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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **DEFAMATION IN THE DIGITAL AGE (CYBER DEFAMATION): LEGAL AND ETHICAL DIMENSION.**

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## ▪ **Abstract -**

In the twenty-first century, people are able to interact and transmit information more quickly, easily, and affordably because of the rapid global expansion of internet communication. An individual can send an email to a large number of people worldwide or post a message on an online message board with only one click. Over the course of centuries, laws against defamation have developed to safeguard individuals whose reputations have been damaged or are projected to be damaged by the publication of information about them. The rapid proliferation of digital platforms and social media, the landscape of defamation has evolved significantly, presenting new challenges and complexities for legal frameworks and ethical considerations. This research delves into the intersection of defamation law, digital communication, and ethical implications in the modern era. Through a comprehensive review of relevant literature, case studies, and analysis of legal precedents, this study aims to elucidate the nuanced dynamics of defamation in the digital age. Key points include the impact of social media on the dissemination of defamatory content, the role of intermediary liability, jurisdictional challenges in cyberspace, and the balance between freedom of expression and protection of reputation. Additionally, ethical considerations surrounding online speech, the spread of misinformation, and the responsibilities of digital platforms will be explored. By synthesizing legal, technological, and ethical perspectives, this research seeks to provide insights into the complexities of addressing defamation in an interconnected digital society, offering implications for policymakers, legal practitioners, and digital citizens alike. According to theory, the aim of defamation law is to maintain a balance between safeguarding an individual's reputation and freedom of expression.

- **Keywords:** Social media crime, Defamation, Digital Communication, Harm Reputation, Civil and Criminal liability.



- **Introduction** -

In the digital age, where information travels at unprecedented speed and reaches global audiences within seconds, the landscape of defamation has undergone a profound transformation. Defamation, traditionally understood as the act of harming someone's reputation through false statements, now intersects with the vast realm of digital communication platforms, posing new challenges for legal systems, ethical frameworks, and societal norms. The rise of social media platforms, online forums, and digital news outlets has democratized the dissemination of information, empowering individuals to share their thoughts, opinions, and experiences with a global audience. While this digital revolution has ushered in an era of unprecedented connectivity and communication, it has also blurred the lines between free expression and harmful speech, raising critical questions about the boundaries of defamation in the digital age.

Moreover, the enforcement of defamation laws and the pursuit of legal remedies are faced with particular challenges due to the nature of digital communication. When defamatory content is posted online, jurisdictional problems occur since the internet crosses national borders, making it challenging to ascertain whose laws and courts are relevant in a given situation. Furthermore, the anonymity provided by the internet makes it more difficult to identify and prosecute defamers, which raises concerns about who is responsible for what on platforms and particular websites.

- **Definition** : Defamation is illegal as well as a civil wrong. <sup>1</sup>According to Black's law dictionary defamation is defined as "the offense of injuring a person's character, fame, or reputation by false and malicious statements". Defamation is simply when someone else's reputation is harmed.

- **Literature Review** :

According to its broad occurrence and far-reaching effects, cyber defamation a subset of traditional defamation has attracted a lot of attention in the academic literature. The body of research on cyber defamation emphasizes the intricate interactions between technological, social, legal, and cultural elements that influence online communication. It also highlights the pressing need for multidisciplinary strategies to successfully address this pervasive issue. Scholars contribute to a

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<sup>1</sup> <https://theamikusgrae.com/defamation-laws>



greater understanding of the complicated nature of cyber defamation and provide guidance for developing comprehensive policies for prevention, mitigation, and redress in digital environments by investigating these new dimensions.

▪ **Research Methodology :**

My analysis is based on qualitative data. It also uses primary and secondary data collected and used the legal websites, journals, comments, textbooks, articles, and so forth are utilized in order to gather secondary data. It focuses on techniques for gathering qualitative data. The overall framework for a study on legal research technique lists legal actions along with remarks from case law. Also enhanced the research topic with critical and comparative analysis.

▪ **Defamation can be divided into two groups:**

- A written remark that is defamatory is called **Libel**.
- A verbally delivered, defamatory statement is referred to as **Slander**.

However, a merely disparaging remark does not qualify as defamation. In order to prove defamation, such a remark must be published. In the same way, defamation occurs online or through cyberspace whenever such an act occurs. Cyber defamation is the practice of defaming someone or something else online by using a computer as a tool or medium. For instance, sending emails with disparaging information about someone with the goal of discrediting them or posting a defamatory message about them on social media sites like Facebook, Twitter, etc. In addition, it is challenging to quantify the magnitude of the harm in terms of money due to the internet's wide presence and the speed at which information circulates on it.

While the means by which this offense is committed in the physical and digital realms change, the defamation law remains applicable. In India, the following could result in liability for cyber defamation:

1. On the person who published the online defamatory content, on the service provider or an intermediary. It is important to remember that under Section 79 of the Information Technology Act of 2000, an intermediary that only serves as a facilitator and does not create or alter such defamatory content is not accountable. Additionally, this protection is contingent on the intermediary abiding by the Central Government's Intermediary Guidelines and due diligence requirements.

2. The intermediary must remove any unlawful content quickly upon notification from the relevant government agency or upon actual knowledge of the issue.

- **Defamation Law In India:**

The Code of Criminal Procedure (CrPC) and the Indian Penal Code (IPC) are the main rules that govern defamation in India. Section 499 of the IPC defines defamation as any imputation made with the intention of harming a person's reputation, either orally or in writing, by making or publishing a false statement.

However, truth is a defence against defamation charges, meaning if a statement can be proven to be true, it may not be considered defamatory. Additionally, there are certain exceptions and defences provided under Section 499 and Section 500 of the IPC, such as statements made in good faith for the public good or for the protection of one's own interests. Defamation can be either civil or criminal in nature, and individuals have the right to file a defamation suit or a criminal complaint depending on the circumstances. Civil defamation cases are typically handled through the courts, while criminal defamation can lead to penalties including fines and imprisonment. It's essential to consult legal experts for specific guidance on defamation cases, as laws and interpretations may vary depending on the jurisdiction and circumstances involved.

- **Criminal Defamation:**

- a. The Indian Penal Code (IPC) defines criminal defamation in Section 499. It entails producing or disseminating misleading claims with the goal of damaging someone's reputation.
- b. Elements including making a false statement, publishing it to a third party, intending to cause injury, and not having a good defence must all be demonstrated in order to prove criminal defamation.
- c. A warrant for an arrest is necessary for the non-cognizable offense of criminal defamation.
- d. The punishment for criminal defamation can include imprisonment for up to two years, a fine, or both.
- e. Criminal defamation is not applicable to remarks made in good faith for the benefit of the public or when the truth is used as a legitimate defence.

- **Civil Defamation:**

- a. Civil defamation refers to the act of making false statements about someone that harm their reputation, leading to damage or loss.
- b. Unlike criminal defamation, which involves prosecution by the government, civil defamation involves a lawsuit brought by the aggrieved party seeking compensation for the harm caused by the false statements.
- c. If the plaintiff is successful, they may be able to recover compensatory damages to help make amends for the damage to their reputation.

The defences available in civil defamation cases are absolute privilege, truth, and fair criticism made in the public interest.

It's significant to remember that court challenges and debates around India's defamation laws have focused on the rights to free speech and expression. The Indian Supreme Court has occasionally demanded that these rules be reevaluated in order to strike a balance between the rights to free expression and reputation. Defamation cases in India can be complex, so anyone who thinks they have been defamed or is being accused of defamation should speak with an attorney for information on their legal options and rights.

Online platforms and social media's growth have increased the incidence of online defamation. Provisions pertaining to the electronic transmission of defamatory materials are among the forms of internet defamation covered under the **Information Technology Act of 2000**. Online platforms might have rules established limiting what is considered defamatory content.

- **Information Technology Act, 2000 :**

This act was created, particularly in response to the nation's increasing cybercrime. <sup>2</sup>According to Section 66A of the IT Act, anybody who transmits any of the following using a computer resource or a communication device :

Anyone who sends hostile messages using electronic devices such as cell phones, or specialized gadgets, or who sends hostile messages using any electronic device with access to internet providers, will be held liable for any hostile information they send or any data they know to be fake or counterfeit with the goal of causing harm, anxiety, injury, criminal terrorizing, and other such outcomes. The

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<sup>2</sup> [https://youtu.be/GO6\\_eRHIRqI?si=ChZDkr4g1g\\_BYWby](https://youtu.be/GO6_eRHIRqI?si=ChZDkr4g1g_BYWby)



Supreme Court of India overturned Section 66A of the IT Act 2000 because the public authority was unable to define the word “hostile.” Ever since it was first used by the government to suppress free speech. If someone receives online criticism, they can get in touch with the digital examination cell. This act’s main objectives are to carry out legal and trustworthy online, digital, and electronic transactions and to reduce or prevent cybercrimes. There are 94 sections and 13 chapters in the IT Act. Parts 91 through 94 of the final four parts discuss the changes made to the Indian Penal Code 1860.

- **Issues** :The risk has increased due to the rise in “cyber defamation” on social media platforms. Since the publication of inaccurate or incorrect information about a person online has the power to harm that person’s reputation, cyber defamation is defined as such. Since defamation is illegal and civil in India, victims have access to legal remedies through the judiciary.

- **Cyber Defamation – Socio economic offence:**

Cyber defamation can have significant socio-economic implications. When individuals or businesses are defamed online, it can damage their reputation, leading to financial losses, loss of business opportunities, and even job loss. For businesses, negative online reviews or false allegations can impact consumer trust and lead to decreased sales or difficulty in attracting investors. Moreover, cyber defamation can contribute to a culture of online harassment and bullying, affecting individuals’ mental health and well-being. It can also deter individuals from freely expressing themselves online for fear of retaliation or reputational damage. From a socio-economic perspective, cyber defamation can undermine trust in online communication platforms, affecting their usage and effectiveness for businesses, individuals, and communities. It can also result in increased litigation costs as individuals and businesses seek legal recourse to protect their reputations and interests. In summary cyber defamation is not just a legal issue but also a socio-economic one, with far-reaching implications for individuals, businesses, and society as a whole. Rather than only hurting a single victim, cyber defamation can also do harm to society. It should go without saying that the consequences of defamation aim to affect society as a whole, as well as specifically harming the reputation of the victim. It’s an offense that hurts not just the victim but also the community. A business’s share value might decrease as a result of defamation, making it an offense that damages both the victim’s and the country’s economies. The type and seriousness of a social or economic offense are significant issues.

- **Liability under Cyber Defamation:**

The laws that apply and the jurisdiction could determine the legal liability for cyber defamation. Generally speaking, those who participate in cyber defamation may face criminal and civil punishments.

**Civil liability:** A lawsuit filed by the person or organization that has been defamed is required to establish civil responsibility for cyber defamation. In order to compensate for any harm, such as reputational loss or mental distress caused by the defamation, the lawsuit may seek damages. In many countries, the plaintiff carries the burden of proving that the defendant produced a false and defamatory statement, that the comment was shared with a third person, and that it caused harm in a civil defamation.

**Criminal liability:** Cyber defamation criminal responsibility involves a state or government prosecution for the defamation charge. Cyber defamation is a criminal violation in several jurisdictions, and those who commit it risk monetary penalties, jail, or both. In a criminal prosecution, the prosecution has more of the burden of proof than in a civil litigation. It must show that the defendant acted with malicious intent or with reckless contempt for the law. Cyber defamers may face disciplinary action from employers or professional groups in addition to civil and criminal liabilities, especially if the defamation is related to professional conduct that might possibly invalidate others.

- **Provisions in India —**

**The following sections of the Indian Penal Code, 1860, deal with cyber defamation:**

- a. **Section 499 of IPC :** According to Section 499 of the Indian Penal Code, it is considered defamation when someone attempts to damage a person by bringing down their reputation. This involves information about a demonstration that might bring harm to someone, such as verbally or physically abusing the person or publicly criticizing their reputation. For example, if two individuals are engaged in a dispute over certain matters and one of them distributes damaging information through online media, such actions may be classified as defamation. The omission of criticism in situations related to defamation through online media is often exploited. With the passing of the Information Technology Act of 2000, the definition of

"speech" and "documents" in electronic form came under the jurisdiction of Section 499 of the law of defamation.

- b. **Section 500 of IPC:** Section 499 of the Indian Penal Code discusses the requirements for defamation, and Section 500 of the penal code regulates the discipline within which the person held responsible can be punished with a fine or two years in imprisonment.
- c. **Section 469 of IPC :** Section 469 of the Indian Penal Code deals with forgery, implying that anyone who creates a false or fake record or archive of someone else with the intention of harming that person's reputation is guilty of forgery. Then it becomes an offender and is punishable by up to three years in prison or a fine. The definition of "intending that the document was forged" under Section 469 was substituted with "intending that the document or electronic record was forged" in the Information and Technology Act of 2000.
- d. **Section 503 of IPC:** Criminal intimidation is defined by Section 503 of the Indian Penal Code, which states that any action that jeopardizes the safety of a person, their property, or the person immediately following them in a relationship is considered criminal intimidation. It demonstrates the intent to harm the individual by alerting and risking the individual in such a way that the individual is required to perform even if they have no legal right to do so in order to prevent such a violation from occurring. If a person does indeed commit the crime of criminal intimidation, they risk a maximum sentence of three years in prison, a fine, or both of those penalties.
- e. The Indian Evidence Act, Sections 65A and 65B, state that any electronic record written on paper or in an attractive medium is a report that the court will accept. Visits made online and emails sent electronically are also acceptable.
  - **Exceptions and Defences :** Truth is recognized as a legitimate defence against defamation under Indian law in addition to exceptions. It may not be considered defamatory if the assertion is truthful and provable. In addition, reasonable criticism and remarks made on an issue of public interest can occasionally be used as defences.



▪ **Relevant Case Laws :**

- a. **<sup>3</sup>Smt. Nilangi Rajiv Gadkari vs. Rajiv Dinesh Gadkari with P.A. Depamala Gadkari**  
– In this case, the defendant sued her spouse after getting a separation agreement, claiming that he had been harassing her for years by posting offensive images online and slandering her. The maintenance is Rs. And the violation has already been reported. The respondent's husband demanded Rs. 75,000 per month.
- b. **<sup>4</sup>S.M.C. Pneumatics (India) Pvt. Ltd. V/S Jogesh Kwatra** -This is India's first case involving cyber-defamation. The defendant, Jogesh Kwatra, worked for the plaintiff company and began to send obscene, vulgar, filthy, and abusive emails to his employers and various subsidiaries across the globe in an attempt to disparage the company and its managing director, Mr. R. K. Malhotra. The plaintiff filed a lawsuit requesting a permanent injunction to stop the defendant from abusing his legal authority to send the plaintiff offensive emails. It was argued on behalf of the plaintiffs that the defendant's emails were notably crude, provoking, abusive, terrifying, insulting, and libellous.
- c. **<sup>5</sup>State of Tamil Nadu V/S Suhas katti** – A Chennai court ruled in 2004. After declining a man's marriage proposal, the divorced woman complained to the police about him sending her offensive, defamatory, and annoying comments in a Yahoo Messenger group. In the woman's identity, the accused created a fake email account and forwarded emails that were received therein. Additionally, the victim received calls from others who believed she was looking for sex employment. The police filed a complaint in February 2004, and the Chennai Cyber Crime Cell was successful in convicting the suspect just seven months after the First Information Report was filed. Katti received a two-year sentence of life in prison. Under Section 469 of the Indian Penal Code (forgery with the intent to cause harm to one's reputation) one year of simple imprisonment and a fine of Rs. 500 for an offense under Section 509 of the Indian Penal Code (words, gestures, or acts intended to insult the modesty of a woman), and Section 67 of the Information Technology Act 2000 (punishment for publishing or transmitting obscene material in electronic form), two years of rigorous imprisonment and a fine of Rs. 4000.

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<sup>3</sup> [www.iiprd.com](http://www.iiprd.com)

<sup>4</sup> <https://bnwjourn.com>

<sup>5</sup> <https://www.legalserviceindia.com>

▪ **Defences against Cyber Defamation :**

- a. **Truth:** In most instances, an internet statement cannot be ruled defamatory if it is true. However, it is the defendant's responsibility to provide evidence that the statement is genuine.
- b. **Privilege** - There are certain discussions that are deemed private and protected from defamation lawsuits. For example, remarks made during court cases, legislative discussions, or in certain official documents might be protected by privilege.
- c. **Consent:** The plaintiff might not be able to bring a defamation lawsuit if they gave their approval for the allegedly offensive statement to be published
- d. **Public Interest:** Statements concerning issues of public concern or made in the public interest may be protected. This often holds true for journalists reporting on public figures or significant community issues.

▪ **Conclusion :**

There are many laws against this kind of offense, but individuals must be aware of them as well as think carefully about whether their posts are abusive or harm the reputations of others. People's time is dominated by the internet. Sharing is great, but some people use it for inappropriate purposes, such as cyber defamation. Online defamation is included in the category of cybercrime. The Internet is a key source of defamation due to its vast amount of data and simple distribution. It seems from the issue investigation that India has insufficient regulations about digital maligning. Maligning laws must be imposed on all media as well. Thus, a framework for teaching responsible people what to do and what not to do online should exist. It is our common duty as consumers, creators of media, and digital citizens to respect different points of view, preserve the truth, and think carefully before speaking. Let us approach our online connections with empathy and mindfulness as we navigate the digital age. Let us maintain the values of, truth, and respect while creating an online space that is conducive to deep conversation and where the exercise of free speech is restrained by a keen understanding of its moral and legal consequences.

- **Suggestion:**

1. Raise awareness about cyber defamation through public campaigns.
2. Encourage platforms to have clear guidelines against defamation.
3. Provide legal aid and support for victims of cyber defamation.
4. Implement user verification to reduce anonymity online.
5. Develop advanced content moderation tools.
6. Foster international cooperation on cyber defamation cases.
7. Include media literacy programs in education to promote responsible online behavior.
8. Create ethical guidelines for journalists regarding online content.
9. Hold online platforms accountable for hosting defamatory content.
10. Continue research on cyber defamation for better prevention and mitigation strategies.

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