



DEFAMATION UNDER THE IPC WITH SPECIAL REFERENCE TO CYBER DEFAMATION

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ABSTRACT:

Purpose: The purpose of this research paper is to understand Defamation as per the scope of IPC, elucidate its types, understand the stance of Cyber/Online defamation in India.

Research Methodology: This paper only provides a preliminary understanding concerning Defamation in the ambit of IPC. Only secondary methods of research and only Scopus Indexed papers are utilized for this study.

Research Findings: The Internet is a significant source of defamation because to the massive amount of information it contains and the ease with which it may be transferred. After conducting study on the aforementioned subject, it can be concluded that India's laws at this time do not adequately address situations of online libel. Additionally, defamation rules must to be adaptable enough to be used in various media. The defamation rules of the modern period make it nearly impossible to apply the reasoning behind instances from the 18th and 19th centuries to problems that arise on the Internet today.

Originality/Value: This paper not only aims to define Defamation and its types, but also compare it with English Law, understand the exceptions to it and attempt to understand how cyber or online defamation falls into the ambit of IPC.

Research Question: What is defamation as per the Indian Penal Code and how is cyber defamation in the ambit of the IPC.

INTRODUCTION:

India's primary penal code is the Indian Penal Code (IPC), which dates back to 1860. It is a thorough code that aims to cover all important areas of criminal law. On the advice of the first law commission of India, which was founded in 1834 and presided over by Lord Macaulay, the code was written in 1860. In the year 1862, it became operative. Since then, the Code has undergone numerous revisions and now includes more penal laws. Defamation is covered in Section 499 of the Indian Penal Code. Any individual who, with the intent to damage that person's reputation, creates or publishes any imputation on another person through spoken or written words, signs, or visual gestures. The person making the imputation must know or have a

good reason to think that it will harm the person's reputation.¹Defamation is also a procedure for check and balance on the Right to freedom of speech and expression ²

RESEARCH OBJECTIVES:

- 1) To elucidate the definition of defamation as per the IPC and its types
- 2) To provide for exemptions under defamation
- 3) To discuss online or cyber defamation and how it is dealt with in India

RESEARCH QUESTIONS:

- 1) What is defamation according to the Indian Penal Code?
- 2) What scenarios are exempted from being considered as defamation?
- 3) What is cyber defamation and how is it dealt with in India?

REVIEW OF LITERATURE:

- 1) Chhetri, S. (2021). In “The Defamation in the Internet Age: Cyber Defamation. *Issue 1 Int'l JL Mgmt. & Human.*, 4, 1981.” The author defines defamation and its uses in 21st century and opined that in the modern world defamation acts as a ground to curb free speech. The paper aimed to find out the scope of defamation in India, its jurisdictions, the laws pertaining to it and the issues that arise while looking at cyber defamation
- 2) Saxena, D., & Shadwal, P. (2016). In “Criminal Defamation and its Constitutional Validity: Case Study of Judicial Interpretations. *Amity Journal of Media & Communications Studies (AJMCS)*, 5(3).” focused on two aspects – sentiment and topic. They analyzed the case of Net Neutrality. In the case of a campaign like Net Neutrality, they could see a difference in the sentiment and clusters. People changed their stance with time. Eminent personalities influencing the trends, could be seen. This was generalized to campaigns with gain pace on twitter ranging from elections to brand campaigns to those on social issues.
- 3) Dubey, V. (2020). In “Understanding the Law of Defamation. *Jus Corpus LJ*, 1, 395.” Define defamation and the purpose it serves to society, He describes that everyone has a reputation in society which leads other people to perceive them in a positive or negative light, in a society one must have good reputation to survive and hence defamation to reputation is a crucial harm to a person and steps must be taken to correct any such allegation from happening.

DEFAMATION AND INDIAN PENAL CODE

IPC defines defamation as “Any person who makes or publishes any false imputation or allegation relating to any person, by words either spoken or written or by signs or visible representations, is said to defame that person. However, it must be done to harm the reputation of such a person against whom the imputation has been made.”³ The section further states that any such imputation or allegation made to a person who is deceased would amount to defamation if it would have harmed his reputation when he was alive or would harm the reputation of his family members. Any allegations made relating to companies or associations etc also constitute to defamation.

For Instance, X tells Y that a restaurant owned by Z serves spoilt food and intends or convinces Y to not go to Zs restaurant constitutes as defamation.

Defamation can be elucidated with the case law: D.P. Choudhary v. Kumari Manjulata where it was published in a newspaper that a 17-year-old girl, Manjulata eloped with a boy who lived close by. The family was well-known and due to this article, her reputation got tarnished along with her family and they faced disgrace.

¹ D.P Choudhary v Kumari Manjulata

² Article 19 of the Constitution Of India

³ Section 499 of The Indian Penal Code

However, it was found that this news was completely fake and irresponsible published and the court ruled that a sum of Rs. 10,000 must be provided to the defendant as it amounted to defamation.⁴

DISTINCTION BETWEEN THE ENGLISH AND THE INDIAN LAW:

Defamation is categorized to be occurred in two forms, Libel and Slander. Wherein Libel is the kind of defamation that occurs through a permanent form such as writing, print, pictures etc, whereas Slander takes place in unwritten forms such as spoken words, gestures etc.⁵

In the ambit of the Indian law, both slander and libel are recognized as criminal offences under the section 499 of the IPC, and in law of torts libel is actionable per se and slander is actionable.

However, in the English Law, a distinction is made between both. Under criminal law only libel is an offence and not slander and in civil law both are offences provided that there is proof of Slander.

ESSENTIALS:

To count as defamation or defamatory statements under the IPC, few conditions must be met or be applied to the situation for the incident to be counted as defamation such as,

- 1) **Reputation:** An imputation or allegation must be made to harm the person against whom it is made, this can be done through spoken or written words, signs, visible representations etc but to sue any person it is necessary to establish that real damage or harm has occurred to the reputation of the person. Only speaking or writing the words, picturing or gesturing does not amount to defamation until the reputation of the person has been harmed.
For instance, A person telling another person that a particular store sells bad or low-quality goods and people should not shop there, results in the reputation of the shop being tarnished and leads to reduction of the inflow of customers to the shop which causes it harm.
- 2) **Publishing:** Section 501 of the IPC talks about printing of defamatory things and 502 talks about distribution of such however the essential refers to any damage that happens when the words have reached to a third party, publication here means that the third party has read, heard, understood or seen any defamatory words. If the third party has not done such then there is no grounds for defamation.

There are several circumstances where although the essentials of defamation have been fulfilled however these statements do not amount to defamation, along with the definition section 499 also talks about these circumstances which are essentially exceptions to defamation.

Public Good: If an imputation or allegation is made in relation to a person and is made for the good of the public it does not amount to defamation. The information should be true and beneficial to the public.

Public servants: Any opinion expressed in good faith relating to fair criticism of a public servant for discharging their functions it does not amount to defamation. For instance, criticising for not doing a good job in their area/office.

Public conduct: In good faith if a person expresses their views and opinions on conduct of another person who discharges any kind of public functions is not liable for defamation. For example, meetings which require public support or applying for a petition against some doing of the government.

Publication of reports of proceedings of courts: Publication of authentic court reports of proceedings of any court of justice does not amount to defamation.

Commenting on cases: Publishing information in good faith regarding merits of a case or conduct of a person who was a witness in such does not amount to defamation.

⁴ AIR 1997 Raj 170

⁵ Jill Elizabeth. Libel and Slander. *Pepp. L. Rev.*, 22, 1765. (1994)

Literary criticism: If any person in good faith expresses his opinion in regards to the performance or character of the author, which the author has submitted to the judgment of the public or viewers, then it does not amount to defamation.

Censure by one in authority: If any person passes censure on the conduct of any other person, then it will not amount to defamation, provided that the person applying censure should have the lawful authority or any authority arising out of a valid contract, over the person on whose matters the censure is applied.

Complaint to authority: If any person who has lawful authority over the other person, accuses him then it will not amount to defamation.⁶

Imputation for protection of own interests: If any accusations or imputations are made on another person in order to protect the interests of oneself, then it is not defamation. For instance, an employee A, who has been told to make a monthly report on the conduct of the employee of that sector, writes about the bad conduct of one employee B then, he will fall under this exception.

Caution in Good faith: If any caution is made for the good of that person or for the good of the public then it will not amount to defamation.

The law considers husband and wife as one and any private communication between them is privileged hence would not amount to defamation.⁷ For instance, in the case of T.J Ponnen v. M.C Verghese⁸ the husband wrote a letter to his wife containing defamatory matter. The court held that this was under Section 122 of the Indian Evidence Act 1872.

CYBER DEFAMATION IN INDIA:

Cyber defamation essentially applies to any imputation or allegation made to harm a person's reputation in the ambit of the cyber world or cyberspace, '**Cyber Defamation**' basically means publishing of false statement about an individual in cyberspace that can injure or demean the reputation of that individual.

The widespread usage of social media sparked a revolution not just in India but also in other parts of the world. People now have a platform to communicate their opinions, thoughts, and feelings through a variety of publications thanks to the Internet's phenomenal expansion. However, because it is so simple to access and publish anything online, there are some hazards because shady Internet users could potentially abuse these digital platforms in the name of free speech and expression. As a result, there have been several instances of "Cyber Defamation".

Liability for cyber defamation is covered under the IPC under the sections: 499, 500 which deal with defamation but is also covered under section 469 which deals with forgery, which implies anyone creating a fake account or document which harms the reputation of a person, punishments extend up to 3 years and fine⁹. Section 503 also deals with the offence of criminal intimidation by use of electronic means to damage a person's reputation. Cyber defamation was also dealt with under 66A, IT Act, 2000 but the law was struck down by the supreme court in 2015 since it was used to curb freedom of speech as it had not clarified its stance for what is considered "offensive". Cyber Defamation complaints are lodged to a branch of the Crime Investigation Department (CID) which is called Cyber Crime Investigation Cell. However, there are some exceptions to this cyber defamation which are online chats, mails, record printed on paper or copied.

In India the liability of defamation is borne by 2 entities:

- The writer: the person who originally wrote the content and published it.

⁶ 1963 AIR 1317, 1963 SCR Supl. (1) 479 Kanwal Lal v. the State of Punjab

⁷ Section 122 of the Indian Evidence Act, 1872

⁸ 970 AIR 1876, 1969 SCR (2) 692

⁹ Kalandi Charan Lenka vs State of Odisha on 16 January, 2017

- The service providers: as per Google India Private Ltd V Visakha Industries and another¹⁰ the ISP or bulletin board service providers who authorized such content are held liable. This is due to The Information and Technology Act of 2000's Rules of 2011 which have sparked discussion about the intermediaries' capacity to serve as more than just a conduit and an entity that is accountable for the information. The amended guidelines' Section 3 specifically states that intermediaries must exercise due diligence and that failure to do so may result in criminal prosecution. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021's new IT regulations, provide the aggrieved party with a three-tiered grievance resolution framework as of 2021.

In addition, regarding the employer's liability issue:

For instance, in SMC L.td. V. Jogesh Kwatra, the employee sent disparaging messages to the employers and other corporate entities, and the Delhi High Court has ordered them to stop communicating with the plaintiff in any way. As the first Indian court to exercise jurisdiction over a case of cyber-defamation and issue an ex-parte injunction preventing the defendant from defaming the plaintiff by forbidding him from sending any disparaging, abusive, or obscene emails to the plaintiff, this Delhi High Court order was regarded as being of great significance. Additionally, because the defendant was not acting in the course of his employment and was off having his own fun, the employer was not held vicariously accountable.

DISCUSSIONS:

It is advised to have an independent cyber-criminal investigation cell that reports to the Central Bureau of Investigation. This cell must be established independently so that it reports to the central government and is dedicated to investigating cybercrimes, such as cyber defamation. In order to help them deal with criminals quickly, every district in every region of India should have a cyber cell police station led by an investigation officer who is knowledgeable on cyber laws. The government should start awareness campaigns to educate the public about cybercrimes and the safety steps they should take.

A strong role for the judiciary is possible if special cyber courts are established and judges with specialized technical knowledge may preside over these courts. Compared to other countries India over the last two decades tremendously increased emphasis on cyber security as an essential policy concern. The UK has relatively developed processes, systems and also cyber security has been a policy concern for a more extended period than in India. The cyber security framework in the UK is more comprehensive than in India. However, India and the UK both are not able to apply pre-existing laws to address new situations in Cyberspace.

CONCLUSION:

The Internet is a significant source of defamation because to the massive amount of information it contains and the ease with which it may be transferred. After conducting study on the aforementioned subject, it can be concluded that India's laws at this time do not adequately address situations of online libel. Additionally, defamation rules must be adaptable enough to be used in various media. The defamation rules of the modern period make it nearly impossible to apply the reasoning behind instances from the 18th and 19th centuries to problems that arise on the Internet today.

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¹⁰ AIR 2020 SC 350

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