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# **DEFAMATION ON SOCIAL MEDIA**

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## **ABSTRACT**

The 21st Century has ushered in a new era of change, where individuals have the unprecedented ability to voice their opinions on social platforms through the written word, regardless of potential harm. This age is characterized by the dominance of media, often hailed as the fourth pillar of democracy. However, the rise of social media has expanded the reach of media, enabling anyone to disseminate content to a global audience. Usually, politicians widely use hate speech or words to gain popularity and propagate their parties through social media sites. While social media has its pros, such as creating change in our lives, it also has cons, such as disrupting the reputation of individuals. Despite this freedom, defamatory statements made on social media are legally regarded as libel, amplifying the complexity of legal recourse. The proliferation of likes, clicks, comments, and shares further complicates matters, as each action constitutes an active statement on the web. Consequently, communication on social platforms has the potential to swiftly reach millions of individuals, courtesy of mass dissemination channels.

**KEYWORDS:-** Defamation, Social Media Defamation, Cyber Defamation, Libel

## **INTRODUCTION**

Social media serves as a means by which individuals maintain communication and engage with friends, family, and various communities. The collection of diverse websites and applications, including Facebook, Instagram, and Twitter, among others, collectively encompasses social media. These platforms facilitate global interaction and communication, community-oriented input, content sharing, collaborative efforts, and numerous other functions. The media plays a significant role in the dissemination of information, as it directly impacts the audience. Its autonomy derives from the provisions outlined in Article 19 (1)(a), which stipulate that

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limitations on freedom of speech and expression should be reasonable<sup>3</sup>. the entitlement to freedom of speech and expression is considered a fundamental right that is ideally present from birth, yet is only truly available to a limited number of people on a global scale. The role of speaking out and expressing oneself plays a crucial role in granting individuals the independence to either participate in or refrain from specific actions that resonate with their goals. This mechanism plays a significant part in advancing a country, aiding its transition from an inadequate democratic system to one marked by effectiveness and accountability. Nearly all countries worldwide have acknowledged this as a basic right of each person. Article 19, Freedom of Speech and expression, was included in both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The UDHR stipulates that every individual possesses the entitlement to freedom of opinion and expression, encompassing the freedom to uphold opinions without interference and to access, receive, and communicate information and ideas through any means, irrespective of boundaries.

The ICCPR asserts that every person is entitled to freedom of expression, which comprises the liberty to access, receive, and communicate information and ideas of all types, without constraints on frontiers, whether verbally, in writing, or in printed form, through art, or via any other preferred media.

### **MEANING OF DEFAMATION**

Defamation, in its broad sense, refers to an erroneous assertion portrayed as truth that results in harm or impairment to an individual's character. It entails the act of tarnishing an individual's standing in the presence of an unrelated party. The act of defamation can be categorized into two primary forms: libel, which pertains to written defamation, and slander, also referred to as verbal defamation.

Defamation encompasses both a tortious act and a criminal offense. By the authoritative Black's Law Dictionary, defamation is defined as "the transgression of impugning an individual's reputation, renown, or standing."

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<sup>3</sup> Article 19(2) of Constitution of India.

Defamation is characterized as a fabricated dissemination designed to tarnish an individual's reputation, or "an assault on another's character, encompassing notions of slander and defamation through falsehoods, leading to harm to one's reputation by such methods." Perhaps the most widely accepted definition, nevertheless, is put forth by Prosser.

“Defamation constitutes an encroachment upon the concern for reputation and honorable standing, through the transmission of information to third parties that serves to lower the regard in which the plaintiff is held or to provoke unfavorable sentiments or judgments against them<sup>4</sup>”.

### ONLINE DEFAMATION

Online defamation, also known as cyber defamation, refers to the act of falsely accusing someone of something online. The internet and social media platforms, such as Facebook, Instagram, and LinkedIn, provide individuals with the means to post written words or comments, which can be considered libelous. It is undeniable that social media and the internet have tremendous benefits for individuals and society as a whole. They contribute to personal and societal development and progress. However, it is essential to recognize that, like any other phenomenon, they have both positive and negative aspects. In this context, it is important to acknowledge that social media and the internet can provide fertile ground for potentially defamatory statements. Many individuals have come to realize how effortlessly one can express their opinions online. Numerous intriguing websites unwittingly or deliberately host comments that can be construed as defamatory. Examples include public comments on media platforms like Facebook and Instagram, letters to the editor published in newspapers, and remarks made in WhatsApp chat groups. While certain websites may screen comments for offensive or illegal content, this screening process is not designed to identify offensive material in every comment. Consequently, numerous defamatory statements manage to circulate via the internet.

Defamation legislations encompass digital publications, and a mounting multitude of individuals and enterprises confront substantial economic repercussions as a result of disseminating defamatory content on the internet.

Defamation law serves as a safeguard against the dissemination of false or harmful remarks that have the potential to detrimentally affect an individual's personal or professional image.

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<sup>4</sup> Newell, Libel and Slander 32 (2d ed. 1898).

The primary objective of defamation law is to strike a balance between allowing the unfettered circulation of ideas, opinions, and information, while simultaneously safeguarding the reputation of both individuals and enterprises. Commencing a defamation lawsuit entails taking legal action against an individual or business entity for the damage caused to one's reputation as a result of the dissemination or publication of certain statements or materials.

In India there is about 120 million internet users and Facebook says about a fifth of this number are active users. Twitter claims that about 4 million people use its service at least once a month<sup>5</sup>. Defamation encompasses the act of disseminating an article or newsletter, uploading content onto a website, or even composing an electronic mail. Given the ubiquity of social media and electronic mail, the remarks and submissions made by individuals possess the capacity to attain instantaneous and widespread popularity. What may have initially materialized as a private conversation between two individuals can promptly proliferate to an audience significantly larger than originally intended, occasionally giving rise to profound ramifications.

### **WHO CAN BE SUE FOR DEFAMATION?**

Plaintiffs who have experienced online defamation frequently pursue legal action against their Internet Service Provider or the platforms responsible for hosting the defamatory content, such as Facebook and Twitter. This is because these companies possess substantial financial resources that enable them to bear the financial burden of compensating the plaintiff for damages incurred as a result of the defamation cases. In 1955, the Communication Decency Act was enacted by Congress to safeguard Internet Service Providers (ISPs) and various social media networking sites against claims of defamation. Individuals with a strong belief that they have been defamed online should initiate legal proceedings against the individual who made the defamatory statement. During this process, the plaintiff is required to file a lawsuit in a State court that holds jurisdiction over the matter. The determination of the appropriate State court should be made following a thorough evaluation of jurisdiction by a qualified attorney.

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<sup>5</sup> [https://economictimes.indiatimes.com/tech/internet/social-media-defamation-rules-people-have-to-be-careful-about-what-they-post-on-social-media-websites/articleshow/10686349.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/tech/internet/social-media-defamation-rules-people-have-to-be-careful-about-what-they-post-on-social-media-websites/articleshow/10686349.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

### **WHO CAN BE LIABLE FOR DEFAMATION**

It is crucial to bear in mind that while it may be impossible to defame a deceased individual and legislation may, depending on one's place of residence, prohibit or restrict a corporation from pursuing a defamation lawsuit, it is imperative to note that each individual who partakes in the act of defamation may be held accountable for their actions. Consequently, should one receive a defamatory email maligning the local plumber who failed to fulfill their obligations or the irrational parent from their child's educational institution and subsequently choose to disseminate this information widely, they may find themselves facing legal repercussions akin to those of the original author of the email.

### **RELATION BETWEEN ARTICLE 21 AND ARTICLE 19(1) WITH RESPECT TO DEFAMATION**

It is of utmost significance to maintain equilibrium between Article 21 and Article 19(1). Both articles play a crucial role in safeguarding an individual's reputation and freedom of speech and expression. These provisions enable individuals to articulate their opinions and ideas while also restraining those who may cause harm to their reputation. The Supreme Court has affirmed that the "Right to Reputation" is safeguarded under Article 21 of the Indian Constitution, which protects an individual's "life and personal liberty" from state intervention. This declaration was made by the Supreme Court in response to the dismissal of a petition filed by Subramanian Swami challenging the validity of Section 499 of IPC, 1860. The court further emphasized that Article 21 must not be exploited as a means to defame or malign an individual's reputation, as such actions pose a significant threat to the future of constitutional rights. Despite this, the court concluded that the right to freedom of speech under Article 19(1)(a) must be balanced against the right to reputation enshrined in Article 21. It is worth noting that the Supreme Court has historically displayed a somewhat contradictory approach towards freedom of speech and expression, treating it more as a nuisance rather than a fundamental right. This pattern is evident in its defamation law judgement, further perpetuating an unfortunate legacy.

### **SOCIAL MEDIA AND JURISDICTION**

Where did the article appear? The location of the publication is of significant importance due to the fact that the jurisdiction where the lawsuit was filed governs the establishment of defamatory claims. Each instance of defamation gives rise to an individual cause of action that is contingent upon the country in which the message was read or heard, irrespective of the

location of the server where it was stored. This phenomenon directly relates to social media and jurisdiction. Social media platforms have provided the potential for defamation claims to be sought out more frequently than traditional print media or radio broadcasts. One may begin by considering the reasons why pursuing a defamation claim in a specific forum may be intriguing. The court may be lauded for its impartiality and the perception that a fair trial could be more likely to be obtained there. It may be more persuasive to litigate against other individuals in a specific jurisdiction in order to clear one's name based on their status and influence, such as the jurisdiction in which they reside. This can be one of several jurisdictions where legal action is initiated against the international reputation of the victim. The laws in that particular jurisdiction may be more favorable for potential disputes, and the claimant desires to exploit this advantage.

In the case of defamation, the initial question that the Court may address is whether Kitts and Nevis is an appropriate forum in which to adjudicate the claim, based on the subject matter and the evidence put forth. Our court asserts jurisdiction as a prerogative of the citizens and entities involved within its jurisdiction. The test for determining the appropriate forum in cases of defamation resulting from defamatory posts or social media broadcasts is the same as that used in forum disputes arising from other contractual or tortious matters. The eastern Caribbean adheres to the principles established in *Spiliada Maritime Corporation and Cansulex Limited, The Spiliada*, which consider both the forum that appears prima facie to be more appropriate and the connecting factors that establish one forum as more suitable than another. Claimants must demonstrate that their defamation claims have genuine and material connections to the jurisdiction in question.

Protecting information, even when it contains defamatory material, does not automatically guarantee the disclosure of said information, as this could potentially expose individuals to harm. People still maintain the right to not be excessively troubled. In the case of "*Totalise Ltd v Motley Food Ltd*", the UK Court of Appeals stated: "First and foremost, it must be assessed whether the disclosure is justified by considering the rights, freedoms, or legitimate interests of the individual whose data is at stake." The publishers of Gentle for Defamation argue that "the reality is that such applications are almost always granted by the internet service provider or web host involved, who typically do not even appear (safely) in court and are aware that the costs of implementing the order will be borne by the applicant in each case) , but are content

to maintain a neutral stance and comply with any orders deemed appropriate by the court."

### **PROVISIONS REGARDING DEFAMATION**

Section 499 of the Indian Penal Code articulates that any individual who utters or communicates words, whether spoken or intended to be read, or employs signs or visible representations, with the purpose of making or disseminating an imputation about another person with the intent to cause harm, or with knowledge or reasonable belief that such imputation will inflict harm upon the reputation of said person, is considered to defame that individual, unless the cases specifically exempted are applicable.

Section 500 of the Indian Penal Code addresses the imposition of penalties. Any individual found to be liable under section 499 shall be subject to imprisonment for a duration of two years, or a fine, or both.

Section 469 of the Indian Penal Code pertains to forgery, wherein the creation of a false document or fraudulent account that tarnishes the reputation of an individual is deemed an offense. The punishment for this transgression can extend up to three years of imprisonment and a fine.

Section 66A of the Information Technology Act, 2000, which was invalidated by the Supreme Court in 2015, encompassed the regulation of punishment for the transmission of 'offensive' messages via a computer, mobile device, or tablet. As the government had not elucidated its stance on the term 'offensive', it began exploiting this provision as a means to suppress freedom of speech. In 2015, the Supreme Court nullified the entire section.

### **IMPORTANT CASE LAWS**

#### **SHREYA SINGHAL VS. UNION OF INDIA<sup>6</sup>**

Section 66A of the Information Technology Act, 2000 is invalidated in its entirety due to its infringement upon Article 19(1)(a) and its lack of preservation under Article 19(2). Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009 possess constitutional validity. Additionally, Section 79 is deemed valid, contingent upon the reading down of Section 79(3)(b) and so forth.

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<sup>6</sup> AIR 2015 SC 1523

**Kalandi Charan Lenka vs. State of Odisha<sup>7</sup>**

In the present case, the petitioner was subjected to persistent harassment, and a false profile was established to disseminate indecent messages to the acquaintances of the victim by the wrongdoer. Furthermore, an altered image displaying nudity was displayed on the premises of the residence where the victim resided. The court deemed the offender responsible for the commission of the offense.

**Rajiv Dinesh Gadkari through P.A. Depamala Gadkari vs. Smt. Nilangi Rajiv Gadkari<sup>8</sup>**

In this instance, the respondent filed a lawsuit against her spouse for persistently harassing her by posting offensive photos and defaming her after obtaining a divorce letter from him. The wife has requested maintenance of Rs. 75,000 per month, and the offence has already been reported.

In the Cyber Defamation case of *SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra<sup>9</sup>*, the High Court of Delhi issued an ex-parte ad interim injunction prohibiting the defendant from defaming the Plaintiff in both the physical and virtual domains. The case involved a disgruntled employee who sent vulgar, abusive, and defamatory emails to the company's subsidiaries and other employers worldwide, with the intention of slandering the company and its managing director.

A compulsory and prohibitory injunction was requested by the petitioner in *M/S Spentex Industries Ltd. & Anr. vs. Pulak Chowdhary<sup>10</sup>* in addition to recovering Rs. 50,00,000 as damages for reputational and commercial harm caused by the defendant's defamatory emails to the World Bank, the International Finance Corporation, the President of the Republic of Uzbekistan, and UZEREPORT (a news website portal and publisher of monthly news reports). In *Swami Ramdev & Anr. v. Facebook Inc. & Ors.<sup>11</sup>*, Justice Pratibha Singh issued an order removing all online defamatory content about yoga guru Baba Ramdev, without regard to territorial boundaries. The order stated that if the content was uploaded from India or was found on an Indian computer resource, Indian courts should have the authority to issue worldwide injunctions.

On the 30th of April, 2020, the Supreme Court of Victoria reached a verdict in the case of

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<sup>7</sup> BLAPL No. 7596 OF 2016

<sup>8</sup> AIR 2009, SC Family Court Appeal no.67

<sup>9</sup> Suit No. 1279/2001 decided by Session court, Delhi

<sup>10</sup> Civil Suit No. 219/18 CNR No. DLSW010034832018

<sup>11</sup> Case No. 27/2019 decided by Delhi High court on 23 October 2019

*Defteros v Google LLC*<sup>12</sup>, in which it was determined that Google had committed defamation against former attorney George Defteros. The court ordered Google to compensate Mr. Defteros with a sum of \$40,000 in damages. This decision was made on the grounds that Google could be classified as a 'publisher', as its search engine displayed articles and images of Mr. Defteros that had originally been published by The Age newspaper in 2004. Furthermore, Her Honour Justice Richards concluded that the inclusion of hyperlinks within the search results constituted the act of publishing the webpage. Similarly, on the 12th of June, 2020, the District Court of Queensland awarded a veterinarian with damages totaling over \$25,000 in the case of *Asbog Veterinary Services Pty Ltd & Anor v Barlow*<sup>13</sup>. This ruling was made following defamatory online reviews and comments posted on social media by a former client, regarding the cost of treatment for her pet beagle. The original bill presented by the Albion vet surgery amounted to \$427.

### CONCLUSION

The interconnection between the act of defaming and the fundamental right of free expression is a multifaceted matter. On one hand, the legislation pertaining to defamation has been formulated with the intention of safeguarding an individual's standing against the dissemination of false and detrimental assertions. Conversely, the right to freely express one's thoughts and sentiments is indispensable for the functioning of a democratic society. The task of striking a harmonious balance between these two conflicting interests is no facile feat. Nevertheless, it is crucial to acknowledge that both defamation laws and the freedom of speech and expression serve a significant purpose within society. The former affords protection to individuals who are unjustly accused of misconduct, whilst also deterring individuals from propagating untruths that are detrimental to others. This plays a pivotal role in upholding public trust in institutions. The latter, freedom of speech and expression, is a crucial tenet within a democratic society. It permits individuals to articulate their perspectives and opinions, even if these viewpoints are unpopular or contentious. This facet is indispensable for fostering public discourse and ensuring the government is held accountable.

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<sup>12</sup> [2020] VSC 219

<sup>13</sup> [2020] QDC 112