by criminals and adversaries.

With the advent of the technology-dependent generation, the graph of cybercrimes seems to rise with time. now the term of cybercrime is not just limited to that of breaching firewalls but now there has been a lot more added to the area of cybercrime.

¹<https://www.wired.com/2009/03/march-17-1948-william-gibson-father-of-cyberspace-2/>, Accessed on 22 December 2020

²Web 2.0: An Introduction, <https://medium.com/@SoftwareDevelopmentCommunity/web-2-0-an-introduction-8230eb8fa6ce>, Accessed on 22 Nov 2020

³“Social media.” Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/social%20media>, Accessed on 22 December 2020

WHAT IS ONLINE DEFAMATION?

Defamation means harming the reputation of a person in the eyes of the third person and this can be done by words of mouth, written words, signs, or by visible representations of anything which harms the reputation of the person.

Defamation done in the cyber world is known as cyber defamation it is a new concept, in cyber defamation the defamation is done through the virtual medium but the definition of traditional defamation is applicable to cyber defamation. Cyber defamation is otherwise called online defamation.

In online defamation internet or computer is used to publish any defamatory material to harm the reputation of any person. If someone sends an email to another person that contains defamatory material or publishes anything on a website by which the reputation of a person gets injured then this would amount to cyber or online defamation.

The defamatory statement can lower the reputation of the person in eyes of the public it may be caused intentionally or unintentionally as the online statements are accessible to the public who use online services.

Online Defamation is defined as Slander, Libel, or Both?

Content that has been written or published is Libel, and content that has been spoken or in oral form is Slander.

Recently, a YouTuber who was a final-year civil engineering student from Bihar was booked for uploading videos defaming environment and tourism minister Aaditya Thackeray and home minister Anil Deshmukh in connection with actor Sushant Singh Rajput's death case.⁴

Posting false or defamatory comments, posts, captions, stories, on social media comes under the purview of publication. Even 'liking' certain defamatory remarks, in cyberspace can be risky. While posting videos can be considered both if the person speaks any defamatory content.

⁴<https://timesofindia.indiatimes.com/city/mumbai/youtuber-booked-for-defaming-maharashtra-netas-gets-pre-arrest-bail/articleshow/79314582.cms>, Accessed on 11th December 2020.

LAWS FOR ONLINE DEFAMATION

Every offense of online defamation is not similar it depends on how much harm it gives to the victim. In India, there are various provisions for online defamation depending upon the loss.

The right to take legal action for defamation is restricted in accordance with Section 75 and Section 76 of the Limitation Act, 1963, the period of filing a suit for compensation of libel and slander respectively, is within one year.

The statutory provisions governing online defamation are as follows:

A) Under the Indian Penal Code, 1860

1. Section 499- Defamation

Whoever,

- by words either spoken or intended to be read, or by signs or by visible 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.

Here, the word “person” includes any Company or Association or body of persons, whether incorporated or not.⁵

But there are some exceptions⁶ for Defamation, which is as follows: -

- a) Imputation of truth which public good requires be making or publishing.
- b) Public conduct of public servant.
- c) Conduct of any person touching any public question.
- d) Publication of reports of proceedings of courts.
- e) Merits of the case decided in court or conduct of witnesses and others concerned.

⁵Section 11, Indian Penal Code, 1860.

⁶Given under Section 499, Indian Penal Code, 1860

- f) Merits of Public performance.
- g) Censure passed in good faith by a person having lawful authority over another.
- h) Accusation preferred in good faith to an authorized person.
- i) Imputation made in good faith by the person for the protection of his or other's interests

The Punishment for defamation⁷ is simple imprisonment for 2 years, or fine, or both.

Section 504 of the IPC provides intentional insult with the intent to provoke breach of the peace. Such insult has to be intentional, giving provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offense.⁸

2. Section 469- Forgery for purpose of harming reputation.

Whoever commits forgery, [intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

3. Section 503- Criminal intimidation:

Whoever

- threatens another with any injury to his person, reputation or property, or
- to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or
- to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat,

commits criminal intimidation.

⁷Section 500, Indian Penal Code, 1860.

⁸Sanmay Banerjee vs. State of West Bengal and Ors, 2020CriLJ4290

The Punishment for Criminal intimidation⁹ is imprisonment for 2 years, or fine, or both.

B) Under the Information Technology Act, 2000

Section 67- Punishment for publishing or transmitting obscene material in electronic form:

Whoever

- publishes or transmits or causes to be published or transmitted in the electronic form,
- any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it,

shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

C) Under the Indian Evidence Act, 1872

Section 65(A) provides special provisions as to evidence relating to electronic records, which may be proved in accordance with the provisions of section 65B.

Section 65(B) provides contents dealing with the admissibility of electronic records.

Sub-section (1) states that any information contained in an electronic record that is printed or is stored by a computer will be deemed to be a document.

Sub-section (2) states about conditions to be referred to in sub-section (1).

An electronic record by the way of secondary evidence will not be admissible without compliance with the conditions specified in Section 65B. However, if an electronic record is used as primary evidence under Section 62, the same is admissible in evidence, without compliance with the conditions specified in Section 65B.¹⁰

LIABILITY OF INTERNET SERVICE PROVIDERS

⁹Section 506, Indian Penal Code, 1860.

¹⁰Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473

ISP has significant responsibility for transmitting or broadcasting third party content, without initiates or involvement in a decision to circulate any particular material. A network service provider means any person who provides access to information service in an electronic form.¹¹

Section 79 of the Information Technology Act, 2000 deals with the liability of the Network Service Providers. The explanation to this section provides that 'Network Service Providers' means an 'Intermediary'. According to Section 2 (w)¹²'Intermediary', with respect to any particular electronic message, "means any person who on behalf of another receives stores or transmits that message/record or provides any service with respect to that message/electronic record."

The Intermediaries Guidelines Rules¹³ lay down the procedures that an intermediary has to follow to avail safe harbor. Rule 3(2)& (7) of the Intermediaries Guidelines Rules lists the categories of information if posted online, which could be considered as illegal. According to Rule 3(4) & (8), an affected person could write to the intermediary to remove any content which is listed as unlawful under Rule 3(2). The intermediary needs to act within 36 hours to remove the content. If the intermediary does not act within the stipulated time then the intermediary cannot avail of a safe harbor.

'FREEDOM OF SPEECH' AND 'ONLINE DEFAMATION'

The criminality of defamation was challenged in Subramanian Swamy V. The Union of India,¹⁴the apex court upholds the constitutional validity of sections 499, 500 of the IPC, 1860, and section 199 of CrPC, 1973.

In Shreya Singhal v. Union of India¹⁵, judgment upholding freedom of expression, the Supreme Court has struck down Section 66A of the amended Indian Information Technology Act, 2000 of IT Act, which provides power to arrest a person for posting allegedly "offensive" content on websites. The apex court ruled that the section falls outside Article 19(2) of the Constitution, which relates to freedom of speech and thus has to be struck down completely.

¹¹ Nakul Sharma, "Information Technology Law and Practice", 2005, Universal Law Publishing co. Pvt. Ltd., Delhi, p. 186

¹²Information Technology Act, 2000

¹³<https://dispur.nic.in/itact/it-intermediaries-guidelines-rules-2011.pdf>, Accessed on 22 December 2020

¹⁴AIR2016SC2728

¹⁵(2013) 12 SCC 73

However, in Swamy's case, Justice Mishra points out that there is a difference in the canvas on which Shreya Singhal's case has been made. In that case, there was a narrow interpretation of the provision whereas in Swamy's case 'reputation' (which is implicit in article 21) was also involved and narrow interpretation was not the case.

Defamation law acts as a counter-balance to the constitutional right of free speech which is guaranteed by Article 19(1)(a) of the Constitution of India.

CASE LAWS

1. SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra¹⁶

It is the very first case of Cyber Defamation. Under this case, a disgruntled employee sent derogatory, defamatory, vulgar, and abusive emails to the company's fellow employers and its subsidiaries all over the world with an intent to defame the company along with its managing director, the High Court of Delhi granted ex-parte ad interim injunction restraining the defendant from defaming the Plaintiff in both the physical and in the cyberspace.

2. Kalandi Charan Lenka v. the State of Odisha¹⁷

The Plaintiff was stalked online and a fake account was created in her name. Furthermore, obscene messages were sent to the friends by the culprit with an intention to defame the Plaintiff. The High Court of Orissa held that the said act of the accused falls under the offence of cyber defamation and the accused is liable for his offences of defamation through the methods for fake obscene images and texts.

3. Swami Ramdev & Anr. v. Facebook Inc. & Ors¹⁸

Justice Pratibha Singh had passed an order to remove all defamatory content posted online against yoga guru Baba Ramdev, without any territorial limit, stating that if the content is

¹⁶CS(OS) No. 1279/2001 (Delhi High Court, 2001)

¹⁷2017(I)OLR543

¹⁸2020(81)PTC54(Del)

uploaded from India or such content is located in India on a computer resource, then the Courts in India should have international jurisdiction to pass worldwide injunctions.¹⁹

4. Google India Private Limited. vs. Visaka Industries Limited and Ors²⁰

The plaintiff M/s. Visaka Industries Limited, filed suit claiming a declaration that Messages 1 & 2 are defamatory and also sought a mandatory injunction for removal of the Messages 1 & 2 posted by the 1st defendant in the blogsite of the defendants 2 & 3.

The 1st defendant was a coordinator of Ban "Asbestos India", a group which is hosted by 2nd defendant (an Internet Service Provider), publishes regular articles regarding various issues.

The 1st defendant remained ex parte and the 2nd defendant filed a written statement refuting the contentions raised in the plaint by the plaintiff while contending that the 2nd defendant is a subsidiary of 3rd defendant i.e. Google Inc., which is a company incorporated under the laws of the United States of America.

The 2nd defendant contended that the Google groups website is a platform enabling users to post their content online which was developed outside India and that no employee or defendant No. 2 has access or the ability to remove or delete the content when once it is posted on the Google Groups website.

It was held that Defendant No. 3 is alone competent to remove or block any defamatory content or sexually explicit material posted by 3rd parties on the web-blog or URL of defendant No. 3. In such circumstances, even if any knowledge is attributed to defendant No. 2, it has no control over the website.

HOW TO LODGE A COMPLAINT OF ONLINE DEFAMATION?

Before bringing a suit, one needs to identify the potential user who made the defamatory statement. It's much easier to identify someone who uses a personal social media account to post something false and injurious.

¹⁹<https://theprint.in/judiciary/why-baba-ramdevs-win-against-facebook-google-in-delhi-hc-only-adds-to-judicial-confusion/312403/>, Para 86, Accessed on 22 December 2020

²⁰2017(1)ALT620

In case of significant anonymity, a plaintiff can issue a summons on the relevant third-party website and ISP to obtain business records that might contain identifying information that could link an anonymous post to an individual.²¹

1. Register a Cyber-Crime FIR:

When filing the cyber-crime complaint, one needs to provide your name, contact details, and address for mailing. One needs to address the written complaint to the Head of the Cyber Crime Cell of the city where one is filing the cyber-crime complaint.

If a person does not have access to any of the cyber cells in India, that person can file a First Information Report (FIR) at the local police station. In case the complaint is not accepted there, one can approach the Commissioner or the city's Judicial Magistrate. Most of the cyber-crimes which are covered under the Indian Penal Code are classified as cognizable offenses.

2. Report to Social Media portals

Most of the social media platforms have a standard procedure in place for reporting any abuse or other nasty offenses. One must make sure that you report such activities in the very initial stages of their occurrence. This shall enable the concerned social media platform to take immediate steps for blocking further activities and protecting the privacy of one's personal information.

Social networks like Facebook, Twitter, Instagram, Snapchat, and YouTube have a strict and clear redressal mechanism to protect their users from online abuse and cyber-crimes. But one must make sure to do the groundwork on their guidelines for reporting abuse without waiting for abuse to actually happen.

3. Report to NCCPR

Any person aggrieved of cyber defamation can report to the Cyber Crime Investigation Cell at the National Cyber Crime Reporting Portal²² and lodge a complaint.

CONCLUSION

²¹Google India Private Limited. vs. Visaka Industries Limited and Ors, 2017 (1) ALT 620, Para 70 & 71.

²²<https://cybercrime.gov.in/>

It is also a known fact how much delay is being caused in the Indian Courts and sometimes it will take years together and by the time direction was issued by the Courts, the total reputation of such person against whom such defamatory content was posted would be greatly affected in the eye of the society and sometimes personal attacks against such person would seriously affect the character and image of such person.

It's important to consider that the legislation related to defamation was enacted when the reach of social media and the internet was unfathomed. There is a requirement to keep in check the tweets, statuses, and comments made online. The social media content requires further laws and regulations, keeping our democratic structure and fundamental rights intact.

The legislation needs to take necessary steps to provide safeguard to the interest of the public at large on account of such defamatory content, by creating fake accounts by the net users and to provide stringent punishment to such net users, by the necessary amendment to the Information Technology Act and Rules.

Special cyber courts can be established wherein judges with specialized technical knowledge may preside over these courts.

These Courts could give preference to such suits or petitions filed before the Courts and grant instant relief by way of interim orders to block or remove such defamatory or sexually explicit content against the person, otherwise, the loss caused to such persons would not be compensated in monetary terms.

Social media has given vast opportunity to reach out to the masses in minutes, however, one must remain extra cautious while executing their freedom of speech and expression.