DEFAMATION IN INTERNET AGE: 
LAW & ISSUES IN INDIA

Amit K Kashyap1, Dr. Tarkesh Molia2
1 Head, Centre for Corporate law Studies, Asst. Prof of law, Institute of law, Nirma University, Ahmedabad
2 Associate Prof of law, Institute of law, Nirma University Ahmedabad
1 amit.kashyap@nirmauni.ac.in
2 tarkesh.molia@nirmauni.ac.in

Abstract
The growth and development of the technology have brought in enormous changes in day to day life. The Internet has made communication and access to information easy through e-mails, chat groups, various social networking sites etc. wherein individuals can publish and disperse information. This easy access to such a media at times causes misuse by users for publishing defamatory statements in the cyberspace.

The term defamation basically means the publication of a false statement that deprecates the reputation of a person. The depreciation to an individual can be through libel or slander. Slander is basically the spoken statements whereas libel is a published statement in some permanent form. "Cyber defamation is considered to be the act of defaming, insulting, offending or otherwise causing harm through false statements pertaining to an individual in cyberspace.” The tort of defamation is committed through the publication of untrue defamatory statements by an individual via the internet. But yet the issue is that Internet Defamation is covered under Information Technology Act 2000 & even not in 2008 Amendment & thus is left to traditional judicial system.

This paper will briefly review the efficacy of the statutory provisions governing the offence of cyber defamation in India, the liabilities wherein the primary publishers as well as the internet service providers can be held responsible, and the remedies and damages, along with the judicial pronouncements.

Key Words: Cyber Defamation, Information Technology Act Tort, Information Technology Act

Objectives
The objective of this paper is to analyse the Law of Cyber Defamation in India & address the legal issues involved in its interpretation.

Research Methodology
The research methodology of this paper is Doctrinal. The study on the topic has been extensive, ranging from researching books, case laws, articles and commentaries on Cyber Defamation.

Literature Review
The author has referred to following books & articles for preliminary understanding of the subject matter where in some aspects of defamation on Internet has been discussed: Collins, M. (2011). The law of defamation and the Internet. Oxford University Press, Inc.

This book gives the coverage of general principles of defamation law in International Scenario & includes, extensive coverage of authorities from jurisdictions including Canada, New Zealand, Ireland, Hong Kong, Malaysia, and Singapore & also covers the application of common law principles of defamation law to material published online.

This Article explains that, The single publication rule, traditionally applied to defamation claims involving libel through printed and broadcast media, also has application in defamation cases where the libellous material appears on the Internet & justifies the propositions with the help of case laws.

1. DEFAMATION IN CYBER SPACE:
   A PROLOGUE

The Internet has now transformed into a need from being a mere facility. The fact that people have a sense of privacy while using the internet because it can be devoid of spoken or telephonic conversations, makes it more demandable [1]. The Internet has also become an essential tool for commerce (UN E-Commerce and Development Report, 2002). Within a fraction of seconds now, Messages can be circulated to masses. Internet has made communication and access to information easy through e-mails, chat groups, various social networking sites etc. wherein individuals can publish and disperse information. This easy access to such a media at times causes misuse by users for publishing statements in the cyberspace which becomes derogatory in certain cases due to its larger influence & interpretations[2].

In the present day, web sites displaying information of all kinds are proliferating. These sites are established and controlled by Internet Service Providers (ISPs) or, sometimes, by the company's information technology department. These sites can be assessed from any part of the world. The judges & lawyers here face a difficulty in grafting the traditional laws of defamation in these issues in cyber space. Moreover, it becomes more difficult to decide the liability of various parties involved in the single action or infringement & also to decide the authority to decide the matter[3].

The internet can be used to spread misinformation just like any other information as in the case of websites wherein false or defamatory information, especially in forums and chat rooms where users can post the information without verification[4].

Technical issue here is that, on the internet everyone can be a publisher and can be sued as a publisher. Another key feature of the internet is that users do not have to reveal their true identity in order to send e-mail or post messages on bulletin boards. Users are able to communicate and make such postings anonymously or under assumed names. This feature, coupled with the ability to access the internet in privacy and seclusion of one's own home or office and the interactive, responsive nature of communications on the internet, has resulted in users being far less inhibited about the contents of their messages resulting in cyber space becoming excessively prone to defamation. Accessibility is another feature of the internet, which distinguishes it from traditional print or broadcast media. The relatively low cost of connecting to the internet and even of establishing one's own website means that the opportunity for defamation has increased exponentially.

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broadcast media. The relatively low cost of connecting to the internet and even of establishing one's own website means that the opportunity for defamation has increased exponentially [6]. Thus, it can be rightly concluded that, a number of features unique to the internet distinguishes the defamation committed in physical space from virtual space. Accordingly, the re-examination of existing laws relating to defamation is required, to allow for their possible evolution and ultimately their application in cyberspace [7]. The author has made an effort to relook the laws of defamation & its applicability in cyber space while appreciating various issues involved with help of case laws & interpretations.

1.1 Defamation

Defamation can be understood as the intentional infringement of another person's right to his good name.

Defamation is defined as “an intentional false communication, either published or publicly spoken, that injures another’s reputation or good name.” (Dixon v. Holden, 1869)

According to Lord Atkin defamatory statement is:

“A statement which tends to lower the claimant in the estimation of right thinking members of society generally, and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear and disesteem.” (Sim v. Stretch, 1936)

If defamation occurs in spoken words or gestures (or other such transitory form) then it is termed as slander and the same if in written or printed form is libel.

1.2 Cyber Defamation

In general terms Cyber Defamation is a crime in cyberspace usually through the computer networks such as internet with the intentions to cause injury to the reputation of a person by defaming that person in the eyes of third person. Cyber defamation is a new concept but the traditional definition of the term defamation is application to the cyber defamation as it involves defamation of a person through a new and a virtual medium (P. Didwania, 2013)

1.3 Liability in Cyber Defamation

The tort of defamation is committed through the publication of untrue defamatory statements by an individual via internet.

There are three essentials to prove cyber defamation (Santosh Tewari v. State of UP, 1996). They are:-

1. The imputation made against a person should be published.
2. Such imputation shall be in the form of visible representations.
3. The intention behind making such imputations should be to cause harm or with the knowledge that it will harm the goodwill of the person.

A person can file a civil or a criminal suit in response to a defamatory sentence. Due to this feature, defamation is considered to be a crime against the whole society. It affects the health and material welfare of the society [8]. When defamation done against institutions, corporate houses or organizations, this could also hamper the economic interests of the country as a lot of goodwill is attached to the face value/ brand value of such entities. Therefore, cyber defamation can be considered as a socio-economic offence measured on the factors of:-

a) Nature of offence i.e. civil or criminal.
b) If criminal, then gravity of harm caused to the society is to be measured.
2. STATUTORY PROVISIONS TO ONLINE DEFAMATION

2.1 Indian Penal Code, 1860

As per Section 449 “whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, to defame that person.” The law got extended to “Speech” and “Documents” in electronic form with the enactment of the Information Technology Act, 2000.

Further, Section 500 provides that, “the offence of defamation is punishable under section 500, Indian Penal Code as a simple imprisonment up to 2 years or fine or both.” & Section 469 of IPC states that “whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.” The phrase “intending that the document forged” under Section 469 was replaced by the phrase “intending that the document or electronic record forged” vide the Information and Technology Act, 2000.

Additionally, Section 124 A deals with the sedition wherein when anyone defames a Minister or Government official in cyberspace or in any other place [9]. The section states that “whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extent to three years, to which fine may be added, or with fine.”

2.2 Information Technology Act, 2000

Section 66 A

The Section 66A of the Information Act, 2000 does not specifically deal with the offence of cyber defamation but it makes punishable the act of sending grossly offensive material for causing insult, injury or criminal intimidation. But the provision has been struck down by the Supreme Court of India in case of Shreya Singhal and Ors. vs Union of India in March 2015. Thus Now is no provision under Information Technology Act 200 which specifically deals with Cyber Defamation.

Filing Complaint: The complaint for the offence of cyber defamation can be made to Cyber Crime Investigation Cell in the district. Cyber Crime Investigation Cells have opened up in many cities like Delhi, Mumbai, Chandigarh, Hyderabad, Bangalore, Tamil Nadu, Gurgaon, Pune, Madhya-Pradesh, Lucknow, etc[10].

3. JUDICIAL INTERPRETATION & ISSUES IN CYBER DEFAMATION

There are various case laws related to cyber defamation in India. Few of them can be mentioned as follows to discuss the issues involved in cyber defamation:-

3.1 Issue of Employees Liability

SMC Pneumatics (India) Pvt. Ltd. V/s Jogesh Kwatra\(^1\) was the first case of cyber defamation in India or rather Asia. In this case the employee used to send derogatory, derogatory, obscene, vulgar, filthy, abusive and defamatory emails to its employers and to

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\(^1\) CS(OS) No. 1279/2001 (Delhi High Court, 2001)
different subsidiaries of the said company with the aim to defame the company and its managing director. The Delhi High Court, in this case, passed an interim, ex-parte injunction order observing that a prima facie case of defamation has been made out. Consequently, the Delhi High Court restrained the defendant from sending derogatory, defamatory, obscene, vulgar, humiliating and abusive emails either to the plaintiffs or to its sister subsidiaries all over the world including their Managing Directors and their Sales and Marketing departments.

The interpretation in UK is that, a defamatory statement is one that impugns another person’s reputation or adversely affects his or her standing in the community. (M Lunney & K Oliphant, 2000)

### 3.2 Injunction in Defamation

Delhi High Court in case of **Tata Sons V/S Turtle International**, held that publication is a comprehensive term, embracing all forms and mediums including the Internet. The internet publication has wider viewership, or a degree of permanence, and greater accessibility, than other fixed (as opposed to intangible) mediums of expression does not alter the essential part, i.e. that it is a forum or medium. Thus rule regarding the injunction in case of cyber defamation can be drawn as;

- The Injunctions on internet content should not be readily granted (especially ex-parte) since, firstly the internet is an easy, self-publishing platform providing a medium of expression for marginal individuals not having corporatist outlets.
- The internet facilitates the distribution of content for a minor cost to a vast audience. Both the alleged injury and the free speech concern are greater due to the wider dissemination of the content.

The exact wording of the court’s judgement says at as: “39. It would be apparent from the above discussion that publication is a comprehensive term, embracing all forms and mediums – including the Internet. That an internet publication has wider viewership, or a degree of permanence, and greater accessibility, than other fixed (as opposed to intangible) mediums of expression does not alter the essential part, i.e. that it is a forum or medium. Even the Ontario Court of Appeals, in Barrick Gold, while recognizing the wider impact and reach of cyber libel, did not moot a different standard for granting injunction, as is sought in this case. The Court there ruled, pertinently, that Internet publication of a libel, because of the libel’s wider reach and viewership, has to be considered as an additional factor, while assessing damages. However, the judgment is not an authority to say that internet libels or cyber libels call for application of a different injunction standard, other than the Bonnard rule. The Court does not discern any such discussion; adopting such an argument would result in the anomaly of discriminating between one medium of expression and another, in assessing whether to grant temporary injunction restraining publication – which is neither salutary, or as this Court suspects, Constitutionally sanctioned”.

### 3.3 Jurisdiction Issue

In the United Kingdom, there is double actionability for defamation. The claimant can choose to sue at the place of distribution or where the loss of reputation occurred, but only for the reputation lost in that jurisdiction. This test was coined in the case of Shevill v. Press Alliance S.A.. In this case, A newspaper published in France reported that Fiona Shevill was involved in money laundering for a drug-trafficking network. The newspaper was
mainly distributed in France and had minor circulation in the United Kingdom. The Court decided that, he victim of a libel by a newspaper article distributed in several Contracting States may bring an action for damages against the publisher either before the courts of the Contracting State of the place where the publisher of the defamatory publication is established, which have jurisdiction to award damages for all the harm caused by the defamation, or before the courts of each Contracting State in which the publication was distributed and where the victim claims to have suffered injury to his reputation (Shevill v. Press Alliance S.A., 1997).

In United States the interpretation as to the jurisdiction is that, if a person is defamed via most publication methods, then that person can sue for all damage that he or she received from all jurisdictions - but from within only one jurisdiction, as per, Uniform Single Publication Act.

Thus, as a matter of jurisdiction, a defamation plaintiff may be able to sue the ISP in a foreign jurisdiction and to obtain recovery there. However, enforcement of that judgment may be difficult unless the defendant has sufficient assets in the foreign jurisdiction.

The recent scenario of Jurisdiction issues in the case of Dow Jones v. Gutnick by the Australian High Court. It was held herein that publication occurred in Victoria where the article was downloaded by the subscribers, and not when it was uploaded to the publisher’s server. (J M. Pathania 2003). In India rules relating to jurisdiction in action inter parties are laid down in Sections 19 and 20 of the Civil Procedure Code.

The test of jurisdiction can also be decided on the basis of type of website as held in Zippo Mfg. Co. v. Zippo Dot Com. The US court has held in this case that there has to be evidence that the defendant used the internet for a commercial purpose to enter that particular jurisdiction. As per the decision the website can be divided into three types, Active Website, passive Website & Interactive Website. A passive website that does little more than make information does not create grounds for the exercise of personal jurisdiction. Whereas, through interactive websites where a user can exchange information. The Interactive website can be tried in the contracting state, even though it has been operated from somewhere else.

3.4 Defence of Fair Comment

Under common law there are some general defences available to all torts like consent, apology, accord, limitation and previous judgments. Another defence, ‘Secondary responsibility which was earlier embedded in the defence of ‘innocent disseminators’ is also being discussed. In common law, a qualified privilege attaches to any occasion where the person who makes a communication has an interest of a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it. Reciprocity is essential (Adam v. Ward 1917). There must be an element of reciprocity between the defendant’s duty or interest in communicating the matters in question and the audience or readership’s interest in being informed of them (V Harpwood, 2000). In order that a statement be referred to as fair comment, it is necessary that it must be made on the basis of the true fact in existence at that time (Cohen v Daily Telegraph Ltd. 1968).Comment in order to be fair must be based upon facts, and if the defendant cannot show that his comments contain no misstatements of facts he cannot prove a defence to fair comment (Digby v. Financial News 1907).

In India, the right to take legal action for defamation is restricted in accordance with the
Limitation Act, 1963 to a period of one year. (Section 75 and Section 76 of the Limitation Act limit the period of filing a suit for compensation of libel and slander respectively to one year).

Further the defences that can be taken are: Justification by Truth Fair (and bona fide) Comment Privilege (which may be either absolute or qualified).

The defence of fair comment cannot be accessible in case there was a statement of fact, rather than an expression of opinion (Radheshyam Tiwari v Eknath, 1985).

3.5 Free Speech & Defamation

In recent years, defamation lawsuits have emerged as a powerful weapon against the press, used primarily by individuals and corporations in positions of power and authority, and invariably as a means of silencing criticism (Centre for Internet & Society, 2014). The law of defamation that we have today is century old which puts the burden of proof completely on defendant. Free speech, a fundamental right under Article 19(1) (a), and the right to reputation, a facet of the right to life and liberty under Article 21 of Constitution of India, have learnt to coexist. Nevertheless, Protection for “legitimate criticism” or “fair comment” on a question of public interest is not only available in the civil law of defamation but is also covered under exceptions 2, 3, 5, 6 and 9 of Section 499 IPC. The Supreme Court has recently said that, “right to free speech cannot mean that a citizen can defame the other” (Subramanian Swamy v. Union of India, 2016), while rejecting appeals filed by politicians across the spectrum including Rahul Gandhi, Subramanian Swamy and Arvind Kejriwal. In this case, Gandhi has been accused of defamation over his remark that the Rashtriya Swayamsevak Sangh was responsible for the assassination of Mahatma Gandhi, Kejriwal for making allegations against finance minister Arun Jaitley and Swamy for alleged anti-Muslim remarks. The court has held that, Reputation’ of one cannot be allowed to be crucified at the altar of the other’s right of free speech. The bench said that the offence is not "beyond the boundary" of Article 19 (2) of the Constitution which deals with "reasonable restrictions" that put curbs on free speech. This judgement is considered as is a depressing moment for free speech lawyers, journalists and activists. Thus has curbed the freedom of speech & expression, no matter you are speaking truth against the politicians.

3.6 Liability of ISP

Information providers typically are information intermediaries. They acquire information from third parties, when they do not create it themselves, and then they distribute that information to others. ISP is an Intermediary as per Information Technology Act 2000. In certain situations the liability of Intermediary is limited under section 79 as per the Act. This provision of Liability of Intermediary are almost similar in all countries & thus accountability is also limited due to safe harbour rule which says the intermediary has to follow due diligence in dealing with the content published on their website. The ISP may be responsible for defamatory material even if they did not have the intent to defame, if he fails to do due diligence. The liability of Intermediary according to safe harbour rule depends upon the answer to three questions:

- “Intermediary” was itself involved in the commission or creation of the content
- The intermediary control its content.
- The varying degrees of knowledge of the information and control over it.

When the intermediary is mere information carrier and transporters and not as an information controller, the he cannot be held liable. But when the function of an information publisher is to not only publish and transmit the information but also take reasonable care in relation to the said publication then his liability can be ascertained. the ISP would have to prove that it was unable to know or had “no reason to believe that the statement in question was defamatory, and the ISP took reasonable care in relation to the publication of the statement in question (G Sutter 2003). ISPs would not to be liable for defamation if they only provide Internet access and no additional control or spot-checking of content.

3.7 Online Defamation & Free Journalism & Civil Society

Now a days the litigation against the free speech has become very common & the suit for defamation in very popular in these circumstances. The freedom in modern society is a political construct, measured primarily by an absence of law that criminalises libellous speech (N Moro 2013). Recently, the Supreme Court has held that law on Defamation has a “chilling effect” on free speech (Subramanian Swamy v. Union of India, et. al. 2016), As Reported by Amnesty International, A court in Yangon also sentenced peace activist Patrick Kum Jaa Lee, 43, to six months in prison for "online defamation" who was arrested in October 2015 for a Facebook post showing someone stepping on a photo of Myanmar Army Commander-in-Chief. In 2015, A Journalist was arrested in Bangladesh for “defaming” a government minister on Facebook (Press Trust Of India 2015). In India now most of parties and politicians are online. Offensive tweets and Facebook posts have posed a problem for some years now and in recent times political parties have established armies of trolls to systematically take on and decimate opponents. The anonymity of the net encourages people to make outrageous allegations and threats online that they would avoid in a face to face interaction. Facebook, Twitter, and other social media platform providers are reluctant to act and stop abuse, citing both the dangers and problems of policing the net (International Federation of Journalists 2016).

The President of India, Shri Pranab Mukherjee inaugurated the Valedictory Function of 155th Anniversary of the Indian Penal Code (IPC), 1860 organized by the Directorate of Prosecution, Kerala (February 26, 2016) at Kochi, Kerala has said that, The Indian Penal Code, requires a thorough revision to meet the changing needs of the twenty-first century. The Issues like, cyber defamation and cyber stalking call for an ingenuous and proactive response from the law providers. Last year the Supreme Court has struck down a controversial section 66A of IT Act 2000, that permitted arbitrary arrests for such posts. Recently, The state of Tamil Nadu, particularly under the rule of current chief minister Jayalalithaa, has seen a concentrated effort on the part of the government to curb the freedom of the press via defamation and sedition laws (Hindustan Times, 2016). As a part of this trial many cases are filed against the journalists in Tamil Nadu. And the Now here the Judgement of Supreme Court which has restricted the freedom of speech and expression indirectly.

4. FINDINGS

- The traditional legal doctrines against defamation have failed to match pace with the strident changes that the heterogeneous networked society.

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person involved in an online defamation suit, his reputation may have suffered too much irreparable harm before it is finally rectified by judiciary

- Courts often get stuck trying to balance privacy rights and right of free speech

- There is need for amendment in the Law of defamation with respect to its applicability in cyberspace, as the internet is now the biggest way of communication & public opinion, thus the freedom of speech & expression is curtailed because the fear of suit for defamation which has become very common.

5. CONCLUSION

The intense volume of information and the simplicity of its transfer make Internet a very critical source of defamation, while the electronic based trading systems are affecting all aspects of commercial and business entities. After researching on the aforesaid topic, the author is of the view that the present laws in India do not have adequate approach towards cases of cyber defamation. It can be recommended that, Defamation laws should be sufficiently flexible to apply to all media. A balance will always need to be struck between freedom of expression and reputation. The difficulty is that the defamation laws world over were principally framed at a time when most defamatory publications were either spoken or the product of unsophisticated printing. Hence it is not practical to apply the principles derived from 18th and 19th century cases to the issues that can arise on the internet in the 21st century.

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