

A Critical Analysis of Cyber Defamation Laws in India

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1. INTRODUCTION

In today's world of technological advancement, media's influence seems to be ubiquitous and profound. This era of the internet is known as the "Information Age". The use of e-mail, social networking sites, chat groups, websites, and many more have increased access to information. It has changed the way we live our lives and is a one-of-a-kind tool for global human communication. This simple access to such a medium can often lead to people misusing it to make defamatory comments in cyberspace.

Tort refers to a civil wrong where the person injured or suffered harm can claim damages to the amount of harm suffered by them. Torts that are committed online are known as Cyber Tort.

The term Defamation in layman's language refers to the publication of a false statement that lowers the reputation of the person in minds of other people. It is not a crime but a Tort (it is either civil wrong or criminal wrong). It is of 2 types- slander and libel. Slander refers to the publication of a defamatory statement in a transient form (not permanent) i.e., it may be spoken words not written. On the other hand, Libel refers to the publication of a defamatory statement in written form (permanent form) i.e., print, picture, writing.

With the emergence of the internet, there is a need to define the defamation done in cyberspace, better known as Cyber Defamation. In India, Cyber defamation is defined as "the act of defaming, insulting, offending, or otherwise harming a person in cyberspace through false statements." Unfortunately, cyber defamation is becoming more common these days. It is because Internet has given us the ability to share our views with the rest of the world. We can quickly share anything and it will go viral in a fraction of seconds.

Under Indian law, both the person who defames you and the person who shares and reposts the content may

be sued. Any of those acts, such as posting, liking, retweeting, and/or commenting, may be construed as a republication of defamatory material – the act of republishing from social media is so easy that users pay no attention to the potentially severe consequences.

1.1 RESEARCH QUESTIONS

Following are the questions which this research will answer:

- What are the laws of Cyber Defamation in India?
- What is the liability of Cyber Defamation in other laws i.e., IPC, 1860 and IT Act, 2000?
- How are Indian Laws different from US Laws in the context of Cyber Defamation?

1.2 RESEARCH OBJECTIVES

Following are the objectives to be fulfilled by this research:

- Analyze the Cyber Defamation Laws of India
- Investigate the liability in Cyber/Online Defamation with reference to other laws
- Examine the contrast of Cyber Defamation laws of India and the US.

1.3 HYPOTHESIS

H0 There is no effective legislation related to Online Defamation in India.

H1 There is effective legislation related to Online Defamation in India.

1.4 RESEARCH METHODOLOGY

The researcher adopted "Doctrinal Research Methodology" i.e., Secondary Research for this paper. Following steps were taken to provide a comprehensive view of the topic.

- Studying the Defamation laws of Tort.
- Analyzing the defamation laws and narrowing it down to Cyber defamation.
- Referring to various domestic and International Cyber Defamation laws to understand the liability and applicability of laws in different countries.

- Referring to various research papers and articles by renowned experts in the field of Tort and Cyber laws.
- The researcher will now propose a possible conclusion about the Cyber Defamation Laws prevalent in the country.

1.5 LIMITATIONS

According to the nature of the topic, the major limitation faced by the researcher was lack of content due to limited literature on the specified topic. Apart from this, the research conducted was secondary so the authenticity of the content cannot be proved. It is not based on practical research due to the paucity of time and money constraints.

2.LITERATURE REVIEW

1. Harish Kumar (2017), in “Law of Defamation in India” critically analyzed the Defamation laws of India and how India protects the dignity and reputation of an individual. The paper also explores the evolution of Defamation laws from Roman laws to Indian laws. It also highlights the requirements for defamation in the Indian Penal Code,1960. The researcher also suggests that since there is no rigorous punishment for defamation the laws should be more stringent and punishment should change from simple fine and imprisonment of 2 years to rigorous imprisonment.
2. Shivi (2016), “Defamation Laws and Judicial Intervention: A Critical Study” examines the defamation laws of India in comparison with laws of other countries such as America, Australia, Pakistan. The paper aims to study the judicial intervention in India by scrutinizing the judgment of Subramanian Swamy v. Union of India with reference to Shreya Singhal's case. The researcher concludes the paper stating India should also adopt the Right to reply rather than to jump to a conclusion right away, as adopted by some US states.
3. Stephen Tully (2013), “People You Might Know: Social Media in Conflict between Law and Democracy” highlights the growing need and usage of social media in all aspects of life from personal to professional including its widespread use in politics. One of the ideas was that social

media led to more political participation as people post more often about their views or opinions. But there is huge scope for offensive content which sometimes also threatens national security. So, the government should make proper laws regulating the use of social media keeping in mind the freedom of speech and expression of individuals in society. Here, comes the need for Cybersecurity laws.

4. Vipul Vinod (2015), in “Civil Adjudication in Cyber Laws” covers the various types of civil problems and cases that include civil adjudication. The second section, which is followed by a conclusion, is devoted to the jurisdiction of courts in cyber civil adjudication. The paper identifies all the cyber-crimes in 3 major parts namely- Cyber tort, commercial transaction over the internet (e-commerce), and lastly civil actions provided in the Information Technology Act,2000. The researcher highlights the lack of awareness among the public regarding the cyber laws in the country.
5. Mohd Akbar Khan (2017), "Cybercrimes and Cyber Torts: A Comparative Analysis and Analytical Perspective" defines what constitutes cybercrime and its classification in 4 major areas like a crime against an individual, Crime against property, crime against the government, and the public at large. Further, the paper describes Cyber tort which includes Cyber defamation, Cyber Obscenity, Breach of Privacy in Cyberspace. The author then compares cyber-crimes with tort and provides a comprehensive analysis of the same.
6. Amit K Kashyap (2016), "Defamation in Internet Age: Laws and Issues in India" explores the narrow concept of Defamation i.e., Cyber Defamation in India. It investigates the judicial interpretation of Cyber laws in different areas such as Injunction in Defamation, the Defense of Fair comment, the correlation of tort of defamation and Free speech, and most importantly the liability of ISP in cyberspace. According to the author, the laws of defamation do not particularly apply to cyber defamation and so there should be amendments in the current defamation laws as they were not made with the view of technological advancement.
7. Ankkrit Valdaya (2014), in "Legal Consequences of Online Defamation in India" defines Online

defamation as its scope and medium of defamation. The paper examines the offenses of defamation which include scoffing at someone in cyberspace, jibing a minister, posting or tagging indecent photos, using abusive language, and many more such offenses. It also emphasizes the provisions related to online defamation. The author also stresses defamation laws violating the Constitution of the country.

8. Sanette Nel (2007), "Online Defamation: the problem of unmasking anonymous online critics" explains circumstances where the writer may remain anonymous or shelter behind pseudonyms. There should be balanced relation between freedom of speech and expression and protection of reputation. It will also look at how far internet service providers can be pressured to expose the identity of their customers.
9. Jackson (2007), "Developments in the Law: The Law of Media" explores the media's involvement in an era of renewed government secrecy. As digital technology allows media content to be sent around the world, a comparison of foreign and domestic media laws is becoming increasingly important. This paper compares cyber defamation laws of different countries including the developed as well as the developing countries.
10. T Pradeep et al. (2018), "A Critical Study on Cyber Defamation and Liability of ISPS" draws attention to legal provisions of cyber defamation and liabilities of ISPS i.e., Internet Service Provider with special reference to some landmark judgments of India as well as the UK. The paper also studies the preventive steps to control cyber defamation. The researcher after analyzing the Indian and UK case laws claims that any countries instead of creating new cyber defamation laws try to apply old laws to cyberspace crimes.

3.CYBER DEFAMATION

The netizen's cyber rights must also be covered by extending tort liability rules and introducing new pigeon holes to the tort law tree's ever-expanding tree. A tort occurs when someone commits a reckless or deliberate act that causes harm to another person. Tort which is committed online is known as Cyber tort. Under Cyber Tort comes Cyber Defamation. It is defined as "the act of defaming, threatening, abusing,

or otherwise harming others in cyberspace by making false claims about them." This is relatively a new concept but the old definition of defamation is also applicable as the core remains the same.

Cyber Defamation is of 2 types-

1. The individual who primarily publishes defamatory statements on the internet, such as email writers and website content providers, is liable for online defamation. These individuals are the primary publishers of defamatory content that is produced and published in cyberspace for Cyber Defamation.
2. Secondly, there is an increasing number of websites that view various types of information which are established and controlled by ISP (Internet Service Provider). They are responsible for any defamatory statement published on their site because they must review the material before it is made public.

Essentials to prove Cyber Defamation

To prove Defamation there are 3 requirements are to be fulfilled. They are-

- The imputation must be published
- Imputation must be in the form of noticeable representation.
- Making such imputations should be done with the intent of causing damage or with the understanding that it would harm the person's goodwill.

As there is no separate law governing Cyber Defamation, if all the above-stated requirements are fulfilled keeping in mind all the publication is in cyberspace, the person can be held liable for Cyber Defamation.

4.MEANS OF CYBER DEFAMATION

There are various means through which Cyber Defamation is committed. Some of the essential ones are listed below-

1. Social Networking sites

The medium of social networking websites is widely used for online defamation. People can post, message, and comment on something on many social networking websites. Some of the sites are Facebook, Instagram, Twitter, Linked In,

and many such sites. People regularly post or comment on some events which makes it more vulnerable to defamation.

Many people who are unaware of the law make defamatory statements that damage another person's reputation. Some people make defamatory statements in comments, which can damage another person's reputation.

2. Forum Sites

It is a place where people visit and discuss some current topics. When people who visited forum site and then publish any defamatory statement then, Forum sites are considered to be origin and medium of cyber defamation.

3. Any Discussion groups

It is a place where people come online and talk about their issues and ask for or offer advice on a variety of topics. Sometimes, people use it as a platform for online slander, posting defamatory content to the discussion group.

4. Email

E-mail popularly known as Electronic mail is also used as a means for Cyber Defamation. It is because people check their emails regularly, anyone can send defamatory material via email.

5. Other websites

The website serves as a means for the dissemination of information. Many people publish articles, research papers, write blogs, etc. So, as it has a lot of content sometimes people publish defamatory statements. This leads to Cyber defamation.

5.PROVISIONS IN OTHER LAWS

There are several provisions for online defamation, and they vary depending on the type of offense committed by the offender. Cyber Defamation has its liabilities in many laws. These laws are stated below.

1. INDIAN PENAL CODE,1860

Section 499

According to Section 499 of IPC,1860, “whoever, by words either spoken or read, or by signs or by any visible representation, 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, to defame that person.” The law after the

introduction of the IT Act, 2000 included "Speech" and "Documents" in electronic form.

Section 500

This section in IPC deals with the punishment of the above-mentioned law of defamation. As per Section 500, “Whoever defames another is punishable with an imprisonment for two years, a fine, or both.”

Section 503

This section deals with offenses committed through the use of computer devices, such as sending emails, posting messages, and leaving comments, to harm someone's reputation or threaten them.

According to Section 503 of the Indian Penal Code,1860, "Whoever, threatens another with any injury to his person, reputation or property, or 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 threats, commits criminal intimidation.”

Section 506

The penalty for criminal intimidation is discussed in this section. As per Section 506, whoever commits the above-mentioned offense shall be punished with 2 years jail term, a fine, or both.

2. Information Technology Act, 2000

Section 66

Although Section 66A of the Information Act of 2000 does not explicitly address cyber defamation, it does make the act of sending defamatory material for causing insult, injury, or criminal intimidation punishable.

After the case of Shreya Singhal and Ors. Vs Union of India, this section of IT act, 2000 was struck down as it was considered to violate Fundamental Rights of Indian Constitution.

Section 79

It exempts the intermediary service provider from liability in certain cases, these are listed here- 1. The intermediary's function is limited to providing access to a communication system through which third-party information is transmitted, temporarily processed, or

hosted; 2. If he exercises due diligence as stated in the Act and also follows the guidelines laid down by Central Government.

Provision for Filing Complaint

A complaint about cyber defamation can be filed with the district's Cyber Crime Investigation Cell.

Many cities, including Delhi, Mumbai, Chandigarh, Hyderabad, Bangalore, Tamil Nadu, Gurgaon, Pune, Madhya Pradesh, Lucknow, and others, have established these Cyber Crime Investigation Cells.

6.SOME CASE LAWS AND RELATED CONCEPTS

1. Employees Liability

The first case in India on Online defamation was SMC Pneumatic Pvt. Ltd. vs Jogesh Kwatra. Here, one of the employees of the company used to send defamatory, derogatory, obscene, indecent, vulgar, dirty, and abusive emails to the employers of the subsidiary company to defame the company and its managing director. The Delhi High Court in the said case passed an ex-parte injunction and observed that the case was a tort of Defamation. Subsequently, the court restrained the employee to send any derogatory emails to the plaintiff or any other subsidiary company of SMC Pneumatic Pvt. Ltd. This case assumes paramount importance in the history of Tort Law of Defamation because it was the first-time court ruled in a matter of Cyber Defamation.

2. ISP [Internet Service Provider]

The Internet Service Providers are the information intermediaries. They obtain information from third parties when they do not produce it themselves, and then they disseminate it to others. There are 2 types of publishers Primary and Secondary. As they are intermediaries, they are not liable for the information published by a third party, subject to some conditions stated in Section 79 of IT Act, 2000.

- Firstly, if his actions are limited to providing access to communication system only to the third party
- Secondly, they are not liable as long as they do not (a) initiate transmission; (b) select the transmission's receiver; or (c) select or alter the transmission's information.

- Thirdly, they perform their duties with utmost care and abide by any rules that may be established.

If the internet provider fails to follow the above-mentioned requirements, they are guilty of Cyber Defamation. Apart from this, they are also liable if they conspired, aided, or caused the event.

When an intermediary act solely as a carrier and transporter of information rather than as controller of information, he cannot be held liable. However, when an information publisher's job description includes not only publishing and transmitting information but also exercising reasonable control concerning that publication, his liability can be determined. Here, the publisher is bound to prove that, "he had no reason to believe the statement was defamatory in nature and he took reasonable care concerning the publication"

3. Free Speech and Journalism

With the increasing use of social media, there has been a rise in defamation cases. This limits the Fundamental right of free speech and expression given to citizens of the country. Supreme Court in Subramanian Swamy vs Union of India ruled that the laws of defamation have a chilling effect. In a legal sense, the word "chilling effect" refers to a situation in which a speech or behavior is silenced by fear of being punished in the interests of a person or community. Censorship or limitations on internet access that are arbitrary or indiscriminate are claimed to be incompatible with a state's foreign commitments and are thus undesirable. According to reports published in Amnesty International, one of the peace activist Patrick Kum Jaa, was sentenced to six months in prison for "online defamation" after being arrested in October 2015 for a Facebook post showing someone walking on a picture of Myanmar Army Commander-in-Chief.

For years, offensive tweets and Facebook posts have been an issue, and in recent years, political parties have formed armies of trolls to actively attack and decimate opponents. Because of the anonymity of the internet, people are more likely to make outrageous allegations and threats online that they would not make in person. All this demands an immediate amendment in the Cyber defamation laws and laws related to it thereafter.

7.COMPARISON BETWEEN INDIAN AND UK DEFAMATION LAWS

This section deals with a brief comparison of cyber laws between developing countries like the Union of India and other developed countries like the United States of America and the United Kingdom.

Countries like India are developing in each sector but particularly in IT and cyber the development is slow. On the other hand, countries like the UK and the US are far more advanced in the cyber sector. The United Kingdom has established protocols and processes, and cybersecurity has been a strategic concern in the UK for much longer than it has in India.

India has a separate law of IT namely IT Act, 2000 which was amended in 2008. This protects individuals from cyber-related crime in the world of E-commerce. But there are no specific laws related to cyber defamation in the country. Contrary to this, laws in countries like the US and UK are very stringent and imposes limits on foreign companies doing business in-country to protect the citizens from any cybercrime. The United States of America has specific cyber defamation laws named as Cyber-Libel.

The UK is significantly more open to multi-partner contributions to curb its policies, while India's cybersecurity remains split between private and government operations, concentrating on national security issues in general.

One key difference today is that developing countries believe that each publishing of defamation gives rise to a different lawsuit, allowing defamation on the Internet to be prosecuted in every country where it was read, while American law only allows one claim for the primary publication.

8.SUGGESTION

Change in technology over the world changed the way people communicate. But the traditional defamation laws could not keep pace with the advancement in technology. There are no separate Cyber defamation laws in India in comparison to other developed countries like the US where the laws regarding cyberspace are very stringent. So, judges interpret various other laws to rule on cases related to cyber defamation.

As the internet has become the predominant medium of communication and public opinion, there is a need to reform the law of defamation to include its applicability in cyberspace. Even the laws related to ISP (Internet Service Provider) are too vague and

should be amended to make it more comprehensive and exhaustive. Also, an approach is needed that balances the Right to freedom of speech and Defamation in cyberspace.

9.CONCLUSION

The new-age technology changed the usage of the internet from just information providers to running the business online. The sheer volume of information available and the ease with which it can be transferred make the Internet a vital source of defamation. People through the internet trying to communicate their views, ideas, opinions, and even criticism which sometimes leads to character assassination. So, as suggested above a proper balance is need of the hour between Freedom of Speech and Expression and the Right to Reputation.

The paper explores the medium of defamation and the liability for cyber defamation in the Indian Constitution. To present a more realistic picture the paper also accounts for case laws related to cyber defamation. After analyzing various research papers, it is evident that there is no effective legislation particularly for Cyber Defamation in India which validates the H0 hypothesis of the study. This creates the need for separate laws dealing with Cyber defamation which should be flexible and comprehensive to apply to all media. Through this paper, the researcher fulfills the objectives and goals mentioned above.