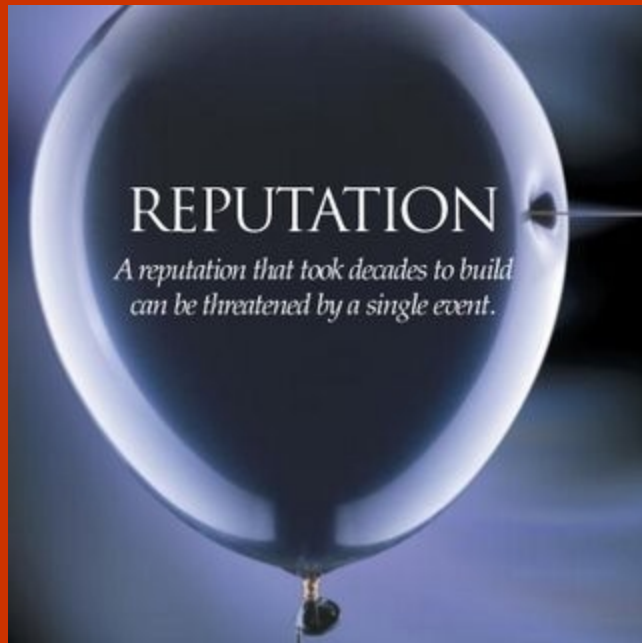


Defamation On Cyber Space



Overview



1. Cyber Crimes
2. Defamation *vis-a-vis* Cyber Defamation
3. Liabilities, Remedies & Damages
4. Liability of ISP
5. Evidentiary value of Electronic Evidences
6. Burden of Proof
7. Conclusion

Introduction

- Defamation of Cyber space is also a crime !
- Crimes committed on internet are not radically different from conventional crimes.
- *Mens Rea* : A necessity
 - Intention to defame coupled with knowledge must be there.
 - Knowledge that the actions would amount to defamation.

Cyber Laws

- Information technology Act 2000 is the principal legislation in the area of Cyber Laws.
- Internet lacks any geographical limits hence United Nations Commission on International Trade Law' (UNCITRAL) proposed a certain level of uniformity of laws in all member countries – Model Law of Electronic Commerce was adopted.

Cyber Law in India

- Dept. of IT in India proposed law based on UNCITRAL model after adoption by UN General Assembly.
- IT Act 2000 is a facilitating, enabling Act and a regulating act.
- IT Act describes various cyber crimes and prescribes punishment for such offences.
- Section 43,65,66,67 deals with Cyber Crimes under Chapter IX and XI.

Cyber Defamation

- The intention to harm the reputation of a particular person knowing that their conduct is likely to cause such harm to the reputation— s.499 IPC.
- Cyber Defamation is when defamation done with computer as tool.

Cyber Defamation

- Section 67 deals with publication of obscene material and provides for imprisonment up to a term of 10 years and also with fine up to Rs. 2 lakhs.
- However the IT Act does not cover cyber defamation specifically, therefore to seek remedy against cyber defamation the aggrieved party will have to initiate proceedings under the provisions of IPC read with the provisions of IT Act, 2000.

Case Laws in India



1. SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra

Considered to be the first civil defamation case of its kind and particularly on the subject of cyber defamation where it was alleged that a company's reputation was harmed by an employee who sent derogatory and obscene emails to his employers and other subsidiary companies of the said company. Delhi High Court issued an ex-parte ad interim injunction against the employee stating that a prima facie case had been made out by the Company and thereby restrained the employee from publishing the derogatory emails.

2. State of Tamil Nadu v. Suhas Katti

The case related to posting of obscene, defamatory and annoying message about a divorcee woman in the yahoo message group. E-Mails were also forwarded to the victim for information by the accused through a false e-mail account opened by him in the name of the victim. The posting of the message resulted in annoying phone calls to the lady in the belief that she was soliciting.

Charge Sheet was filed u/s 67 of IT Act 2000, 469 and 509 IPC before The Hon'ble Addl. CMM Egmore

The accused was found guilty of offences under section 469, 509 of IPC and Section 67 of IT Act, 2000,

He was sentenced for the offence to undergo rigorous imprisonment for 2 years under 469 IPC and for the offence u/s 509 IPC sentenced to undergo 1 year Simple imprisonment and for the offence u/s 67 of IT Act 2000 to undergo imprisonment for 2 years.

Liability, Remedy & Damages

- Cyber defamation need not necessarily be directed against an individual victim.
- The act of defamation is potentially capable of harming a large number of persons and that is the principal object behind making penal provisions for the same.

Liability, Remedy & Damages

- Defamation cases are either instituted in the nature of civil or criminal.
- Basis for a civil defamation suit (for damages) related to internet would be Tort law while criminal cases would be covered under Section 499 IPC read with section 67 of IT Act.
- Both nature of cases (Civil and Criminal) can be instituted simultaneously.
- Jurisdiction of court lies wherever the publication of defamatory content is affected.

Liability of ISP (Internet Service Provider)

- Courts generally analyzes ISP liability under the same standards as applied to newspapers and other media (anyone who exercised a substantial degree of editorial control over the distributed product).
- Example: A person published defamatory material on a network and the computer redistributed that material, the owner or operator of the server will not be liable as they only permitted access to published defamatory content but they did not assist in publishing that content. Therefore proving facilitation of distribution of defamatory content is necessary.

Liability of ISP in U.S.

- Communications Decency Act (USA) - No provider or user of an interactive computer service is treated as the publisher or speaker of any information provided by another information content provider. Thus the law is not harsh on the ISPs.

Challenges to developing Jurisprudence: Cyber Defamation

- ‘Publication’ – most important ingredient of defamation defined under IPC.
- What constitutes ‘Publication’ on internet is still not clear.
- No definition of ‘Publication’ is provided in IT Act, 2000.
- IT act covers only ‘publishing of information which is obscene in electronic form’.
- No mention of ‘derogatory’ remarks and words intended to insult the modesty of women (S.509 IPC). i.e. no specific provision which is the need of the hour given the current situation prevailing in the Country.

Admissibility of Electronic Records

- Section 65A & 65B of Indian Evidence Act.
 - electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a 'document'.
 - Online Chat is admissible in evidence under section 65B of the Indian Evidence Act (State of TN v. Suhas Katti).
 - Emails are admissible as evidence under section 65B of the Indian Evidence Act (SMC v. Jogesh Kwatra)

Burden of Proof

- Section 102 of IE Act: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, therefore burden lays on prosecution.
- Section 106 - doctrine of exclusive knowledge - when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
- Burden of proof v. onus of proof.

Conclusion

- The IT Act does not provide for the definition of 'publication' – the most important element of defamation.
- Act provides remedy only for publication of obscene material thus limiting the scope.
- Liability of Intermediary (ISP) is absolved under IT Act, which is in contravention of Section 501 of IPC.

The Author of this Slide is a practicing lawyer in the Delhi High Court and can be contacted on tuhinbatra@gmail.com in case of any query.

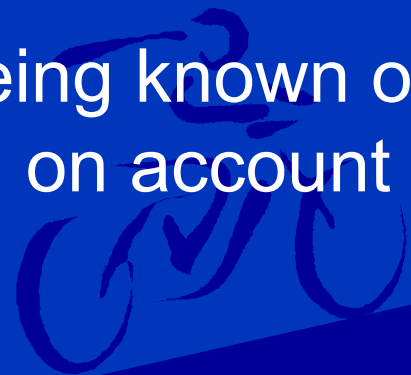
Defamation

Dr. Khakare Vikas

Asso. Prof.

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- This is also known as wrongs affecting reputation.
- Word 'reputation' is synonymous with 'fame'.
- 'reputation' is the beliefs or opinions that are generally held about someone or something.
- It is widespread belief that someone or something has a particular habit or characteristic.
- 'Fame' is the condition of being known or talked about by many people, esp. on account of notable achievements.



Definition

- Winfield, “Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of the society generally or which tends to make them hate or avoid that person”.
- Underhill, “Defamation is the publication of a false and defamatory statement concerning another without just cause or excuse, whereby he suffers injury to his reputation”.
- Salmond, “ Defamation consists in the publication of a false and defamatory statement concerning another without lawful justification”.

...

- The constitution of India has provided fundamental right of freedom of speech and expression. But this right is not absolute and subject to certain limitations. A person may speak or express his ideas but it should not cause defamation of another.



Kinds of defamation

- **Following are two kinds of defamation.**
 - 1. Libel**
 - 2. Slander**



Libel

- Libel is publication of a false and defamatory statement in some permanent form tending to injure the reputation of another person without lawful justification or excuse.
- Examples- writing, printing, picture, effigy, online publication, cartoons, etc.



Slander

- Slander is false or defamatory, verbal or oral statement in some transitory form, tending to injure the reputation of another without lawful justification or excuse.
- Example- words uttered, comments, explanation, on radio, television etc.



libel

1. It is written defamation addressed to the eye.
2. It is in permanent form.
3. It is both civil and criminal wrong.
4. It is actionable per se.

slander

1. It is spoken defamation addressed to ear.
2. It is in transitory form.
3. It is civil wrong only.
4. It is not actionable per se unless there is special damage.

Distinction in India

- About libel and slander law is different in India. In English law, libel is under criminal law while slander is under civil law. In India, both are under criminal law and for both civil action is possible.



Essential elements for defamation

1. False statement.
2. Publication.
3. Published by defendant.
4. The statement must refer to plaintiff.
5. Defamatory statement.



1. False statement

- The statement must be false. It means which is not true.
- If the statement is not false or actual narration; it is not amounting to defamation.
- Here statement include written and oral statement.



2. Publication.

- Publication of the statement is necessary for defamation.
- 'Publication' is understood in technical sense in relation to the tort of defamation. It means the contents of the defamatory statement are conveyed to someone else other than the plaintiff.
- If defendant has communicated defamatory statement only to the plaintiff and to none else then, it shall not amount to defamation.
- If the defamatory letter is send to the plaintiff is likely to be read by somebody else, there is a publication.

3. Published by defendant.

- The statement must be published by the defendant.
- Where plaintiff himself publishes statement; no action lies.
- Where publishers are jointly and severally liable; all can be sued. For example – writer, editor and publisher of news paper.



4. The statement must refer to plaintiff

- “In an action for libel, the question is not who was meant but rather who was hit.”
- In an action for defamation, the statement alleged must refer to the plaintiff.
- It is not necessary to show that, the defendant intended to refer the plaintiff.



...

- Plaintiff has to prove that the statement referred to him. It is immaterial that the defendant did not intend to defame the plaintiff. If the person to whom the statement was published could reasonably infer that the statement referred to the plaintiff then defendant is liable.
- In case of defamatory statement, intention or motive are immaterial. Good faith or ignorance of the defamatory statement is not defence. The burden of proof that the words are false does not lie on the plaintiff.

5. Defamatory statement.

- Only defamatory statement amounts to defamation.
- A statement is defamatory if it lowers down plaintiff in the estimation of right thinking persons of the society OR it is a statement which if known to a reasonable person shall cause him to be shun and avoided by the person in the society.

...

- A statement is defamatory if it tends to injure reputation of a person.
- it is not necessary that such injury to reputation should be in the eyes of everyone; but it is sufficient if such injury is in the eyes of certain group of respectable persons.



Innuendo

- Sometimes defamation is not , in terms apparent or prima facie clear. It is often couched in subtle language.
- The words are not defamatory in its ordinary sense but due to circumstances it amount to defamatory. This is innuendo.
- It is a kind of remark, intimation or question which is disparaging or insinuation.
- Example – A tells B, that C is under treatment of Dr. D. If D is a well known psychiatrist, then C may plead by way of innuendo A has published to B that, C is insane and under treatment.

Remedy

- Under law of torts, for publication of a defamatory statement, plaintiff can file a suit for injunction and damages.

1. Injunction

plaintiff can claim injunction against the defendant for not publish such defamatory statement. Generally prohibitory injunction is claimed by the plaintiff.



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2. Damages

For publication of defamatory statement, plaintiff can claim damages. In cases for defamatory statement, there is presumption of damage or injury to reputation of the plaintiff. For this plaintiff may get nominal damages. To claim substantial damages, plaintiff must prove that, he sustained actual economical or otherwise injury.



Defences

- In the suit of defamation; defendant can use the following defences to avoid his liability.
 1. Justification or truth.
 2. Fair and bonafide comment.
 3. Privilege
 - absolute
 - qualified
 4. Apology



1. Justification or truth.

- The truth of defamatory words is complete defence.
- If the statement is true; the motive is irrelevant.
- Statement based on rumours is not sufficient.
- The truth must be proved by the defendant otherwise he will be liable.



2. Fair and bonafide comment

- This is another defence for an action of defamation. To avail this defence following conditions are essential.
 1. It must be a comment.
 2. The comment must be fair.
 3. The matter commented upon must be of public matter.



...

1. It must be a comment.

Comment means, an expression of opinion on certain facts. It is different than mere statement of fact. It is essential that, the facts commented upon must be either known to the audience addressed.



...

2. The comment must be fair.

Fair comment means, comments honestly believed to be true and not inspired by any malicious motive.

A comment based upon untrue fact, is not fair comment.



...

3. The matter commented upon must be of public matter.

To treat a comment upon public matter, such matter must be-

a) in which the public in general have a legitimate interest, directly or indirectly, nationally or locally.

b) matters which are expressly or impliedly submitted to public criticism or attention.

Eg.- administration of Government, departments, public companies, courts, conduct of public men like ministers and officers, public institutions, public meetings, plays, books, artist etc.

3. Privilege

- Privilege means that a person stands in such a relation to the facts of the case that he is justified in saying or writing what would be defamatory. In this situation, right of defendant is more important than right of reputation of plaintiff.
- There are two types of privilege 'absolute' and 'qualified' privilege.



Absolute privilege

- A statement is absolutely privileged when no action lies for it; when it is false, defamatory and with express malice.
- Eg.
 - Parliamentary proceeding
 - Judicial proceeding
 - Military proceeding
 - State proceeding
 - Judicial report



Qualified' privilege

- A statement is said to be qualified privilege, when no action lies for it even though it is false and defamatory unless it is made with express malice.
- Eg/ communication made in the course of legal, social or moral duty,
- for self protection,
- for protection of common interest, and
- for public good



4. Apology

- This is a statutory defence in an action for libel contained in a public newspaper or periodical, wherein apology is published and accepted.
- For this defence, defendant must show absence of malice and gross negligence and such apology should be published at the earliest.



Thank you



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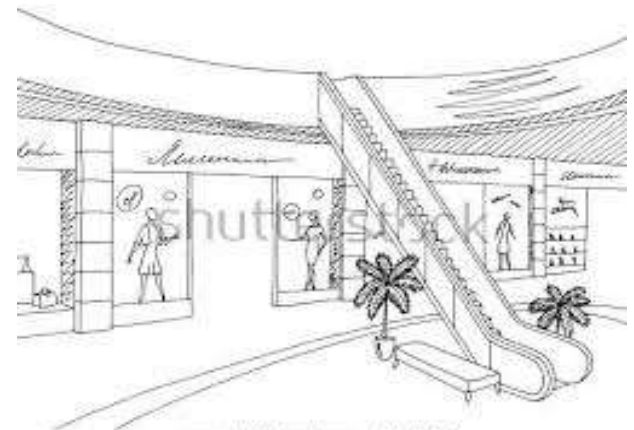
What is Tort



- Tort- A Civil wrong, less serious than a crime, committed by a person against another, other than breach of contract.
- The state has no interest.
- May lead to a civil suit.

Torts against property

1. Torts against immovable property.
2. Torts against movable property.



1. Torts against immovable property

➤ Torts affecting immovable property arise :

- a) either by disturbance of the right to hold or possess it,
- b) whether such disturbance be present or in expectation ;
- c) or by actual physical damage to the property;
- d) or by interference with it ;
- e) or impairing of the enjoyment of it

1(A). Trespass to Land

1(A)(a) General Trespass:

Every person who possess lawfully any land; has a right to exclude others from entering over his land. If a person without permission or authority enters on his land will be treated as a trespasser.

- Trespass to land is also an offence under IPC(section 441)provided the requisite intent is present.
- To constitute the wrong of trespass neither force ,nor unlawful intention, nor actual damage, nor the breaking of an enclosure is necessary.
- “Every invasion of private property, be it ever so minute, is a trespass”

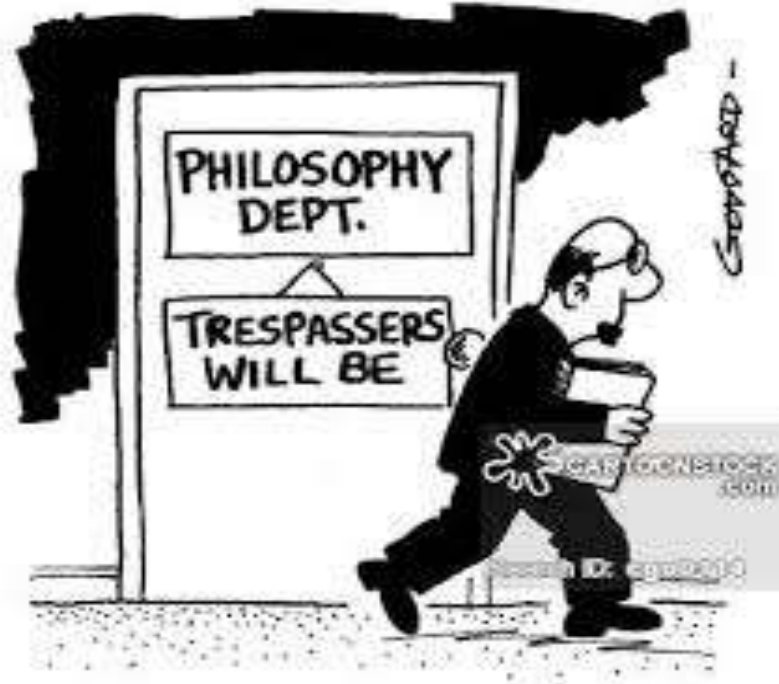
CASE: Secretary K.S.E.B v. M.V.Abraham

Trespass may be committed:

- 1) By entering upon the land of the plaintiff
- 2) By remaining there
- 3) By doing an act affecting the sole possession of the plaintiff in each case without justification.



1) Entry is essential to constitute a trespass:



intentionally
mistake

LIABLE

involuntarily

NOT LIABLE

When a person is thrown upon the land by someone else he cannot be held liable as it is involuntary.

➤ ILLUSTRATIONS:

CASE: FOWLER v. LANNING

Here court said that intention was an important element to constitute trespass.

CASE: CORBET v. HILL

In this case the presumption was that, he who owns the surface of land owns all the underlying strata. So an entry beneath the surface at whatever depth, is an actionable trespass at the instance of the owner of that surface.

But it is possible that the underlining strata may be in possession of a different person.

For e.g.:

- When mining rights are held by a person who is not in possession of the surface.
 - So if the surface of land is in possession of 'A' and the subsoil is in possession of 'B'
 - Entry on the land will be trespass against 'A' and entry in the subsoil will be trespass against 'B'.
- Also if a person who has limited right of entry upon land, exceeds that right, he is a trespasser.

2) By remaining there

If a person who has lawfully entered on the land of another and remains there after his right of entry has ceased, he commits trespass.

For e.g.:

Licensee whose license has been terminated or extinguished by expiry can be sued as a trespasser if he does not vacate after request



3) Doing an act affecting the sole possession of the plaintiff

- Means trespass by placing things on land
- Trespass → not by actual entry.



By placing or crossing some physical things on others property

e.g.: >shooting over a persons land

>placing anything above or hanging his land

>planting trees in his land



1(A)(b) Aerial Trespass

- The owner of the land is entitled to the column of air space above the surface.
- Ordinary rule of law → whoever has got the site- is the owner of everything up to the sky and down to the center of the earth.
- e.g.: If a man were to erect a building over hanging the land of another, he would commit trespass and an action would lie against him.



1(A)(c) Continuing Trespass

- If a man throws a heap of stones, or builds a wall, or plants post of rails, on his neighbor's land, and there leaves them, an action will lie against him for the trespass;
- And the right to sue will continue from day to day, till the encumbrance is removed.
- Action can be brought for:
 1. original trespass → placing encumbrance
 2. continuing the things so erected.

1(A)(d) Trespass by joint owners

- Joint tenants or tenants in common can only sue one another in trespass for acts done by one in consistent with the rights of the other.
- e.g.: Destruction of a building, carrying away of soil.

1(A)(e) Trespass by animals

- Trespass by a man's cattle is dealt similarly to trespass committed by himself.
- If a man's cattle, sheep or poultry or any animal trespasses into the land of another, the owner of the land is responsible for the trespass and consequential damage;
- Unless he can show that his neighbor was bound to fence and had failed to do so.



Essential elements for trespass

- Entry essential
- Entry by an unauthorized person
- Not liable for involuntary entry
- Liable for aerial or underground trespass
- Liable if person remains on land after right is ceased
- Every interference with the land of another is considered trespass



What a plaintiff has to prove??

- In an action for trespass the plaintiff has to prove:
 1. That the plaintiff was in actual possession of the land at the time of trespass. Lawful or unlawful possession is immaterial.
 2. There was direct interference with the possession of his land.

No need to show actual loss or damage.



"Officer, my name is Wilber RobinSon and I'd like to report a trespassing dollar sign."

Remedies to plaintiff

- Following remedies are available:

- 1). Injunction → against defendant

- 2). Suit for damages

Other remedies like declaration, expulsion or possession



Defences available to defendant

1) Prescription- The defendant may plead that he has a justifiable reason or right over the property.

2) Leave and license- It is also considered as consent. This defence can be used for those acts which will be lawful with consent. Where plaintiff has consented for the entry.

3) Authority of law- If entry is defended by lawful authority then he is not answerable.

4) Act of necessity- If the act done by the defendant is under necessity

5) Act of self defence- If trespass done safety of himself, animal, property, goods.

6) Re-entry on land- A person who is wrongfully dispossessed of land may retake possession of it if he can do so peaceably and without the use of force.

7) Abating a nuisance- Nothing but removal of nuisance must be done peaceably and without danger to life or limb

Trespass Ab Initio

- Sometime a person enters over another's property with some authority or consent. But later he does something or abuses or goes beyond such permission to him, he will be liable for trespass only.
- But if a person enters the land of another under the authority of some law but then abuses his authority by doing some wrongful act, then he will be treated as trespasser ab initio. i.e. he will be treated as trespasser from the beginning

SIX CARPENTER'S CASE

CASE: VAUX v. NEWMAN



SIX CARPENTERS

took wine and bread
→
did not pay



"I don't know if Land Of The Amazon Women was such a great place to open a bar/inn."

INN

- Plaintiff sued them for trespass ab initio
- It was held that non payment was simply an omission to do a certain thing which the defendants were supposed to do and it amounted to non feasance.
- Non feasance does not render a person liable for trespass ab initio.
- So the carpenters were not trespassers ab initio.

In this case court laid down three points

1. If a man abuses an authority given to him by law, he becomes a trespasser ab initio.
2. In an action of trespass, if the authority be pleaded, the subsequent abuse may be replied.
3. A mere non feasance does not amount to such an abuse as renders a trespasser ab initio.

THANK YOU

