

**DE JURE NEXUS LAW JOURNAL**

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1<sup>st</sup> Year, BBA LL.B.**DEFAMATION IN CYBERSPACE: AN ANALYSIS****ABSTRACT**

*The introduction of new forms of technology and access to various internet sources has changed the dynamics of the world. It has made communication easier at a cheaper cost and have connect the different ends of the world at a faster pace. Not only it has made communication easier, but has provided us with up- to- date information and helped the markets to become globalized. However, with the invent of this new technology, comes certain disadvantages. Certain sections of the society use this system inappropriately causing harm and discomfort to others. as there are no restrictions to the engagement in these social media, one has access to the private information and pictures, published by other people. One of the serious concern, defamation, now not only occurs physically but in a virtual world too. False publication of the other's information, trolling, etc. are certain example which disrupts one's reputation and cause misery to the life of the victim. There are various provisions and acts under the Indian Constitution which deals with the cyber defamation and punish the wrong-doer.*

**INTRODUCTION**

Countries now have become digitalized which has made the life much easier and access to the information has become a piece of a cake. At one side, where there are so many advantages to

the access to the technology, on the other, it had created problems and had prone to be disadvantageous to people. Crimes over a cyberspace is one the growing issues over the globe which has disrupted lives of many. Cyber law deals with such kinds of activities including- credit card fraud, cyber stalking, child pornography, forgery, etc.<sup>1</sup>

The free access to internet has also become a place of risk where defamation can take place. The information which could not be taken out by other people before the era of the internet, are now easily available to everyone on one click and anybody could use it in the manner they wish so. It can then be passed upon to other people by e-mails and could be circulated to large number of people. Thus, a defamatory statement could be circulated in one go and it could ruin one's self-earned reputation.

### **WHAT IS CYBER DEFAMATION?**

Defamation is publication of wrong information about the facts of one, without his knowledge or consent. The person is considered to be defamed when the false publication has caused loss to his reputation and not just merely has hurt his feelings. Section 499 of the Indian Penal Code has divided defamation in two main categories-

- Libel- a statement constituting to defamation in written form
- Slander- a spoken statement constituting to defamation<sup>2</sup>

The above explained method of defamation was used earlier when the technology was not so developed. Today, defamation can also take place through electronic devices using the internet. This form of defamation, which occurs on cyberspace, is known as cyber defamation. Due to the widespread reach over the internet, the intensity of the harm could also be large and can also affect a large a number of people. Publishing a defamatory statement about a person or sending him defamatory e-mails constitutes this offence which is punishable under the Indian Constitution.

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<sup>1</sup> LEGAL SERVICE INDIA, (last visited on FEB 14, 2022, 2:06 PM)  
<http://www.legalservicesindia.com/articles/defcy.htm>

<sup>2</sup> BRITANNICA, (last visited on FEB 13, 2022, 12:26 AM) <https://www.britannica.com/topic/defamation>

## **STATUTORY PROVISIONS RELATING TO CYBER DEFAMATION**

### **Indian Penal Code, 1860**

Section 499 of the Indian Penal Code, 1860 has defined the defamation as “*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, except in the cases hereinafter excepted, to defame that person.*”<sup>3</sup>

Section 500 of the IPC describes the punishment that would be awarded in the cases of defamation. It has also described the liability of the employer. For example, if an employee sends his colleague any defamatory statement about a competitor within the work hours, even if it is prohibited or out of his authority, the employer would be made liable for the employee’s actions.

Section 469 of the IPC deals with the matter of forgery. If any person creates false documents or a fake id to harms the reputation of the other person, he/she is said to have committed an offence which can attract imprisonment up to 3 years and fine as a punishment.<sup>4</sup>

Section 503 of the IPC has defined criminal intimidation using the means of electronic devices or emails which impacts his/her property or reputation. If a person compels another, by threat and injury to the property or reputation of that person, to do any act which is forbidden by law or he is legally not bound to do it, or to refuse to do an act which the person is legally entitled to do, the criminal intimidation is said to have taken place.

### **Information Technology Act, 2000**

The Information Technology Act, 2000 was specially enacted and came into force because of the rise in the cases of cyber offences in the country.

Section 66A dealt with the transmission of ‘offensive’ messages through any electronic device such as- tablets, phones or computers. However, this provision was quashed down by the Supreme Court as the term ‘offensive’ was not explained properly and was vague. Also,

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<sup>3</sup> LAWLEX, (last visited on FEB 12, 2022, 11:48 PM) <https://lawlex.org/lex-pedia/what-is-cyber-defamation/25167>

<sup>4</sup> IPLEADERS, (last visited on FEB 14, 2022, 2:06 PM) <https://blog.ipleaders.in/cyber-defamation-india-issues/>

government misused the act to put restrictions on the freedom of speech and expression, given to the citizens of India. the provision was thus, repealed by the Supreme Court.<sup>5</sup>

## **LANDMARK JUDGEMENT**

### **SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra**

Facts- The defendant, Jogesh Kwatra worked in the plaintiff's company and began sending defamatory, obscene, vulgar and abusive emails to his employers as well as numerous other affiliates associated with the company in order to ruin the company and its Managing Director Mr. R.K Malhotra's reputation. The plaintiff asked the defendant to immediately stop sending these defamatory emails to other employees of the company.

According to plaintiff's counsel, the main purpose behind sending these emails was to defame the company's name national and internationally. The defendant had violated the plaintiff's legal rights because of his actions and also it was the duty of the defendant to not disclose the communications which were aforementioned. After discovering the abusive emails, defendant's employment was terminated.<sup>6</sup>

Judgement- The Hon'ble Judge of the Delhi High Court issued an ex-parte ad interim injunction after hearing the plaintiff's comprehensive arguments, noting that the plaintiff had shown a prima facie case. As a result, the Delhi High Court prohibited the defendant from sending defamatory, obscene, vulgar, humiliating, or abusive emails to the plaintiff's company or its foreign affiliates. Furthermore, both in the real world and in cyberspace, the defendant was prohibited from publishing, sending, or causing to be published any material that is insulting, defamatory, or abusive to the plaintiffs.

### **Kalandi Charan Lenka vs. State of Odisha**

In this case, the petitioner was stalked on a regular basis, and the offender created a fake account of her and sent obscene messages to her friends. On the walls of the hostel where the victim stayed, a modified naked picture was also put. The offender was found guilty of his crime by the court.<sup>7</sup>

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<sup>5</sup> LEXOLOGY, (last visited on FEB 14,2022, 2:06 PM)

[https://www.lexology.com/library/detail.aspx?g=d3075f4d-afb5-4920-bf59-26cf5d054ab8#\\_ftn4](https://www.lexology.com/library/detail.aspx?g=d3075f4d-afb5-4920-bf59-26cf5d054ab8#_ftn4)

<sup>6</sup> LEGAL BOTS, (last visited on FEB 14, 2022, 2:06 PM) <https://legalbots.in/legal-blog/defamation-in-the-cyberspace-lack-of-data-protection-act-in-india-2022020804230362024b8f63ac5>

<sup>7</sup> IPLEADERS, (last visited on FEB 14, 2022, 2:06 PM) <https://blog.ipleaders.in/cyber-defamation-india-issues/>

## **COMPARATIVANALYSIS OF THE LAW BETWEEN UK AND INDIA**

Developing countries like India are experiencing success in many areas, but the cyber industry is growing slowly. On the other hand, developed countries like UK are more advanced when it comes to the domain of cyber industry. The Computer Misuse Act of 1990, provides the citizens of UK a strategic legal protection against the cyber-crimes. However, both the countries are not able to tackle new-arising situations using the old law framework.

In addition, the UK is much more open to multi-stakeholder input when it comes to shaping policy, but in India, cyber security is still divided between private and government activities, which usually focuses on national security concerns. The Indian government can do a lot to raise awareness about cybersecurity, and it may also use the flexible techniques used by the United Kingdom to comply with security methodologies without imposing severe laws and regulations. It should also explore the possibilities of engaging into international agreements that provide a high level of cooperation in the investigation of cyber threats. The UK must also strike a balance between national security considerations and privacy and surveillance concerns.

### **CONCLUSION**

With the advent of the internet age, communication has become significantly easier.

However, such conveniences always have advantages and disadvantages. Because of the ease with which data and information can be transferred over the internet, it has become a major hotspot for defamation. Despite the fact that there are laws forbidding people from publishing defamatory information online, the majority of people are either unaware of these rules or are too negligent to discern whether or not the content is defamatory. In addition to strict data protection regulations, the government will establish cyber cells with professionals who will be able to combat the new era of cybercrime. When free speech threatens a person's reputation in the digital age, the legal system must set a boundary, preventing further damages.

Legislation that teaches and informs users about what to do and what not to do in cyberspace, as well as what is wrong and what is right, and what is defamatory and what is not defamatory, is desperately needed. Furthermore, the intermediaries in charge of open platforms should monitor the material on their social media and take appropriate action against offenders, thereby raising public awareness.