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REVIEW ARTICLE

DEFAMATION IN CYBERSPACE: AN ANALYSIS

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ABSTRACT

Defamation in CyberSpace is an intentional act to injure the reputation of a person in the eyes of right thinking persons in the society. The emergence of the internet towards the end of the 20th century has brought in the revolution in the technological sector. The internet has the unique potential to promote free expression and access to information. Compared to all previous media, the Internet is defined by its global and decentralized nature, low barriers to entry, openness, and relative affordability. These developments led the people across the world to communicate with each other easily and at the same time became the platform to defame the reputation of others. The Cyber Space provides new means by which people can engage in defamation, whether via an e-mail message, a message posted to a newsgroup or bulletin board, or an available file via file transport protocol or through social networking sites such as Facebook, Twitter etc. The author made an attempt to analyze the definition, concept of defamation in Cyberspace and Constituents of defamation in CyberSpace.

INTRODUCTION

No one is bullet proof in the digital world

The Internet and Information Technology has played a very important role in our life. Today the physical boundaries are disappearing and due to information and communication technology revolution, the entire world has been converted into a global village. More importantly, the way people live and work is changing like never before. The new technology is proving to be the main hub of this change which is advantageous to almost everybody in his life. Today there is hardly any area where Information Communication is not used. Internet¹ operates 24 hours a day and 7 days a week. It is a visa less traveler and sleepless worker.² Thus we can access any information from the Internet at any time and becoming the most efficient source of information. It has made e-communication and e-publication faster, cheaper, and speedier.³

Modern times call for modern crimes: Therefore access to information on the internet is a cup of tea or a piece of cake now. It has made easier to defame a person's or a company's reputation or a brand image online at the click of a mouse. Thus there is a possibility of sending, posting, publishing defamatory material or statements on the internet. This has led to the growing cases of cyber defamation around the world.⁴ The power of new Cyber Defamation to destroy a person's reputation is as powerful as YouTube but as old as Civilization. Cyber defamation is an intentional act to injure the reputation of a person in the eyes of right thinking persons in the society.⁵ Cyber defamation is an untrue and unwarranted comment about the reputation of a person.⁶ It is a digital attack made available by making a false publications and statements with the help of computer and internet. More or less Cyber Defamation is a character assassination of an individual, officials, celebrities, politicians and companies etc. more often the targeted groups are the well known persons like celebrities and politicians.⁷

⁴ The sticky nature of the Internet can spread unwanted information even when no malicious force is at work.

⁵ A major issue in the blog context is defamation. Although definitions vary from state to state, generally speaking a defamatory statement is a false and disparaging statement about another that causes injury to reputation (or in some cases causes emotional distress). It is a communication that exposes people to hatred, ridicule (more than a simple joke or satire/exaggeration) or contempt; lowers them in the esteem of others; causes them to be shunned or injures them in their business or calling.

⁶ Dr. C. Rajashekhar and Ms. Nikhila S. Tigadi, KLE Law Journal, titled: Dynamics of Cyber Defamation in India: An overview, 2015 Issue, pp-16

⁷ Richard Torrenzano and Mark Davis, Digital Assassination, first edition, p-2 to

¹ It is easy to imagine that the internet, though not an organism and not sentient, acts as if it had a malevolent wil of its own. The fact is, it is humans who bring all the will to do harm. Someone will always use technology to keep whatever can be kept. It is hard to imagine any law or technology that could make the Internet forget.

² Everywhere we go, everyone has a camera, the Internet is the new camera of the twenty-first century that it is always on.

³ Dr. Jyoti Rattan, Cyber Laws and Information Technology, eighth edition (2020), p-26

It is not enough to watch what we say; we have to be careful what we read: Cyber Defamation is a Word War between the two individuals which is intentional and willful act who wishes to harm on the reputation through the internet. It is an intentional insult or damage to reputation and which are derogatory in nature. The result is multiple slices and stabs leaving a permanent, searchable internet record that continues to harm brand, fan base, business or reputation among friends, customers, investors, celebrities or other media on 24/7 basis.⁸ Cyber defamation is an intentional infringement of another person's right to his reputation and good name. The question as to what type of comments,⁹ words and publication would constitute cyber defamation varies from society to society with different perception. The law relating to cyber defamation also varies from country to country. Unknown people use the internet for unknown reasons to cause and damage the brands, reputation, goodwill and good name without the fear of Criminal Charges.

Defences to Defamation: It is legal to make fair comments and publications. Defences to a cyber defamation claim include truth, the fair reports privilege. Truth is a complete defense and it is usually sufficient if there is substantial truth or the gist is a curate, even if minor details are off.¹⁰ The bottom line is that people who use the internet must be aware that their opinion, information, allegation, infringement, damage or speech vulnerable to the subsequent punishment of a cyber defamation suit.¹¹ It is used to be the case that opinion was virtually completely protected from being the basis for liability and words like "I think" or "I believe" do not necessarily assure protection for what follows. A statement may be actionable to the extent it implies a false assertion of fact. Nevertheless, statements may be protected if they are truly opinion and not capable of being proven either true or false.¹²

Mediums of Cyber Defamation

Email is the fastest communication around the world: Some of the mediums through which cyber defamation is committed are social media, electronic mailing list,¹³ World Wide Web¹⁴ and email. E-mail is a remarkably quick and easy to use method of correspondence. It has closer resemblance to spoken conversation rather than written interaction. Psychologically, electronic interaction combines a sort of deceptive distance with a kind of equally deceptive intimacy. There is a tendency to make inappropriate statements. Hence, email senders are dangerously prone to making defamatory statements.¹⁵ In the recent years social media platform is chosen enormously. There is no denying the power of social media nowadays.

¹¹

⁸ Once was on the internet it remain on the internet.

⁹ Qualifying the language (with less than absolute words like may) may reduce liability risks somewhat. Should anyone determine that a mistake was made and a false derogatory statement was posted on our blog, a prompt correction/clarification of prominence comparable to the original should help reduce potential damages. Plus, it furthers the goal of providing accurate information to our readers.

¹⁰ Once a plaintiff has made his or her case, the defendant in a libel suit can pursue several defenses. Had someone published a libel on the Internet, the simplest defense would be that the information was the truth

¹¹ Dr. Ashok K. Jain, Cyber Law (Information Technology Act), Second Edition, pp-99 to 110

¹² The plaintiff's evidence that the material in question is false is always one of the most difficult aspects of a defamation suit, regardless of media form. The internet might pose some special problems because of the ability to cut and paste images and words digitally.

¹³ Email is a common medium for committing cyber defamation. For example : A receives an e-mail concerning the foul practices of a competitor and forwards it with a few keystrokes to parties C and D who later send it to E and F. Only later is it discovered that the message is not true; subsequently the competitor discovers the re-publication and sues party.

¹⁴ The World Wide Web is the largest growing component of the Internet. It combines a user-friendly interface with freedom of articulation and information. This results in people who have no knowledge of the law of defamation writing defamatory statements without appreciating their potential liability.

¹⁵ Nandan Kamath, Law relating to Computers, Internet and E-commerce, 4th edition, pp-224-225

That too Face book is the world largest countries where anyone can publish, post, infringe, harm and damage the reputation of brand individuals. Face book and Twitter attracts the millions of viewers online and their reputation is assassinated within a fraction of seconds even though the original publication, image, statements, allegations and videos deleted or blocked immediately. Once was on the internet it remains forever.

Cyber Defamation v/s Traditional Defamation: One main difference between cyber defamation and traditional defamation is that the identity of the publisher. On the internet the publisher could be virtually anybody anywhere around the world. On the other hand, comments made in a newspaper or magazine have a more limited readership and are more likely to be forgotten in a few days.¹⁶ There are a plethora of issues related to cyber defamation. These include questions of jurisdiction and also questions relating to lack of legal awareness amongst people using the Internet. The most important issue relates to the question of whether writings on the Internet amount to "publication" or not. To consider this question, it is essential to examine the distinct sites where defamation may occur on the Internet.¹⁷

Constituents of Defamation

Defaming a person on the Internet is easy even when defamation may not intended.

Defamation flows from publication (or communication) of information. The constituents of defamation are:

- Publication of defamatory statement
- The statement must make reference to the Plaintiff.
- The statement is communicated to third party.
- The statement must reach the Plaintiff.
- The statement causes actual or presumed damage to the Plaintiff.

Identity Theft¹⁸

You cannot sue those who you cannot find: It is very easy to find out the reasons and causes behind the cyber defamation. Moreover behind every case of a cyber defamation there is malice, desire, envy, greed, money and harm. Even it is easier to find out the computers, IP address, Face book, Twitter accounts and Internet Service Providers.¹⁹ But often it is highly difficult to trace individuals behind the cyber defamation. While tracing computers is possible it is less easy to trace users.²⁰ So if a defamer has used a public computer and an email with false registration details it can be difficult to identify them. If the defamer is located abroad the plaintiff would have the very expensive task of litigating in a foreign country which may have very different laws regarding cyber defamation.²¹

Even the exonerated pay a reputational price: In India both civil and criminal remedies are available in case of ordinary defamation. The Indian Penal Code 1860 provides for criminal liability and civil actions lie under tort. The remedy for Cyber Defamation lies under the Information Technology Act 2000. Though the Information Technology Act 2000 does not specifically speak about the Cyber Defamation but the provisions of the Act is attracted to trace out the

¹⁶ See supra note 10

¹⁷ Ibid

¹⁸ Unknown persons distribute rumors with unprecedented precision

¹⁹ An Evil Clone can be a wholly imaginary person and yet draw you to ruin.

²⁰ Comments made on the internet can be instantly and indefinitely accessible to millions of people around the world. Even if the original site where the comment was posted has disappeared the comments may remain cached in a search engine or have been repeated on other websites or blogs.

²¹ Ibid

jurisdiction and the liability of Internet Service Providers, Intermediaries and the publisher is concern.²²

Conclusion

No country has the authority over the Internet. No country can control the Internet. No country can dominate over the Internet. Similarly nobody can determine that these words and meaning constitutes cyber defamation. In fact local words in various languages, emoticons, symbols, cartoons are used while communicating on the social media or on the Internet. It is not all the publication or statements or the allegations that constitutes Cyber Defamation. The word which spoils and harms the reputation of a person constitutes Cyber Defamation online. Finally the words which are used in the publication whether it is defamatory or not has to be decided by the courts either on the social or community perspective.

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²² Section 75 of the Information Technology Act, 2000 extends the jurisdiction of Indian Courts to an offence or contravention committed outside India by any person irrespective of his nationality. Further, this law is to apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system, or computer network located in India. For example. Mr. Z, an Australian national, residing in the USA, gains unauthorized access to a computer located in China and deletes the information. Mr. Z has used a computer located in India to gain the unauthorized access. Mr. Z will be liable under the provisions of the Information Technology Act, 2000.