

EMERGING CHALLENGES IN CYBER DEFAMATION

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INTRODUCTION

The growth and development of technology have brought a drastic change in the world. The Internet has made many things far easier for all of us through various social networking sites. India has evolved into a digital nation. While digital working has aided individuals in digitizing their labour, it has also given a new face to crime, which now embraces a variety of methods to conduct crime throughout the world. One of the most hazardous weapons for attempting a crime on the internet is “Cyber-crime”. It tarnishes an individual’s reputation and draws attention to them on the internet, resulting in defamation. While virtual workplaces have been beneficial to businesses and sectors, the scope of this platform has grown in the last year as a result of the pandemic, which drove many conventional workplaces to adapt to the new normal of using the internet. Acts of Cyber defamation through virtual means have become the new normal, making it dangerous to continue working through such channels without the protection of the law.

Meaning of Cyber Crime

Cybercrime is a criminal activity where target to use of computer or network device. Lot of cybercrimes is committed by hackers who want to gain money through illegal method and makes the aggrieved person helpless by stealing their money & credentials. Cybercrime is undetectable at the initial stage or comes to the knowledge with the consequences. There is a lot of crime in cyber but one of the most prevalent crime in present scenario is defamation. Defamation has become a matter of concern. With the rise of so-called trends of sharing or posting information or pictures on certain social networking sites and commenting on them have increased the risk of ‘**Cyber Defamation**’ The term ‘**Cyber Defamation**’ basically means publishing of false statement about an individual in cyberspace that can injure or demean the reputation of that individual. In India, defamation can be contemplated as both civil and criminal offence, and thus legal remedies are provided to the victims by the Indian judiciary system.

Cyber Defamation has been a serious crime due to its emerging cases in the recent times due to the overall business through online mode. It includes *Widespread Coverage, Instantaneous Communication, Anonymity and Impersonation*. The defamation created through audio, video, written in the form of comments, publications through any electronic devices such as Mobiles, computer, laptops, tablets as mentioned under section 2(1) (ha) of the Information Technology Act, 2000 which states ‘*any cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any*

text, video, audio or image.' This type of defamation is quite rampant with comfort of identity to get spoofed and it quite disturbing for the institution, political parties. Cyber Defamation has been a serious crime due to its emerging cases in the recent times due to the overall business through online mode. It includes *Widespread Coverage, Instantaneous Communication, Anonymity and Impersonation*. The defamation created through audio, video, written in the form of comments, publications through any electronic devices such as Mobiles, computer, laptops, tablets as mentioned under section 2(1) (ha) of the Information Technology Act, 2000 which states '*any cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image.*' This type of defamation is quite rampant with comfort of identity to get spoofed and it quite disturbing for the institution, political parties.

LABILITIES AND LAWS FOR DEFAMATION

The term 'Intermediary' has been defined in section 2 (1) of the Information Technology Act, 2000 where if any particular electronic record, who makes or stores, receives, stores, or transmits that record or provides any service with respect to that record and includes Telecom Service Providers, Network Service Providers, Internet Service Providers, Web Hosting Service Providers, Search Engines, Online Payment Sites, Online Auction Sites, Online Market Places and Cyber Cafes shall be liable for the cyber defamation. Section 66A of IT Act, 2000 states if any person sends or receives any data through any electronic device which are defamatory and are grossly offensive along the menacing character which does not hold any truth but are responsible for creating annoyance or inconvenience and the origin of the sender is not easily detected then such messages shall be punishable with imprisonment for a term of three years along with fine. This act totally punishes the comments, obscene information and grant powers to the police for searching of any premises without any warrant. The latest amendment adds power to block or ban the sites containing any defamatory statements.

The Information Technology Act, 2000 lays emphasis on the internet to remove all the companies' content after 30 hours of the notifications by the Government of India.

Indian penal Code, 1860 section 499 of IPC which states that whoever publishes, intends to speak, sign and intends to harm the reputation of any person by passing defamatory statements are **liable** and **Slander** a defamatory statement spoken that means a verbal form of defamation. Section 500 of IPC where a person is punishable for the defamation for two years along with fine. Section 469 deals with forgery where if a person is found creating false documents which do not hold any true or legal value with the intention of harming the person are booked for 3 years imprisonment along with fine included. Section 503 IPC which deals with criminal intimidation through electronic mode in order to harm the dignity and peace by infringing with the reputation of any individual. In Article 19(2) of the Indian Constitution where defamation is defined as a ground on which constitutional limitation on the freedom of expression can be imposed without infringing the Article 19(1)(a) as only reasonable restrictions are imposed in order to reduce the unlawful use of expressions which harms the dignity of human reputation.

Admissible defamatory publications in court of law

As per sections 65A and 65B of the Indian Evidence Act-

- Any electronic record recorded, printed, copied on a paper or media in the form of a document shall be admissible by court.

- Mails and online chats, screenshots are also admissible in court

Elements Responsible

The burden of proof lies on the defendant. It is required to prove given elements to prove execution of defamation within cyber space to impose liability. The elements are as follows –publication of the defamatory statement.

- The plaintiff must prove the defamation refers to the plaintiff.
- The plaintiff must prove the statement is defamatory.
- Upon proving of publication there are presumptions to be made in favor of the plaintiff that the statement was false, that it was published with malice and that the damage has been suffered by him both in case of cyber defamation.

D.K. Malhotra, SMC Pneumatics (India) Pvt. Ltd. V. Jogesh Kwatra, 12th February, 2014

This was the first case on cyber defamation where a disgruntled employee sent defamatory, vulgar, abusive and derogatory mails to the company's fellow employers all over the world with the motive to defame company's name which also included managing director where the High Court of Delhi passed an interim injunction and granted ex-parte thus restraining the defendant for defaming the plaintiff in both the physical and cyber space.

Kalandi Charan Lenka v. State of Odisha, 16th January, 2017 In this case, the petitioner was the victim of online stalking from a fake account which led to spoofed identity. The case involved forwarding of obscene messages were set to the friends under the definition of cyber defamation. The High Court of Odisha held that the act of the accused falls under the offence of cyber crime and is liable for the defamation for the fake messages and obscene images and texts.

Rajiv Dinesh Gadkari through P.A. Depamala Gadkari v. Nilangi Rajiv Gadkari, 16th October, 2019 In this case, the respondent after receiving the divorce letter from her husband and he harassed her by uploading disturbing photos which were vulgar and abusive thus defamed her. It was concluded and damages of 75000/- per month has been claimed by the wife.

CONCLUSION

In the current 21st century there has been adaption of cyber technology which has led to the one touch accessible mode of working. Social media has led to the great influence in every one's life where anyone can write, post and read comments. This even leads to cyber defamation which have reaching effects on the various institutions with their legal personality. There has been various legal organization to deal with the crimes related to cyber crimes and with admissibility of electronic records as evidence things have been eased. The burden of proof always lies upon the defendant and thus there still has been amendments required for the speedy redressal for cybercrimes including defamation. The interaction with one tap with the help of internet makes way for everyone to send, receive and retrieve documents which also leads to defamation. There still hasn't been adequate approach towards defamation which applies to crime within the cyber space. The intense volume of information and the simple method of working which makes internet a very critical source of defamation which is electronic based which affects all kinds of commerce and business entities. The revolution due to globalization often comes with cons where trolls and hackers hinder with the personal space of various users with malicious intention to

defame the reputation of institutions and individual and the damages depends upon the amount of defamation done.

REFERENCES

1. *Indian Panel Code 1860 (Act -13)*
2. *Constitution of India*
3. *Information Technology Act 2000*
4. *D.K. Malhotra, SMC Pneumatics (India) Pvt. Ltd. V. Jogesh Kwatra, 12th February, 2014*
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6. *Rajiv Dinesh Gadkari through P.A. Depamala Gadkari v. Nilangi Rajiv Gadkari, 16th October, 2019*
7. *Indian Evidence Act*