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VIRAL BUT VILE: WHEN POSTS CROSS THE LINE INTO DEFAMATION

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INTRODUCTION

The right of each man during the lifetime to the unimpaired possession of his reputation and good name is recognised by law. Defamation describes that if a person injures the reputation of another person. A man's reputation is his property and, in most cases, it is more valuable than the other form of property. Reputation depends upon opinion in the main on the communication of thought and information from one individual to another. The law of defamation is based upon this principle that the reputation of a member of society, the esteem in which he is held by it, the credit and trust it reposes on his intelligence, honour, and integrity, all of these constitute a valuable asset for him and it deserves protection at the hands of law.

The growth of the world in contemporary times is marked by the advancements and complex challenges that shape our globalized world. Technology is at the core of modern growth. The rise of the internet, artificial intelligence, and automation has transformed how people work, communicate, and live. The rise of smartphones and internet accessibility has accelerated social media growth worldwide.

Social media has become a primary platform where defamation occurs due to its accessibility, speed, and global reach. The defamation on social media occurs in various ways which includes, posting false information about someone, forming defamatory statements in comment sections of posts, videos etc., online harassment, sharing or reposting defamatory statements.

The rise of social media has led to a notable increase in defamation claims. Unfounded statements can quickly go viral, entering mainstream discourse and prompting legal actions to combat online and misinformation. In 2022, Kerala reported the highest number of cybercrimes motivated by defamation, with approximately 15 registered cases. Between 2021 and 2023,

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Maharashtra police filed over 600 cases for defamation against social media users for offensive posts.

The objective of this article is to inform the difference between libel and slander, and how it applies specifically to social media platforms like Twitter, Facebook, Instagram, etc. Highlight how common online defamation has become, its potential consequences, how it affects individuals and businesses and have an insight about jurisdiction of court for defamation.

WHAT IS DEFAMATION?

Defamation is the publication of a statement which tends to lower a person's injuries in the estimation of right-thinking members of the society generally or which tends to make them shun or avoid that person.

LIBEL AND SLANDER

Mainly because of historical reasons, English law divides actions for defamation into- Libel and Slander. Let's delve into this to know more.

Slander is the publication of a defamatory statement in a transient form. Eg: words spoken or gestures. Defamatory statement is addressed to the ear.

Libel is representation made in some permanent form, e.g., writing, printing, picture, effigy or statue. Defamatory statement is addressed to the eye.

Under English law, the distinction between libel and slander is material for two reasons:

1. Under the criminal law, only libel has been recognised as an offence. Slander is no offence.
2. Under the law of torts, slander is actionable, save in exceptional cases, only on proof of special damage. Libel is always actionable per se, i.e., without the proof of any damage.

Indian Law: It has been noted above that under English criminal law, a distinction is made between libel and slander. There, libel is a crime but slander is not. Slander is only a civil wrong in England. Criminal law in India does not make any such distinction between libel and slander. Both libel and slander are criminal offenses under Section 356, Bharatiya Nyaya Sanhita (BNS).

The defamation stands on three pillars which are:-

- (1) The statement must be defamatory;
- (2) The said statement must refer to the plaintiff;
- (3) The statement must be published.

THE STATEMENT MUST BE DEFAMATORY

Defamatory statement is one which tends to injure the reputation of the plaintiff. Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally or which tends to make them shun or avoid that person. An imputation which exposes one to disgrace and humiliation, ridicule or contempt, is defamatory. The defamatory statement can be in oral or in writing. Whether a statement is defamatory or not depends on how the right thinking men of the society are going to take it. If the statement is injurious to the reputation of the person from the stand-point of the right thinking men - men of fair average intelligence - it is no defence to say that such a statement was not intended to be defamatory.

THE INNUENDO

A statement may be prima facie defamatory in its natural and obvious meaning leads to that conclusion. Sometimes, the statement may prima facie be innocent but because of some secondary meaning, it may be considered to be defamatory. When the natural and ordinary meaning is not defamatory but the plaintiff wants to bring an action for defamation, he must prove the secondary meaning, i.e., the innuendo, which makes the statement defamatory.

THE STATEMENT MUST REFER TO THE PLAINTIFF

To bring an action for defamation, the plaintiff has to prove that the statement of which he complains actually referred to him. It is immaterial that the defendant did not intend to defame the plaintiff. If the person to whom the statement was published could reasonably infer that the statement referred to the plaintiff, the defendant is nevertheless liable.

THE STATEMENT MUST BE PUBLISHED

Publication means making the defamatory matter known to some person other than the person defamed. Communication to the plaintiff himself is not enough because defamation is an injury to reputation and reputation consists in the estimation in which others hold him and not a man's own opinion of himself. However, if a person wrongfully reads a letter which was meant for the plaintiff, the defendant is not liable. Also, if a defamatory matter is contained in a postcard or telegram, the defendant will be held liable even without a proof that somebody else read it, because a telegram is read by the post office officials who transmit and receive it, therefore there is high probability of the postcard being read by someone.

ETHICAL CHALLENGES OF SOCIAL MEDIA

Social media refers to websites and online platforms allowing users to create, share content and interact with others. It includes Facebook, Twitter, Instagram, Snapchat, TikTok, etc.. Social media has become a crucial part of modern society, with billions of people worldwide using these platforms to communicate, share information, and develop connections. However, social media also has its downsides. One major issue is the spread of misinformation and fake news, which can have serious consequences, from undermining democratic processes to endangering public health. Another issue is cyberbullying which can lead to mental health problems and even suicide.

Social media companies are responsible for addressing these issues and designing their platforms in a way that prioritizes user well-being. Some companies have taken steps to combat

misinformation and cyberbullying by implementing fact-checking systems or warning labels on content deemed misleading. Ultimately, it is up to individuals to use social media responsibly and be aware of risks and ethical considerations involved.

SOME ETHICAL ISSUES AND CHALLENGES ON SOCIAL MEDIA ARE AS FOLLOWS:

- 1. Privacy:** Social media platforms have access to an enormous amount of personal data, and there are concerns about how this data is collected, stored, and used. Social media platforms often require users to share personal information, such as their name, email address, and location, to create a profile. The platform can use this information to personalise the user's experience and target them with advertising. Moreover, these platforms often share user data with the third-party advertisers and other companies. Users must be aware of who their data is being shared with and should be able to control how it is shared.
- 2. Cyber bullying:** It is a form of bullying that occurs through electronic means, such as social media platforms, messaging apps, and online forums. It is a serious issue that can significantly impact the mental health and well being of those who experience it. Cyberbullies can hide behind fake usernames or profiles, making it difficult for their victims to identify them or take action against them. They use social media platforms to post mean comments, spread rumors, or share embarrassing photos or videos of their victims. To address cyberbullying on social media is to educate young people about the impact of cyberbullying and the importance of treating others with respect online.
- 3. Fake News:** It refers to false or misleading information presented as factual news. Social media platforms have made it easy for fake news to spread rapidly, which can be dangerous and have serious consequences. Misinformation and propaganda can influence people's decisions and beliefs. In addition, social media allows for the rapid spread of information without fact checking or editorial oversight, which leads to spread of misinformation and conspiracy theories. Such as when false information about the COVID-19 vaccine leads to people to avoid getting vaccinated, increasing the risk of infection and transmission.

4. **Addiction:** Social media can be addictive, and people may spend excessive time on social media platforms. This can negatively impact productivity, relationships, and mental health. Social media addiction refers to the compulsive and excessive use of social media platforms such as Facebook, Twitter, Instagram, and Snapchat. The platforms use algorithms and notifications to keep users engaged and coming back for more.
5. **Discrimination:** On social media, discrimination refers to the unfair treatment or prejudice against individuals or groups based on race, gender, sexual orientation, religion, or other personal characteristics. Social media platforms have become a forum for people to express their opinions and beliefs, and unfortunately, this can sometimes result in discriminatory behaviour. Discrimination on social media can have serious consequences, such as damaging a person's mental state, creating social divisions, and contributing to a culture of hate and intolerance.
6. **Large scale data collection:** One of the primary ethical concerns of large-scale data collection through social media is the issue of consent. Users of social media platforms often need to fully understand the extent to which their data is being collected and used. This lack of understanding can lead to a situation where users unknowingly consent to manage their data. Companies and organizations that engage in large-scale data collection must ensure that they are obtaining informed consent from users and that users understand how their data will be used.

RELEVANCY OF DEFAMATION IN INDIA

Defamation, even though it was formally acknowledged, has always existed in our society. The development of defamation laws in India can be traced back to the 19th century when Lord Macaulay introduced them in 1837. However, it's ironic that the British rulers really started these laws with the aim of safeguarding their own interests.

Article 21 of the Indian Constitution is a part of the fundamental rights and ensures a person's right to live with dignity, safeguarding their reputation, prestige, etc. Additionally, Article 19 of the Indian Constitution grants Indian citizens the right of freedom of speech. However, this right is not absolute as Article 19(2) mandates the state to enact laws imposing “reasonable restrictions”, which include the defamation laws in India.

Defamation is defined under Section 356 of the Bharatiya Nyay Samhita and the punishment for it is dealt with in Section 356 BNS itself defines defamation as any spoken, written, or visual statement about any person damaging their reputation.

Section 356 goes further and protects the rights of a deceased person, according to section 356 of BNS, defamation of a deceased person to be held, the statement must hurt the feelings of the family or the close relatives, and it must damage the reputation of the deceased individual if the person were still alive. While section 356 of the BNS defines defamation, section 500 states punishment for the same. Within section 356 BNS any person who defames any other person is subject to punishment, which shall include fine, or imprisonment which shall not exceed more than two years or both.

Defamation is also punishable under the law of torts. Here the punishment for the defendant is to pay the monetary compensation for legal damage suffered by the plaintiff. In the case of *Ram Jethmalani V. Subramanian Swamy 2006*, Delhi High Court, the defendant made the “written final argument” in which Ram Jethmalani was claimed to have also obtained from LTTE. The plaintiff brought a complaint against the defendant over such an accusation. It was held that the accused's statement was defamatory.

Injuring a person's reputation on the internet with the use of social media is termed as cyber defamation. For instance, Publishing of a defamatory statement against a person on social networking sites such as Facebook, Twitter, Instagram etc., or sending emails containing defamatory content about a person with the intention to defame them.

At times, when free speech runs contradictory to a person's reputation it becomes pertinent for the State to establish a boundary.

JURISDICTIONAL CONCERN OF DEFAMATION

In India, the lack of a uniform test to decide jurisdiction has given rise to divergent views being expressed by courts. For instance, in two cases of “publication” of defamatory statements over the internet when neither the plaintiff nor the defendant resided in Delhi, one Bench of the Delhi High Court exercised territorial jurisdiction whereas the other refused to do so. The need, therefore, is to bring in uniformity and predictability to ensure that, on the other hand, the defendant should not be dragged to remote jurisdiction to defend a defamation suit. In order to bring predictability on this issue, there is a need to define territorial jurisdiction as a function of the plaintiff's activities within such territory.

The exercise of territorial jurisdiction in personal actions against the defendant is covered by sections 19 and 20 of the Civil Procedure Code, 1908 (CPC). Section 19 has three ingredients: firstly, it applies where “wrong” was done to a person or movable property; secondly, it applies only when the place where “wrong” was done is different from the place where defendant is domiciled, and thirdly, where the second ingredient is satisfied, the plaintiff has the option to sue the defendant either at the place of the latter's domicile or where the “wrong was done”. Since defamation is a personal wrong, a suit for defamation will be covered by Section 19. The “wrong” referred to in section 19 is the “publication” of the defamatory statement, because “publication” gives rise to a cause of action. Therefore, the plaintiff will have the option to institute a suit for defamation either if the defendant is domiciled (irrespective of the place of “publication”) or at each place where the “publication” is made. Section 20, the plaintiff can institute a suit either at the place where defendant was domiciled or where the cause arises (i.e. where “publication” was made). Therefore, where domicile of defendant is one of places where defamatory statement was published, the plaintiff's option will not be restricted to instituting suit at only the place where the defendant is domiciled, instead, he will have the option to institute a suit at all such places where the “publication” was made, including the defendant's domicile. This is the narrowest “jurisdictional net” that the plaintiff can cast for the defendant.

BALANCING FREEDOM OF EXPRESSION AND REPUTATION

In many jurisdictions, defamation laws aim to strike a balance between protecting an individual's reputation and safeguarding freedom of speech. In India, for instance, defamation is both a civil and a criminal offense under Section 499 and 500 of the IPC which is now section 356 BNS. Civil defamation allows the aggrieved party to seek monetary damages, while criminal defamation can lead to imprisonment and fines.

THE RISE OF MEDIA TRIALS

Media trials refer to the phenomenon where media outlets, especially television channels and social media platforms, conduct their own "trials" of individuals, often in high-profile cases.

These media trials can significantly influence public perception and, at times, prejudice the legal process.

The interplay between defamation laws and media trials presents several legal and ethical challenges:

1. **Presumption of Innocence:** One of the cornerstones of criminal justice is the presumption of innocence until proven guilty. Media trials can undermine this principle by portraying individuals as guilty based on incomplete or biased information, thereby influencing public opinion and potentially the jury pool.
2. **Fair Trial Rights:** Extensive media coverage and media trials can jeopardize the right to a fair trial. Prejudicial publicity can create a hostile environment, making it difficult for the accused to receive an impartial hearing.
3. **Impact on Reputation:** Defamatory statements made during media trials can cause irreparable harm to an individual's reputation, regardless of the outcome of the legal proceedings. The damage to one's personal and professional life can be profound and long-lasting.

4. **Freedom of Expression:** While it is crucial to protect individuals from defamation, it is equally important to uphold the freedom of the press. Media serves as a watchdog and is essential for the functioning of a democracy.

The interplay between media trials and defamation has been highlighted in several high-profile cases around the world.

INDIAN CASES

1. **The Aarushi Talwar Murder Case (2008):** The double murder of 13-year-old Aarushi Talwar and her family's domestic worker Hemraj Banjade became a sensational case in India, with the media conducting a parallel investigation alongside the police. The case received widespread media attention, often featuring speculative and unverified reports.

Impact on Fair Trial: The media's portrayal of Aarushi's parents, Rajesh and Nupur Talwar, who were accused of the murders, was largely negative. The sensational coverage raised significant concerns about the potential for prejudicing the judicial process and violating the accused's right to a fair trial.

Defamation Concerns: The Talwars faced significant damage to their personal and professional reputations due to the media's unsubstantiated allegations. The case highlighted the need for responsible journalism and the potential for defamation in media trials.

2. **The Sushant Singh Rajput Case (2020):** The death of Bollywood actor Sushant Singh Rajput led to a media frenzy in India, with various news channels conducting their own investigations and speculating on the causes of his death. The media coverage was criticized for being intrusive and sensationalist.

Impact on Fair Trial: The extensive media coverage influenced public opinion and potentially the investigation process. Several individuals connected to the case, including Rajput's girlfriend Rhea Chakraborty, faced intense scrutiny and public vilification.

Defamation Concerns: Chakraborty filed defamation suits against some media outlets and social media users for spreading false information and damaging her reputation. The case underscored the risks of media trials and the need for ethical journalism.

CONCLUSION

The rise of social media has transformed how we communicate, express opinions, and access information. However, this digital freedom has also blurred the boundaries between honest Expression and defamatory content. The viral nature of social media means that even a single post can damage a person's reputation within minutes, often without due verification or understanding of the consequences. Defamation in this context is not only a legal issue but also a moral and social one, impacting individuals, institutions, and society at large.

While the legal system in India provides remedies through civil and criminal defamation laws, enforcement remains challenging in the fast-paced digital world. The anonymous and borderless nature of social media often allows individuals to spread false or harmful content with little accountability. This highlights the need for a more proactive and multilayered approach.

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