

UNDERSTANDING OF CYBER DEFAMATION AND ITS IMPACT: A CRITICAL ANALYSIS

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Abstract

Cyber defamation is a serious issue because it can have significant and lasting impacts on a person's reputation, personal and professional life, and even their mental health. The rise of "Cyber Defamation" on social media sites has increase the risk. As Cyber defamation is the publication of false or wrong statements about an individual or person in cyberspace world that can damage their reputation. In India, defamation is both civil and criminal, so the judiciary provides victims with legal remedies. Many companies do not realize Web site hosting risks. Who is liable if an employee secretly posts racist, sexist, or defamatory claims about a competitor on the company's website? By recognizing electronic information and online marks, the Information Technology Act 2000 legalizes electronic administration. Digital wrongdoings and punishments are also detected. Any company with a cyber presence is liable for defamation worldwide. With the growth I bandwidth of cyberspace, Internet users can use several identified and unidentified channels of communication which essentially are left with issues pertaining around no checks on the number of forwards, first hand author or originator source and other discrepancies. The huge amount of data on Internet's and easy transfer make it a major source of slander. After researching the topic, it appears that India's laws on digital maligning are inadequate.

Keywords: Defamation, Cyber defamation, Cyber space, IT Act, Civil liability, Criminal liability, Digital Communication, Cyber Crime

Introduction

Cyber defamation, also known as online defamation, refers to the act of making false or derogatory statements about someone over the internet or other digital communication channels such as social media platforms, emails, or instant messaging. Defamation generally refers to the communication of false statements that harm the reputation of an individual or an organization. In the context of cyberspace, defamation can take many forms, including posting false accusations, malicious gossip, or untrue statements about someone on social media or other online platforms. Cyber defamation can be intentional or unintentional, and can involve both individuals and organizations.

Cyber defamation is a serious issue because it can have significant and lasting impacts on a person's reputation, personal and professional life, and even their mental health. It is also illegal in many countries, and individuals who engage in cyber defamation may be subject to civil or criminal penalties. The world has changed dramatically due to technology. Through social media, the Internet has made many things easier for us. We can now easily communicate and access information. However, misuse may occur. Defamation is a concern on social media because users can publish and share information.

Statement of the Problem:

The rise of "Cyber Defamation" on social media sites has increase the risk. As Cyber defamation is the publication of false or wrong statements about an individual or person in cyberspace world that can damage their reputation. In India, defamation is both civil and criminal, so the judiciary provides victims with legal remedies.

Objectives of the study:

- To identify the factors affecting Cyber defamation.
- To analyze the correlation between the variables for cyber crime.
- To analyze the impact of internet, cyber defamation, cyber space and awareness on Cyber law.

Review of Literature:

Cyber law and its applications, by Shilpa Dongre (2015), includes preventive remedial measures for individuals, organizations and government to prevent cyber crime which is based on cognizable/ non-cognizable and bailable/ non-bailable offence. Computer, internet and new technology laws by Karnika Seth, (2016), provides various aspects of cyber laws including cyber crime, privacy and freedom of speech. It provides better understanding of one's legal rights and duties by using the internet and educate one on netiquette or cyber norms and best practices to maintain privacy and safety on the internet. Cyber law by Pawan Duggal, aims to elaborate the diverse legal issues, which govern the day to day online activities the netizens and the computer savvy.

Research Methodology:

The legal websites, journals, commentaries, textbooks, articles, etc are referred for secondary data collection. It focuses about qualitative data collection methods. The general research frame work is on Legal research methodology indicates legal activities with case laws comments. Researcher has also added comparative and critical analysis to the research topic.

Results and Discussion:

Defamation: Understanding within a legal landscape

Defamation is a legal term that refers to the act of making false statements that harm the reputation of an individual or an organization. It can take many forms, including spoken or written words, gestures, or images.

Defamation can be divided into two categories: libel and slander. Libel is the written or published form of defamation, such as a newspaper article, a blog post, or a social media post. Slander, on the other hand, is the spoken form of defamation, such as a false statement made in a conversation or in a public speech.

To prove defamation, the following elements must generally be established:

1. The statement was false: The statement must be untrue and factually inaccurate.
2. The statement was communicated to a third party: The statement must be communicated to at least one other person, either in writing or verbally.
3. The statement prompted towards inciting loss of repute to an individual or an organization: The statement must have been made with malicious intent or with reckless disregard for the truth.
4. The statement caused harm: The statement must have caused harm to the reputation of the individual or organization, such as loss of business, damage to personal relationships, or emotional distress.

Defamation within the Cyber Space:

Text, sound, and image communication is cheap and fast on the Internet. That means an information resource without political or content boundaries is limited only by the providers' willingness to share their materials and research. Informational websites are multiplying today. ISPs or IT departments run these sites. Search engines that find and display relevant information found these sites. Many companies do not realize Web site hosting risks. Who is liable if an employee secretly posts racist, sexist, or defamatory claims about a competitor on the company's website?

The internet has several features that set it apart from the other media. To adapt to cyberspace, defamation laws are being reexamined. The internet is interactive. Internet users have a false sense of freedom because they can access information and communicate. Internet media is also more

accessible. Defamation has increased exponentially due to the low cost of internet access and website creation. Everyone can publish and be sued online now.

E-mail and bulletin board postings don't require users to reveal their identities, another benefit of the internet. Anonymous users can post and communicate. Users are to become excessively prone to defamation with the ever-advancing accessibility to the internet as both a one-stop destination and a one-stop solution at the comfort of our homes.

Cyber Defamation - A socio-economic offences

Cyber law includes cyber crimes, electronic commerce, freedom of expression, intellectual property rights, jurisdiction and choice of law, and privacy rights. Cyber-crimes include credit card fraud, unauthorized computer access, child pornography, software piracy, and cyber stalking. Defamation, obscenity, and censorship are part of free speech. Cyberspace jurisdiction concerns who makes and enforces the rules.

Cyberspace crimes are still being defined. Cyber-crime includes the destruction or we say theft of computer data's and programs. Forgery, illegal gambling, cyber stalking, cyber defamation, and others have been added recently.

Internet defamation is a risk in several places. Being "alone" with a computer creates a sense of intimacy and there is also no spoken/telephoned conversation or dictated correspondence to warn. Users' sense of social norms and propriety also blurs due to the internet's "free-for-all" nature.

Information is instantly published worldwide at low cost on the Web. Before the internet, information was hard to find. Company intranets are private. Intranet data can be downloaded and sent to third parties via email. Anyone can read bulletin board content. The bulletin board allows anyone to post defamatory claims. Email users talk to each other. Emails are stored and can be retrieved as hard copies, so their contents cannot be disputed. A single message can reach hundreds. A new defamation claim is made every time an email is forwarded.

Any company with a cyber presence is liable for defamation worldwide. With the growth I bandwidth of cyberspace, Internet users can use several identified and unidentified channels of communication which essentially are left with issues pertaining around no checks on the number of forwards, first hand author or originator source and other discrepancies.

The harm is usually done by the time a defamation lawsuit is filed. Thus, damages are the main defamation action relief. The type of defamation and publication will determine damages only. Any jurisdiction with a cause of action allows defamation claims. A potential defamation defendant could be sued in several countries under unfamiliar laws for a particular defamatory statement. Indeed, a potential plaintiff can litigate in the country with the most favorable laws. A defamatory Internet posting is published when a third party views it.

Cyber defamation can harm society rather than an individual victim. It's a no brainer that the repercussions of defamation apart from specifically intended to harm an individual's reputation also sets sight on harming the society at large. It's an offence that harms the community, not just the victim. Defamation of a corporate house can even lower its share value, making it an offence that hurts the nation's economy as well as the victim's.

A social and economic offence's nature and severity are crucial. Despite its invisibility, the harm is severe. The crime is unusual because it is well planned and committed in secrets by smart, skilled individual with sophisticated means. Gravity affects public welfare, but detection is unusually difficult.

Cyber defamation cause more harm than traditional crimes and are different. Unlike traditional crimes, they are not positive aggressions or invasions. The law must minimize their danger, even if they don't cause immediate harm. Thus, if such offences' legislation departs from ordinary crimes' in terms of mens rea, substantive matters, and procedure, the departure would be justified.

Comparative Analysis of Cyber Defamation in other countries

Canada, Australia, and the United States have different defamation laws that vary additionally from province and state. Therefore, plaintiffs may "forum shop" or choose the jurisdiction with the

most favorable laws.

Position in the US

State courts hear 75% of defamation lawsuits in the US, while federal courts hear 25%. Libel and slander definitions vary by state, making a comprehensive discussion difficult. Slander and libel are sometimes treated the same in some states. Some states have old criminal libel laws that are rarely enforced.

In "Stratton Oakmont v. Prodigy (1995)," the US Supreme Court gave online service providers no incentive to remove obscene or libelous content from their databases. The online service provider risked liability for offensive content it missed if it made a good faith effort to inspect content before publication. This case led to the 1996 Telecommunications Act, which overruled it.

Position in Canada and UK

Canada adopts UK defamation law. Hill v. Church of Scientology of Toronto examined libel law and the Charter of Rights and Freedoms. (1995). this lawsuit rejects New York Times Co. v. Sullivan's real malice requirement, citing US and international criticism.

Internet articles reach millions; therefore, damages might be significant. Not millions see each publication. Internet publication usually outnumbers print and broadcast media.

As a Web site host/owner or ISP, a company may be liable for defamatory statements on its site. The Web site host or ISP may be liable if a hacker posts a defamatory statement. The defendant can avoid liability if he can claim the defamatory statement was unintentional.

The courts must consider whether a Web site host is like a library, which distributes published literature, or like a communications provider, which passively transmits information it does not control.

Position in Australia

Australia's top court decided internet defamation and jurisdiction. Dow Jones' internet article can be sued in Victoria, according to Australia's supreme court in Dow Jones v. Joseph Gutnick. Dow Jones publishes Barron's and The Wall Street Journal. Dow Jones owns www.wsj.com. Dow Jones users can log in with their credentials.

Liability under Cyber Defamation

Legal liability for cyber defamation varies depending on the jurisdiction and the laws that apply. In general, individuals who engage in cyber defamation may be subject to civil and criminal penalties.

Civil liability:

Civil liability for cyber defamation involves a lawsuit filed by the individual or organization that has been defamed. The lawsuit may seek damages to compensate for any harm caused by the defamation, such as loss of reputation or emotional distress. In many jurisdictions, the burden of proof for a civil defamation lawsuit is on the plaintiff, who must demonstrate that the defendant made a false and defamatory statement, that the statement was communicated to a third party, and that it caused harm.

Criminal liability:

Criminal liability for cyber defamation involves a prosecution by the state or government for the offense of defamation. In some jurisdictions, cyber defamation is considered a criminal offense, and individuals who engage in it may be subject to fines, imprisonment, or both. The burden of proof for a criminal prosecution is typically higher than for a civil lawsuit, and the prosecution must demonstrate that the defendant acted with malicious intent or reckless disregard for the truth.

In addition to civil and criminal liability, individuals who engage in cyber defamation may also be subject to disciplinary action by employers or professional associations, particularly if the defamation relates to the individual's professional conduct.

It is important to note that the legal liability for cyber defamation can vary significantly depending on the jurisdiction and the specific facts of the case. It is advisable to seek legal advice if you believe you have been defamed or if you are considering engaging in online communication that may potentially defame others.

Provisions governing Cyber Defamation in India

1. Under Section 499 of the Indian Penal Code, it was defined on the off chance that somebody attempts to slander somebody to bring down its standing, who ought to have criminal aim to malign somebody with information on a demonstration that may prompt hurt somebody, by a demonstration of doing loudly or physically misuse the individual or criticize the individual its standing and picture publicly then it considered as defamation. For instance, if two people have some tussle between them concerning particular issues and one of them distributes harmful visits via online media then such acts might be considered under Defamation. In the cases identified with Defamation via web-based media exemption of criticism is profoundly abused.
2. Section 500 of the Indian Penal Code coordinates the discipline inside which the individual discovers responsible under Section 499 discussing the Defamation standards, who find at risk will be culpable with fine or detainment of 2 years.
3. Section 469 of the Indian Penal Code manages Forgery which implies that if anybody makes a phony/bogus archive or phony record of anybody with an expectation or not yet which brings about hurting the standing of the individual. then, at that point, it is an offense and culpable as long as 3 years of detainment or with a fine.
4. Criminal Intimidation characterizes under Section 503 of the Indian Penal Code which characterizes that whosoever compromises injury to any individual his standing his property or to the next individual who is joined to the individual in any sort of relationship is termed as Criminal Intimidation. It shows the malice aim of the individual to caution and dangers the individual to do so that demonstration of which the individual does not legitimately tie to perform however they are needed to perform to keep such wrongdoing from being executed. On the off chance that anyone perpetrates the offense of Criminal Intimidation will be culpable for detainment which may stretch out to 3 years with a fine or both the charges.
5. According to Section 65A and 65B of the Indian Evidence Act, any electronic record printed on paper or attractive media is a report and will be accepted by the court. Online visits and electronic sends are also acceptable.

Information Technology Act, 2000:

By recognizing electronic information and online marks, the Information Technology Act 2000 legalizes electronic administration. Digital wrongdoings and punishments are also detected. As stated in Section 66 A of the Information Technology Act 2000, any person who sends by electronic devices like PCs, cell phones, or any specialized gadget or by any electronic sends and hostile messages with access to internet providers define any information that is hostile in nature or any data that he knows to be bogus or counterfeit with a malevolent aim of causing inconvenience, unsettling influence, injury, criminal terrorizing, and so forth will be punished Since the public authority couldn't explain the word hostile in section 66 A of the IT Act 2000, the Supreme Court of India struck down this law. Since the public authority started using it to suppress free speech. The digital examination cell can be contacted if someone is criticized online.

Relevant Case Laws:

- **SMC Pneumatics (India) Pvt. Ltd vs Shri Jogesh Kwatra on 12 February, 2014**

A Court of Delhi accepted purview over a matter where an enterprise's standing was being maligned through messages, in what was India's first instance against digital criticism, in which a significant ex-parte directive was rendered.

- **Rajiv Dinesh Gadkari vs Smt. Nilangi Rajiv Gadkari on 16 October, 2009**

After receiving a separation letter, the respondent filed a lawsuit against her spouse for sending obscene images and slandering her. The wife, the respondent, has claimed Rs. 75,000 in monthly maintenance for the offense.

• **Kalandi Charan Lenka vs State Of Odisha on 16 January, 2017**

“In this, the candidate was persistently followed, and the guilty party made a fake record of her and sent indecent messages to the companions. The victim's hotel walls had a retouched photo. The court expects the offender to accept responsibility.

Findings:

Internet use for long-distance social media has caused some problems in the country. In contrast to defamation cases, the greatest challenge is to identify the person who has proposed to hurt the individual's reputation or the third party who has read the abusive or hostile messages when they were distributed to sites or other long-range informal communication locales like paper and magazines. Since bloggers usually keep their names hidden to protect themselves. That's why it's hard to tell who posted the disparaging statement on friendly sites or other public communication channels. Therefore, such people groups are hard to find or understand. When a slanderous or hostile message is posted on friendly platforms, it quickly spreads and damages the person's reputation.

Conclusion

There are many laws for this type of offence, but people need to know these laws and consider whether their post is abusive or hurts others' reputations. Internet use dominates people's time. It's great to share, but some groups use it for cyber defamation, which is wrong. We say that Cybercrime includes online slander. The huge amount of data on Internet's and easy transfer make it a major source of slander. After researching the topic, it appears that India's laws on digital maligning are inadequate. Furthermore, maligning laws should be applicable to all media. So there should be a framework to teach mindful people what to do and what not to do online.

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