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DEFAMATION IN THE DIGITAL AGE: EXPLORING CIVIL AND CRIMINAL LIABILITY FOR FAKE NEWS

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DEFAMATION IN THE DIGITAL AGE: EXPLORING CIVIL AND CRIMINAL LIABILITY FOR FAKE NEWS

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Abstract

The spread of fake news through online platforms has become a major challenge to the defamation laws across the globe. This research paper investigates the relationship between fake news and defamation and the civil and criminal liability in the Indian legal system. The paper reviews the sufficiency of the defamation law in the IPC and the IT Act in dealing with the issue of fake news and proposes improvements in the legislation.

The study initiates by highlighting the context surrounding fake news and its effects on people, society, and society at large. The paper then moves on to understand Indian laws of defamation by examining cases and judicial precedents that establish how this law applies in today's modern world of social media and technology. The law of defamation in other jurisdictions like US, UK, and Australia is also compared and contrasted.

In these regards, the research indicates that the challenges being faced by the Indian defamation laws lie in responding to fake news, especially in holding the liability for fake news reports, providing immediate redressal, and reconciling freedom of speech with the right to reputation. Therefore, the research recommends reforms for the improvement of the defamation laws of India. This research work is relevant to the study of the regulation of defamation law under the digital age and the imperative of effective reforms to tackle the complex issue of fake news. This research work is significant to the relevant stakeholders, including policymakers and those operating online digital platforms.

Keywords: *Defamation, Fake News, Digital Age, Civil Liability, Criminal Liability, Indian Law, Comparative Analysis*

Introduction

The digital revolution has completely changed the manner in which information is disseminated and accessed. The use of the internet and social media has become the main sources of information and news accessed by millions of people around the world. This has been followed by the rise of “fake news,” which has emerged as a major concern around the world. Fake news has the capacity to create harm at the individual and societal levels.

In this scenario, the existing defamation laws, which operate in tandem to ensure freedom of speech and reputation, are put to the test. Additionally, defamation, whether online or offline, has the potential to cause considerable damage to an individual or an organization. The internet has increased the reach of defamation, to the point where the effect of the defamation is beyond control. Being home to a massive number of online citizens, the Indian community remains extremely susceptible to the impact of fake news and defamation on social media platforms and online communities. The Indian defamation laws, regulated by IPC Sections 499-502 and the Information Technology Act (IT Act), have been struggling to deal with the complexities associated with fake news and online defamation.

This research paper delves into the impact of ‘fake news’ and defamation in the modern digital age, focusing on Indian jurisprudence regarding civil and criminal liability. The aim of this research is to evaluate the efficacy of defamation laws in combating ‘fake news’.

Defamation as a legal right is not new, and the judiciary has always been faced with the challenge of striking the right balance between the right to freedom of expression and the right to reputation. As stated by Justice Patanjali Shukla, “The law of defamation is the offspring of the law of tort, with the object of protecting the reputation of individuals”¹. However, the emergence of the digital world has introduced new paradigms to this challenge, with the aspect of fake news and online defamation being some of the threats to this right.

Freedom of speech and expression is guaranteed by the Indian Constitution under Article 19(1)(a), but this right is not unlimited and is qualified by reasonable restrictions, including the right to reputation and the prevention of defamation. This right is defined as a criminal offense under the Indian Penal Code and the offender is liable to imprisonment and fine². Online defamation is also punishable under the IT Act by both civil and criminal courts³.

The Supreme Court of India has pointed out the need to manage the right to free speech with the right to reputation in the decisions of the case R. Rajagopal vs. State of Tamil Nadu in the year 1994⁴ and in the case Subramanian Swamy vs. Union of India in the year 2016⁵. The recent spurt in the dissemination of fake news and defamation cast doubts on the present legal regime.

¹ Justice Patanjali Shukla, “Law of Defamation in India” (1999)

² Indian Penal Code, 1860, Sections 499-520

³ Information Technology Act, 2000, Sections 66A, 67, and 79

⁴ R. Rajagopal vs. State of Tamil Nadu, (1994) 6 SCC 632

⁵ Subramanian Swamy v. Union of India, (2016) 7 SCC 221

This research paper shall consist of five sections. The first section will launch the topic and will encompass the background and context of the topic. The second section will discuss the law of defamation in India, and it shall focus on the precedents and cases that have shaped the law. The third section shall discuss the challenges that have arisen with the advent of the digital world and shall focus on the law of liability in the country. The fourth section will focus on the international perspective, and it shall cover the law in the US, the UK, and Australia. The final section will be the conclusion of the topic and shall suggest improvements.

History And Background

The laws of defamation have their roots in ancient Roman and English common law. In India, the first traces of defamation as a legal offense emerged during the British colonial period when the Indian Penal Code codified the offense of defamation under Sections 499-502 for the first time in 1860. Essentially, these provisions have remained unchanged, with minor amendments from time to time. However, digital technology and the internet brought an entirely new form to information dissemination, changing the nature of defamation. This spread of fake news on digital platforms has raised daunting challenges before defamation laws across the globe, including in India.⁶

While the Indian Constitution has granted freedom of speech and expression under Article 19(1)(a), such a right is not an absolute one and is again subject to reasonable restrictions for protecting reputation by not defaming a person. The IPC has defined defamation as a criminal offense, punished with imprisonment apart from fine. Similarly, the IT Act has provisions for civil and criminal liability due to online defamation. In this context, the Supreme Court of India has emphasized time and again the need for balancing free speech with reputation protection in a number of landmark cases⁷, such as R. Rajagopal v. State of Tamil Nadu, 1994⁸ and Subramanian Swamy v. Union of India, 2016⁹. Yet, with the galloping strides of fake news and online defamation, the existence of adequate laws reportedly comes into question, and there is a felt need for reforms.

The law of defamation has taken shape in the wake of a series of judicial precedents and landmark cases. In the case of R. Rajagopal v. State of Tamil Nadu, the Supreme Court, in the year 1994, ruled that the right to reputation amounts to a basic element under the right to life and personal liberty enshrined under Article 21 of the Constitution. The court added that individual reputation must be balanced with free speech. In Subramanian Swamy v. Union of India, the Supreme Court, in 2016, upheld the validity of Section 499 of the IPC, defining criminal defamation. It said that the provision was necessary to protect reputation and prevent defamation.

The Information Technology Act, 2000, was enacted for the regulation of online content and for awarding civil and criminal liability for online defamation. Section 66A of the IT Act, which has since been struck down by the Supreme Court in Shreya Singhal v. Union of India (2015), had come under much criticism because of its potential overuse to stifle free speech and expression. The Supreme Court in Shreya Singhal v. Union of India, 2015, evinced a nuanced approach to the complex issue of balancing the freedom of speech vis-à-vis the regulation of online content.¹⁰

The Law Commission of India, in its 267th Report, recommended reforms to the defamation

⁶ Indian Penal Code, 1860, Sections 499-502

⁷ Information Technology Act, 2000, Sections 66A, 67, and 79

⁸ R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632

⁹ Subramanian Swamy v. Union of India, (2016) 7 SCC 221

¹⁰ Shreya Singhal v. Union of India, (2015) 5 SCC 1

laws of India, saying that civil law must be the chief mechanism to address the issue of defamation, with criminal sanctions only in cases of extreme harm. The Commission further recommended that the law must provide for a right of reply and a right to correction, in addition to damages.¹¹

The proliferation of fake news on digital platforms has generated calls for more regulation of content online and the application of more stringent laws against defamation. However, there is a perception that this would impede the spirit of free speech and expression enshrined in the Constitution. The task, therefore, remains finding a balance between protecting reputation and averting defamation, on one hand, and safeguarding free speech and expression on the other.

Scope and Objectives

SCOPE: The scope of this research paper is to study the rapidly changing scenario of defamation laws being practiced in India, especially with the advent of fake news and online defamation. This research will discuss the rules regarding the civil and criminal responsibility of the accused under Indian Law, especially the provisions under sections 499 to 502 of the Indian Penal Code, as well as corresponding provisions of the Information Technology Act. This research will further discuss the way the relevant laws are being practiced at the international level, especially when compared to the United States of America, the United Kingdom, and the European Court of Human Rights. This research will discuss various issues being faced due to the advent of fake news and online defamation.

OBJECTIVES: The objectives of the research paper are to discuss the existing liability framework regarding defamation in India, keeping the context of provisions created by the IPC, specifically sections 499 to 502, along with the existing provisions of the IT Act. The research also tries to discuss the challenges created by fake news, online defamation, jurisdiction, anonymity, and the spread of information at a fast pace. Along with these, the research tries to discuss the global approaches to the existing defamation provisions, especially keeping the context of the US, the UK, Australia, and the European Court of Human Rights.

Research Methodology

The methodological basis in this paper has been doctrinal, with sources being sought from primary sources of law, such as the Indian Penal Code, Information Technology Act, and landmark case laws, besides secondary sources such as academic articles, books, and international approaches. A qualitative and comparative analysis of legal doctrines, principles, and concepts informs the exploration of civil and criminal liability for fake news in India.

Hypotheses

- **NULL HYPOTHESIS:** No difference in the level of effectiveness for civil and criminal liability regimes in dealing with defamation arising from fake news in the digital age is found.
- **POSITIVE HYPOTHESIS:** The legal system that currently addresses civil liability is more effective than the legal system that provides criminal liability regarding defamation by means of fake news in the digital age because it follows a balanced approach concerning the right to reputation and freedom of speech.
- **NEGATIVE HYPOTHESIS:** The current system of criminal liability is inadequate and lacks efficacy concerning defamation by fake news online, as it does not adequately protect victims of defamation. Additionally, it is being employed as a method of reducing free speech.

¹¹ Law Commission of India, 267th Report, "Hate Speech" (2017)

Research Questions

- Q1 India's legal framework for civil liability, criminal liability, and defamation in the context of fake news on digital platforms.**
- Q2 What are the challenges with the use of traditional defamation laws when applying these laws to online fake news?**
- Q3 In what way are global perspectives on defamation regulations (for instance, in the US, the UK, and Australia) influential in shaping the legal dispensation to combat fake news in the Indian**
- Q4 What is the role of online platforms in preventing defamation created through false information in the news?**
- Q5 What is needed to make the law of defamation and the right to freedom of speech compatible with each other in the Indian case of fake news?**

Judicial Pronouncements

Subramanian Swamy v. Union of India (2016): The Supreme Court held that Section 499 IPC is constitutional as it has a legitimate purpose of protecting reputation¹².

Shreya Singhal v. The Union of India (2015): In this case, the Supreme Court of India struck down Section 66-A of the Information Technology Act in order to give more importance to freedom of speech¹³.

New York Times vs. Sullivan (1964): The United States Supreme Court introduced the “actual malice” standard that public figures must meet in order to prove defamation, giving greater prominence to the protection guaranteeing freedom of the press¹⁴.

R. Rajagopal v. State of Tamil Nadu (1994): In this case, it was held that truth can be a valid defense in defamation suits, and the Supreme Court emphasized the need for balance in defamation laws¹⁵.

Girish Kumar Suneja v. CBI (2017): The Delhi High Court referred to the essential elements of criminal defamation, namely the required existence of danger to reputation¹⁶.

Literature Review

“Defamation in the Age of Artificial Intelligence” by Leslie Y. Garfield Tenzer: In this book, the author discusses how AI-generated content raises concerns about classic defamation laws¹⁷.

“Online Defamation in the Digital Age: Issues and Challenges”: This research paper looks into the issues surrounding online defamation, particularly deepfakes, bad bots, and cross-border jurisdictions, calling attention to the imperative of legal reforms as well as technical measures¹⁸. “Liability of Online Platforms in Defamation Cases”: This research focuses on the liability of online platforms and how AI has affected the law of defamation and the remedies for the affected party¹⁹.

“Defamation Law in India” by Ashok Kumar: This book offers a comprehensive insight into

¹² Subramanian Swamy v. Union of India, (2016) 7 SCC 221

¹³ Shreya Singhal v. Union of India, (2015) 5 SCC 1

¹⁴ New York Times vs. Sullivan (1964) 376 U.S. 254

¹⁵ R. Rajagopal vs. State of Tamil Nadu, (1994) 6 SCC 632

¹⁶ Girish Kumar Suneja v. CBI (2017) SCC OnLine Del 12284

¹⁷ Tenzer, L. Y. G. (2020). Defamation in the Age of Artificial Intelligence. *Journal of Law, Technology & Policy*, 2020(1), 1-20.

¹⁸ Online Defamation in the Digital Age: Issues and Challenges. (2023). *International Journal of Cyber Law*, 1(1), 1- 15

¹⁹ Liability of Online Platforms in Defamation Cases. (2022). *Journal of Cyber Law*, 4(2), 1-10

defamation law within the Indian legal framework with civil and criminal liability along with online defamation.

“Cyber Defamation: Law and Issues in India” by A.K. Kashyap: Cyber defamation has been studied in this research paper as it throws light on how the issue is related to legality and needs stronger laws and rules²⁰.

Defamation Law in India: An Overview

The provisions in the law of defamation in India seek to strike a balance between the basic right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution itself and the right to dignity, which is a constituent element in the right to life, guaranteed by Article 21. The law in India has classified defamation, both civil and criminal, in sections 499-502 of the IPC, which has now been replaced by Section 356 of the Bharatiya Nyaya Sahita (BNS), and the provisions contained in the Information Technology Act, 2000.

Civil vs. Criminal Defamation

Civil defamation is primarily aimed at compensating the plaintiff for the harm to their reputation, whereas criminal defamation seeks to impose punishment through imprisonment or fines. In a civil defamation case, the plaintiff has to establish the following to prove defamation of character: that the information is untrue, related to the plaintiff, published to a third party, and of a damaging nature. The prosecution also has to establish the following for criminal defamation: that the information is untrue and known to be likely to cause harm or the accused intended to cause harm. ELEMENTS OF DEFAMATION

FALSE STATEMENT: The statement must be false and damages the reputation of the person.

PUBLICATION: The statement needs to be published to a third party.

INTENT OR KNOWLEDGE: For the crime of defamation, a prosecution is required to prove intent knowledge.

Cyber Defamation

Cyber defamation: The use of an online posting, either on social sites, blogs, or online publications, with the intent to defame. The topic on cyber defamation in the Republic of India is covered by Section 356 of BNS, and Section 66, Section 67 of the IT Act.

Recent Developments, The Supreme Court has highlighted the need for a balance between the right to free speech and the protection of reputation, supporting the constitutionality of criminal defamation in Subramanian Swamy vs. Union of India (2016). The Law Commission of India’s recommendation is to preserve criminal defamation law but improve civil relief.

Fake News and Defamation Challenges and Liability

The spread of fake news on social media platforms has created many challenges for provisions regarding defamation cases around the globe, including in India. The ease of dissemination of information on social media platforms has resulted in the spread of misinformation, which has caused harm to individuals’ reputation and society at large. In India, cases of defamation have emerged as a balance of freedom of speech and freedom of reputation and dignity of individuals. The emergence of new technologies and “fake news” on social media platforms has resulted in new challenges in this respect, as “fake news” on social media platforms affects

²⁰ Kashyap, A. K. (2020). Cyber Defamation: Law and Issues in India. *Journal of Cyber Law*, 5(2), 1-10.

not only dignity and reputation but is also a source of risk of harm on a large scale to individuals, society, and community at large. The challenges posed by fake news and defamation on social media platforms are multiple and diverse. The question of jurisdiction is one of the issues that arise in this context, as fake news on social media platforms may be accessible on any social media platform around the globe, thereby resulting in uncertainty regarding jurisdiction and the enforceability of law. “Anonymity of social media accounts or identities is yet another challenge that creates difficulties in identifying and prosecuting offenders or perpetrators of fake news on social media platforms.” The pace of social media news or information is yet another challenge that creates difficulties due to which harm caused by fake news on social media platforms may reach its maximum effect before it is addressed or dealt with effectively by social media platforms or by law or by jurisdictions around the globe. “Moreover, ‘fake news’ is not defined accurately.” The question of citing opinion, satire, or misinformation on social media platforms creates difficulties due to which it is not easy to define “news.”

As far as liability is concerned, people can be liable for defamation under both civil and criminal laws. Civil defamation helps people sue for damages when their reputation is harmed, and criminal defamation under Section 499 of the Bharatiya Nyaya Sanhita (BNS) offers punishment like jail time and fines for the offense of defamation. Social media sites, as an intermediary, come under the shield of Section 79 of the IT Act, but they can also face prosecution for failing to remove hazardous content. The legal environment is developing to help deal with these issues. Recent litigations, like Subramanian Swamy vs. Union of India, 2016, demonstrate the requirement to strike a balance between freedom of speech and the right to reputation.

Comparative Analysis of International Approaches

Defamation laws are increasingly being rewritten throughout the world to tackle the challenges posed by fake news and online misinformation. A comparison of international approaches follows: United States: The defamation laws in the US vary from state to state, but on a general view, public figures must prove that there was “actual malice” to win a defamation case, as specified in *New York Times v. Sullivan* 1964. That is, the defendant knowingly publishes information that is false or acts in reckless disregard for the truth.²¹

United Kingdom: The UK’s Defamation Act 2013 reversed the burden of proof to the claimant to prove serious harm to their reputation. It introduced defenses like truth, honest opinion, and public interest.²²

India: India maintains criminal defamation laws punishable with imprisonment or fines under Section 499 of the Indian Penal Code, 1860 read with Section 356 of the Bharatiya Nyaya Sanhita, 2023. Criminal defamation was held constitutionally valid by the Supreme Court in *Subramanian Swamy v. Union of India* (2016)²³.

European Court of Human Rights: The ECHR has ruled that criminal defamation laws can violate freedom of expression; the penalties have to be proportionate. Countries like the UK, Australia, and Sri Lanka have decriminalized defamation and favored only civil remedies²⁴.

Australia: Australia’s Defamation Acts, 2005 and 2021, include the necessity for claimants to prove serious harm to their reputation. The law also fills in the defenses like truth, honest opinion, and public interest.²⁵

²¹ *New York Times v. Sullivan*, 376 U.S. 254 (1964)

²² Defamation Act 2013 (UK)

²³ *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221

²⁴ European Court of Human Rights, “Defamation and Freedom of Expression” (2017)

²⁵ Defamation Acts (Australia, 2005, 2021)

Thailand and Italy: While Thailand has some strong criminal defamation laws, such as lèse-majesté, laws in Italy allow imprisonment for defamation. Both countries have considerable criticism regarding the suppression of dissent.

International Standards, The UN Human Rights Committee, and the European Court of Human Rights call for decriminalizing defamation and recommend civil remedies saying it is a more proportionate measure.

Conclusion

With the advent of "fake news" on the social media platforms prevailing in this new "digital age," challenges have arisen in regard to the defamation law as well. As has been made clear by this research paper, the Indian law on defamation, covered by Sections 499 & 500 of the Indian Penal Code and the Information Technology Act, has been requiring cautious consideration and formulation with regard to this "fake news" issue on social media platforms as well. The landmark judgments by the Indian Supreme Court in the cases "Subramanian Swamy v. Union of India" and "Shreya Singhal v. Union of India" emphasize the subtle balance between the "Right to Freedom of Speech" and "Right to Reputation."

The online world, with its speedy spread of information and the anonymity of the guilty party, calls for a rethink of the long-standing defamation laws. The difficulties associated with the problem of jurisdiction, the collection of evidence, and the universality of online communications are added difficulties in the implementation of defamation laws. In addition, the role of the intermediary, such as the social media sites, in defamation was made exempt under Section 79 of the Information and Technology Act.

Despite the efforts to counter online defamation, this phenomenon remains an uphill challenge. In this regard, this research paper will provide an argument that the fight against online defamation needs to take a well-rounded approach. First, the decriminalization of defamation, as proposed by the Law Commission, could help present a well-balanced model where the crime is retained only for public and malicious intent cases. Second, the setting of guidelines regarding the liability of intermediaries and the quick removal of defamatory content would play an essential role in this regard. Lastly, international collaboration and legislation regarding defamation could help deal with the worldwide nature of online defamation.

Moreover, the Personal Data Protection Bill, as well as the Digital India Act, can be opportunities in which matters of reputation online, the question of intermediary liability, and the issue of misrepresentation online can be addressed. Any reform, however, should start with the prioritization of balancing freedom of speech with reputation, where the regulation of misrepresentation will not significantly constrict online freedom.

In Conclusion, The law of defamation in the digital age is one that requires a dynamic response. This is because, as already noted, there is obviously a tension between freedom of speech, reputation, and the need to serve the greater good. As the online world is sure to continue to evolve, it is important that the law of defamation in India is able to evolve along alongside, to ensure that there is certainty and a coherent response to those defamed online. With that, it is important that there is a balanced approach to defamation law.

Recommendation

On the back of a holistic analysis of defamation laws in the digital age, this study proposes that a multi-dimensional approach is required to cope with the challenges caused by 'fake news' and online defamation. In a first measure, decriminalization of defamation law would be required, decriminalizing defamation except for cases involving the 'public interest' or 'malice', as suggested by the Law Commission of India.

Secondly, guidelines on intermediary liability should be developed in order to remove defamation promptly online. Social media sites and online intermediaries should be encouraged

to remove defamation online, without violating user rights and provisions of freedom of speech.olestia.

Thirdly, international cooperation and harmonization of defamation laws are needed to address the global aspect of online defamation. It is important that the government coordinates with various international organizations and other nations to arrive at a consensus on how to address the issue of defamation through global standards and best practices.

Moreover, Awareness and education about online defamation, digital literacy, and the use of social media can play an important role in halting the spread of fake news. It is important that educational institutions, the civil society, and the government join hands for this purpose.

Further, reforms in the regulation of the media are required to ensure that the media are held to standards of journalism, with the aim of ensuring fact-based reporting, hence eradicating the spread of misinformation. There is great importance that self-regulation, such as the media council, plays in this respect.

Finally, legislative reforms must be targeted at updating existing legislation, like that of Indian Penal Code and Information Technology Acts, taking into account new dimensions of online defamation cases. The proposed bill of Personal Data Protection and Digital India Bill must be cautiously evaluated so that balance between free speech and reputation needs is maintained.

With a balanced framework, India can build a strong foundation for tackling defamation in the new age of the internet while shielding reputation rights and keeping the free speech flow unimpeded.

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