

DEFAMATION IN A DIGITAL WORLD: THE COMPLEX INTERPLAY OF ANONYMITY AND LEGAL ACCOUNTABILITY

by

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INTRODUCTION

In this digital age where social media amplifies voices and spreads information at lightning speed, defamation has emerged as a powerful weapon capable of shaping public perceptions and ruining reputations overnight thereby making the concept of defamation more critical. Take, for instance, the dramatic courtroom showdown between Johnny Depp and Amber Heard¹ whereby Depp accused Heard of damaging his career with 2018 op-ed in The Washington Post, where she described herself as “public figure representing domestic abuse”, not only captivated audiences and showcased the destructive potential of defamatory statements but also ignited a firestorm of discussion surrounding the nuances of celebrity culture and laid bare fragile line between truth and falsehood. As we delve into this intricate world, it is essential to understand that this is not just about celebrities but reverberating across various facets of society.

Similarly, Elon Musk’s infamous “pedo guy” tweet², which labeled a diver involved in the rescue of Thai soccer team, raises pressing questions about the boundaries of speech and its consequences. On another front, Rahul Gandhi’s statement that “*Saare Choro Ke Naam Modi Hi Kyu Hai*”³- “Why is Modi's name associated with all thieves?” incited significant backlash and legal ramifications, illustrating how political discourse can quickly turn into personal attacks. These cases underscore the complicated nature of defamation, where legal standards and personal integrity intersect in increasingly complex ways. Again, the dispute between M. J. Akbar and journalist Priya Ramani⁴ for her allegations of sexual misconduct in 2021, illuminates how defamation law can become a tool for stifling conversations around sensitive issues.. However, these challenges extend beyond the contentious nature of the cases themselves. There is another pressing issue: the challenge of anonymity. Many defamatory statements are made online, often shielded by the cloak of anonymity provided by intermediaries such as social media platforms and internet service providers (ISPs). These lacks

¹ https://www.fairfaxcounty.gov/circuit/sites/circuit/files/assets/documents/pdf/high-profile/depp%20v%20heard/cl-2019-0002911_motion_8871451_04_11_2019.pdf.

² Unsworth v. Musk, (N.D. Cal. 2019), https://www.govinfo.gov/app/details/USCOURTS-cand-3_19-mc-80224/summary.

³ *Modi Surname Defamation Case | Supreme Court stays Rahul Gandhi's conviction*, SCC Blog (Aug. 4, 2023), <https://www.sconline.com/blog/post/2023/08/04/sc-stays-rahul-gandhis-conviction-in-modi-surname->

[defamation-case-legal-news/](#).

⁴ #MeToo | *MJ Akbar v. Priya Ramani*: Woman has a right to put her grievance at any platform of her choice even after decades || *No defamation case against Priya Ramani [Verdict]*, No defamation case against Priya Ramani



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of accountability not only complicates the pursuit of justice for victims but also raises questions about the responsibilities of these intermediaries in addressing harmful content. Thus, while these cases shed light on the nature of defamation, we need to take a step further to understand and analyze the urgent need to navigate the challenges posed by anonymity and the role of intermediaries in the digital age.

As we delve deeper into this complexity in the digital age, this essay seeks to unravel the dynamics between the challenges posed by anonymity and approach of Indian jurisprudence in dealing with the anonymous users and the role of intermediaries.

DEFAMATION AND ITS CORE LEGAL FRAMEWORK

Defamation is a potent legal instrument that serves as a shield for individuals and entities against the corrosive impact of falsehoods on their reputations. In India, defamation is governed primarily by the Bharatiya Nyaya Sanhita (BNS)⁵ 2023, which outlines defamation in Section 354(1) as any statement that tarnishes a person's reputation. Under Section 354(2), the law prescribes penalties, including simple imprisonment for up to two years, fines, or community service. Under the Indian jurisprudence, defamation is either a civil law or criminal vis-a-vis; punishable with imprisonment or fine or punishable through the award of compensation. It is the act of publishing derogatory, insulting and/or even abusive statements, about and regarding another person, which has repercussions in the damage or harm to the good name and character/reputation of the other. Furthermore, it is typically characterized into two forms: **libel** and **slander**. Libel refers to defamatory statements made in a permanent form, such as written texts or digital publications; for e.g. print, newspaper articles, emails, blogs, while slander is the publication of a statement which is ephemeral in nature (non-permanent). Both forms necessitate that the aggrieved party prove that the statement was not only false but also damaging and made with a requisite level of fault, depending on the legal standard applied. Libel and Slander are the elements of this tort.

To have a complete idea of this matter in question of online defamation, we need to understand its crucial elements, rules, and completely delve into the issue at hand.

- **DEFAMATION & ITS ELEMENTS:**

1. The statement should be incorrect or false;
2. It should be defamatory;

⁵ Bharatiya Nyaya Sanhita, 2024, § 354.

3. It should be published in some manner;
4. Should harm the reputation of the plaintiff; and lastly,
5. It should be intended by the defamer.

In order to sue someone for defamation, the defamed person should take into consideration certain norms and standards. Firstly, the statement made by the defamer is believed to be false about oneself; next, a rudimentary element that is - the statement must be defamatory; in addition to that, it should be published i.e.- communication of the statement to the third party/parties; on top of that, it should damage the very reputation of the plaintiff and last but not the least - the published statement should be intended by the defamer. However, one cannot succeed in the defamation claim, if the defamer articulates the statement 'only' to the plaintiff alone with no any other person present around or with them and/or writes defamatory content and never publishes it. Hence, no defamation suits arise in such instances.

- **Identification:** As this essay discusses the issue of online defamation, there arises a need to clarify and apprise the latitude of the identification mandatory to allege for defamation. The plaintiff must prove that the defamatory content is 'published' and that too 'referring to him'. Without publication, there exists no cause of action. Thus, it could be argued that publication and the identity are the basis for libel suit.
 - **Defenses:** In defamation cases, the burden of proof initially lies with the plaintiff to prove the publication of the defamatory article appertaining to him/her and that the publication of the content is viewed by some third parties. Besides, the onus probandi shifts to the defendant after the plaintiff proves the aforementioned chore i.e.; defamatory content, publication, identification.
- **IMMUNITY AVAILABLE TO THE DEFENDANT:**
1. **Truth:** The defendant can be exempt from the liability imposed on him for the content published, if he proves that the statement was accurate and precise. After all, defamation is the false statement of fact and hence truth is the ultimate defense for one to spared from the liability.
 2. **Mere Opinion:** to succeed under this defense, one must establish that the statement published was mere opinion and not facts. Moreover, the opinionated statements should be published or available in some manner to be referred to. If the plaintiff succeeds in that the opinion made by the person is not honest, then the defence fails. However, simply because you defame the opponent by issuing an opinionated statement does not

mean it will be elucidated for tort of defamation. The jury will take into consideration certain circumstances i.e.; how well you knew the person defamed, why you made the statement and how precise the statement made was. And so accordingly, the jury foresees whether the statement was an opinion or not.

3. **Absolute Privilege:** Person making a statement has absolute rights, even if it is defamatory. In this scenario, the right to speech⁶ of the defamer outweighs the right to reputation of the defamed person i.e., statements published during legislative processes, government reports and so on.
4. **Qualified Privilege:** Person making a statement has some right to make that statement i.e., a statement made without malice. And to achieve this defense, the defendant should prove that there was an occasion for making the statement.

- **Intermediary Landscape and Challenge Posed by Anonymous Users:**

An essential element of the defamation framework in the digital age involves the role of **intermediaries**. According to Section 2(1)(w) of the Information Technology Act, 2000, intermediaries encompass a wide array of entities that facilitate the exchange of information. These include Internet Service Providers (ISPs), social media platforms, online marketplaces, and various other digital service providers. While these intermediaries are vital in enabling users to share and access content, they also present unique challenges when it comes to navigating the complexities of defamation law.

To surf the internet, one must have to create a profile and have their actual account and get identified, however this does not apply to all the cases. Some feel comfortable in not revealing or disclosing their identity and hence the term “anonymity” and “pseudonymity” comes ahead. One can operate himself through anonymity i.e., by not revealing their real identity or may use an unknown name, whereas pseudonymity is being used when one uses a fictitious name hiding their identity⁷. The internet becomes interesting, exciting, and helpful until and unless online defamation becomes a massive concern when derogatory statements are made against a reputation of a person, anonymously. Consequently, it becomes burdensome for the plaintiffs to file a suit in a civil court for the tort of defamation against the defendant because of the non-revealing identity of the defendant and hence here the problem arises. On top of that, ISPs i.e.,

⁶ Constitution of India, 1950, art 19(1)(a).

⁷ Yaman Akdeniz, Anonymity, Democracy, and Cyberspace, 69 JHU Press. 223, 237 (2002).

the Internet service providers⁸ and social media web hosts often, also become liable for the liability of defendants. In the view of the fact, editors/publishers/reporters/hosts are to be held liable in the eyes of the defamed person, considering it is their authority and duty to monitor the derogatory content being published on their platforms and take actions promptly. At this moment comes the issue of balancing and imposing liability on the intermediaries for the very deeds of the anonymous, aspersing.

This anonymity can lead to an increase in defamatory statements, as individuals feel emboldened to make harmful assertions without the fear of facing repercussions. This lack of accountability complicates the ability of defamation law to protect individuals from reputational harm. Victims of online defamation often struggle to identify the perpetrators, which hinders their ability to seek justice through legal channels.

APPROACH OF INDIAN JURISPRUDENCE WITH RESPECT TO ANONYMOUS

USERS:

Anonymous online speech complicates the tort of defamation by making it more challenging for the victim/defamed person to "unmask" the identity of the anonymous publishers hiding under their veil and seek justice. Anonymous speech empowers people to express oneself in ways they would never be able to if their identities were revealed. The privilege to remain anonymous is not absolute. In the previous system, publishers worked alongside anonymous authors to disseminate anonymous speech. A recent case has been examined to demonstrate the navigation for dealing with problems presented by the anonymous publisher in Indian decree.

- **SUBODH GUPTA vs. HERDSCENEAND & Ors (2019)⁹:**

Subodh Gupta, the plaintiff, was a renowned artist who was made alleged offender of sexual harassment, made by the so-called victims anonymously, on the defendant's provided Instagram platform for alleged victims of sexual harassment against alleged offenders. In 2018, an unknown user posted defamatory allegations against Subodh Gupta. In response, he filed a defamation suit against the defendants: (1) the Instagram page (Herdsceneand); (2) Instagram; (3) Facebook Inc.; (4) Facebook Ireland; (5) Google Inc.; (6) Google India Pvt. Ltd; in addition to that- a compensation of Rs. 50 million. The arguments presented by the plaintiff was to

⁸ Pratik Dixit, From gatekeepers to publishers: Liability of internet intermediaries in India for hosting defamatory content, 1 NLSIU. 1, 11 (2021). <https://scihub.se/https://doi.org/10.1016/j.clsr.2021.105558>

⁹ Subodh Gupta v. Herdsceneand & Ors, Live Law, CS(OS) 483/2019 (Delhi HC: 2019)

remove all the false accusations made on the Instagram page of Herdsceneand and for the search engines to remove the reference to the post and related news articles¹⁰. As a result, this act caused the reputation and financial losses simultaneously. On question of whether Herdsceneand should stay anonymous during the proceedings, the counter-arguments being presented by the defendant were- disclosing the identity of its administrator(s) would cause harm for which sufficient protection was not available in the legal system & the victims of the sexual harassment in such #MeToo cases face a large number of issues and thus must be permitted to stay anonymous. The matter through which the researcher tries to connect with this case is focused whether the court would allow the identity of the publishers to remain anonymous. Justice Endlaw has ruled that the defendant in this case should not be allowed to act as the judge in his or her own case by demanding anonymity and refusing to let the "alleged" accused provide a defense. According to Indian law, the adversarial character of judicial processes, fairness of procedure, and equality of opportunity for all parties are violated when an unknown individual is involved in a lawsuit¹¹. However, the Court ultimately ruled in favour of Herdsceneand and allowed the proceedings to resume without revealing the identity of Herdsceneand's administrator to the plaintiff or the public. The Court gave Herdsceneand the choice of either representing the said' accuser's interest behind the post or involving the accuser as a party in the lawsuit. Herdsceneand's administrator's identity private and agreed not to bring any more allegations against Herdsceneand. Finally, the suit was decided in Gupta's favour, and the anonymous charges were erased from Instagram and Google search results. In tort, control equals liability. Existing case laws in this area typically focuses on the issue of control. Under the tort law of defamation, liability may be imposed upon the creator of defamatory statement as well as on the disseminator/ISP of the platforms where the material is being published. The amount of control the intermediaries has, so does the liability for publishing the material. Thus, it can be concluded that Indian laws exempt the liability of the ISPs from the deed of anonymous publishers. There are three mediums through which the content can be disseminated- newspapers (publishers), libraries, bookstores, news vendors (distributors), telephone companies. The magnitude of the punishments to be awarded to the service providers extents to different levels. For instance, newspapers (publishers) are often made liable as they exercise a complete authority over the content disseminated; while on the other hand, telecom

¹⁰ Global Freedom of Expression (Feb. 11, 2020), <https://globalfreedomofexpression.columbia.edu/cases/gupta-y-herdsceneand/>.

¹¹ Press Trust of India, Anonymity in Litigation Runs Counter to Indian Jurisprudence says HC, Business Standard (Sep. 20, 2024, 7:10 PM) https://www.business-standard.com/article/pti-stories/metoo-can-t-permit-guerilla-warfare-by-allowing-anonymity-to-accusers-says-hc-119112101156_1.html

companies have no control over the circulation of the statements. The challenging issue arising here is comparing ISP to three common law groups for disseminators might be challenging because to the similarities they share with each category. Even if the courts classify them as one, the classification is not uniform because ISPs maintain varying levels of authority in different places i.e.; the email platforms can be maintained by the service providers while the chatrooms are not. Furthermore, the laws regarding the unmasking of anonymous users are unclear. As a result, plaintiffs who would have previously sued ISPs for damages in libel cases are instead suing the anonymous users directly. However, up until this point, Indian courts have not dealt with complicated questions that they will definitely need to decide in the near future. As a result, the Indian Parliament must foresee these circumstances and include their resolutions in a complete statute that clarifies both the obligations of intermediaries and the boundaries of their liability.



CONCLUSION:

The delicate balance between safeguarding an individual's right to reputation and preserving the freedoms associated with anonymous expression remains a challenging conundrum for the judiciary and lawmakers alike. The existing legal provisions, while aimed at protecting intermediaries, often result in a paradox where victims of defamation find themselves disadvantaged when attempting to unmask their accusers. This scenario is exacerbated by the ambiguities in current laws regarding intermediary liability and the lack of explicit statutory guidance on how to navigate the complexities of online defamation. As society continues to embrace the digital age, it becomes increasingly essential for the Indian legal system to evolve alongside these changes. Legislators must strive to create a more comprehensive framework that not only delineates the responsibilities and liabilities of intermediaries but also ensures that victims of defamation have viable pathways to seek justice. Such a framework should incorporate clear guidelines for unmasking anonymous users while balancing the need for privacy and protection against malicious attacks.

In conclusion, the challenge of anonymity in defamation cases poses significant questions for Indian jurisprudence, demanding a thoughtful and nuanced approach. The quest for justice in the digital realm must not come at the cost of fundamental rights, and as the legal landscape adapts to the realities of the internet, it must prioritize both the protection of individual reputations and the vital freedoms that underpin democratic discourse. Addressing these

challenges head-on will not only fortify the rule of law in the digital age but also foster an environment where the rights of all individuals are upheld, ensuring that justice is accessible and equitable.



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