**CYBER DEFAMATION: CHANGING DIMENTIONS AND AN INSIGHT INTO INDIAN LAWS**

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***ABSTRACT***

*The Internet is an economic and fast means of world widecommunication of text, sound and images. In other words, an information resource without political or content boundaries; limited only by the extent to which the information providers are willing to disclose their materials and the fruits of their own writing and research.It has also brought revolution intrade and commerce, Social networking, entertainment, shopping, job hunt, recruitment, anything and everything is possible via the medium of internet these days.The widespread and increasing use of internet has also given a new face to the crime and a new medium to the bad elements to commit crime. There is no dearth of defamatory material coming as regular social media updates. The internet has made it far easier than ever before to disseminate defamatory statements to a worldwide audience with impunity****.*** *This report tries to trace back the evolution of Internet and increasing rate of cybercrimes. This research also tries to study various legal provisions that are being implemented on cyber defamation in tort law as well as in other statutes in India. This study also analyzes some of the most landmark judgments on this issue in India and how judicial interpretation and initiative of judiciary has helped in giving justice. Further this paper tries to point out the lacunas in the present legal system and also gives various recommendations and suggestions to improve and to ensure the soundness of the legal system present for this important issue.*

*Keywords- All India Reporter, First Information Report, Indian Penal Code*

**INTRODUCTION**

**Defamation may be defined as the intentional false communication either oral or written that harms the person’s reputation, decreases respect of a person.** With evolution of internet the cases of cyber defamation have increased.

Now, on the Internet everyone can be a publisher as well as victim of defamatory publication. A defamatory allegation need only be disclosed to one person for publication to be proved. Since a publication on internet can be circulated to literally countless number of people, every time an e-mail is forwarded to another person or defamatory content is shared on Facebook, it is published again and again creating further cause of action.

It has led to cyber space becoming a highly prone area for defamation. The issue is further aggravated by the difficulty in identifying the perpetrator, and the degree to which Internet Service Providers (ISP's) should be held accountable for facilitating the defamatory activities. With the widespread use of internet many crimes have increased and are treated separately under cybercrimes.

***EVOLUTION OF DEFAMATION BEFORE CYBER AGE***

* Before the early 1300s, actions for the predecessor of defamation were obscure and purely within the jurisdiction of the Church courts, it was not until much later that the King’s courts allowed an action for defamatory words. The often physically-based nature of the common law was not in favour of creating an offence which rested on mere words. It was much more concerned with the tangible actions and results of, for example, assault, theft and murder.
* It took until the 1500s before a common law action for defamation appeared. Perhaps the key reason for this delay, as outlined above, is the fact that pre-1500, defamation was seen as a purely spiritual matter and was therefore dealt with by the Church courts. The Church courts tried Defamation as a criminal offence and could only sentence the offender to penance, admittedly quite a light punishment.
* Until 1660, the common law did not draw a clear distinction between defamation that was spoken or that which was in writing. However, defamatory words in writing were often punished with harsher sentences. [[2]](#footnote-3)**The current distinction is between impermanent, often spoken, statements (Slander) and permanent, often written, statements (Libel).**

**LIBEL**

* Libel is the type of defamation with a permanent record, like a newspaper, a letter, a website posting, an email, a picture, or a radio or TV broadcast.
* If any person can prove that someone libeled you, and that person does not have a good defense, then a court will presume that you suffered damages and award you money to pay for your damaged reputation.
* But going to Supreme Court is expensive and even if the plaintiff wins, he may not get as much as it costs you to sue. In deciding on damages, the Court will consider person’s position in the community. For example, if you are a professional, damages may be higher.

**SLANDER**

* Slander is the type of defamation with no permanent record. Normally it's a spoken statement. It can also be a hand gesture or something similar.
* The law treats slander differently than libel: with slander, you have to prove you suffered damages, in the form of financial loss, to get compensation. But with libel, the law presumes you suffered damages.
* The actions revolve around the Slander and Libel distinction mentioned immediately above. There are several defences to such a claim: (a) Justification (where the statement is true), (b) Fair Comment (where the statement would be believed by a reasonable person) and (c) Privilege (where the statement is privileged, for example, something said in the Houses of Parliament).
* The current growth in the number of Internet users has made it more prone to various defamatory statements. Now it has become a convenient source of expressing one’s views, which are often found defamatory. Hence cyberspace defamation has evolved with the origin and development of Internet.
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**EVOLUTION OF CYBER AGE**

* In the early 1990s, the World Wide Web was developed, in large part, for commercial purposes. Corporations created home pages where they could place text and graphics to sell products.
* Colleges and universities posted research data on the Internet, so students could find valuable information without leaving their dormitories.
* New forms of communication were introduced. Electronic mail, or email, was a convenient way to send a message to associates or friends. Messages could be sent and received at the convenience of the individual.
* Internet service providers like America Online and CompuServe set up electronic chat rooms. These were open areas of cyberspace where interested parties could join in a conversation with perfect strangers and now almost everything from work to shopping or to listening songs can be done through Internet and due to excessive use of the internet its misuse has increased.[[5]](#footnote-6)

**EVOLUTION OF CYBER DEFAMATION**

* Defamation has existed since a long time the only difference is that with the changing time the ways of doing has changed a lot. With the development of the technology various new ways of defamation has evolved.
* Now the flow of data has become much more effective and fast with the development of internet. Cyber defamation evolved write from the evolution of cyber age in early 1990s. from then various laws in almost all the countries have been made considering the widening scope of cyber defamation.

**EVOLUTION AND DEVELOPMENT OF RESTRICTION ON FREEDOM OF SPEECH AND EXPRESSION IN INDIA**

**Under Indian law, the freedom of speech and of the press do not confer an absolute right to express one's thoughts freely.Clause (2) of Article 19 of the Indian constitution enables the legislature to impose certain restrictions on free speech under following heads:**

* **Security of the State,**
* **Friendly relations with foreign States,**
* **Public order,**
* **Decency and morality,**
* **Contempt of court,**
* **Defamation**
* **Incitement to an offence, and**
* **Sovereignty and integrity of India.**[[6]](#footnote-7)

**SCOPE**

In considering why the Internet is a defamation prone zone, there are at least four distinct sites where defamation may occur on the Internet that can usefully be separated out, as to some extent they raise distinct problems.

1. ***One to one email messages***

* In emails comments can be typed in haste and sent at the press of a button. Compared to conventional written correspondence, where there is typically time to draft the statement, print or type it out, re-read, re-draft, and then think before signing, putting the message in an envelope, attaching a stamp and putting in the post, transmission of email is virtually instantaneous and usually, once sent, is irrevocable.
* As a result, email correspondence is often in substance more like spoken conversation than written interaction for habitual users - hasty, ungrammatical and rash - and tends to lead parties to say things they would not only not normally commit to writing, let alone widely published writing, but would in fact often also not say in face to face interaction with the other party.
* Studies and anecdotal evidence show that there is a lack of body language, eye contact or spoken cues, as there would be in conversation or on the phone, to prevent the making of inappropriate statements.
* To add insult to injury, it is very easy to repeat or forward the defamatory comments of *others* via email, and in the libel law of many countries, a re-publisher is just as liable as the original publisher (bar the possibility of innocent dissemination defences, discussed below).
* For example, party A receives an email concerning the foul practices of a competitor and forwards it with a few keystrokes to parties C and D who later send it on to E and F Only later is it discovered that the message is not true; subsequently the competitor discovers the re-publication and sues party A rather than or as well as the original author who may be (say) without funds. In this way, actionable email statements can be re-published far and wide with the speed of transmission of any other computer virus.

1. ***Mailing lists***

* The format of an electronic mailing list is that various parties subscribe by email to the list, which is administered by some central host. The subject of discussion of the list may be anything. Usually the list is set up so that, by default, any email message sent by any one subscriber to the list, is "bounced" or "exploded out" to every other subscriber Mailing lists combine all the general problems of email discussed above, with some extra difficulties of their own.
* It is very easy for the slightly careless or inexperienced user of such a list to think they are replying *only* to the maker of a particular comment - but *actually* send their reply to every member of the list. The embarrassment factor can be considerable, particularly where the members of the list form a small professional community within which the professional reputation of the person defamed can be severely damaged.

1. ***Newsgroups, and discussion fora****.*

* Newsgroups are discussion forums which are made up of comments from their subscribers, sorted by subject matter. All it takes to subscribe and post comments to a newsgroup is rudimentary software, obtainable for free as shareware, and an Internet connection. Collectively, the newsgroups available to Internet users are sometimes known as the "Usenet".
* There are approximately 14,000 Usenet newsgroups subscribed by millions of subscribers, located in every country where there is Internet access. As a result, any comment posted to a Usenet newsgroup is virtually guaranteed to be published, and read, within days if not hours, in many hundreds of national jurisdictions. As can be imagined, the volume of material published in these fora is enormous - one estimate is that around 4 million articles are available at any particular time.
* Newsgroups are even more problematic from the defamation point of view than the rest of the Internet because of what may be described as traditional "Internet culture". Until very recently - roughly, the early Nineties - the Internet was largely the domain of technophiles, students, academics and workers in the computer industry, principally in the US.
* These users largely accessed the Internet for free and used it for non-commercial purposes. There was a strong collective sentiment towards anarchy, libertarianism and free speech rights - and a strong corresponding dislike of corporate, governmental or legal authority or control.
* In this culture, full, frank and unfettered discussion known as "flaming", which was often indistinguishable from rudeness and abuse, was not only tolerated but by and large encouraged.

1. ***The World Wide Web***

* The Web is now so large, and increasing in size so fast that it is impossible even to pin down estimates of its size. In September 1996, there were 30 million Web pages, located on 275,000 servers. At around the same date, it was estimated that the Web doubled in size every 45 days.
* Like newsgroups, Web sites can be accessed and read in multiple jurisdictions, and they therefore share many of the problems of transnational publication discussed above. But perhaps the major unique problem with the Web is how far it allows any individual to mimic traditional publishing at very low cost. "Home pages" can be set up which do a good job of looking like electronic journals or glossy magazines and which can be extremely attractive, with good design and graphic content.
* However many of the parties setting up Web sites - often fans of popular music or TV programmes, students, pressure groups, or amateur associations - are not already hard copy or traditional publishers, have no knowledge of the law of defamation or libel, and may well find themselves publishing defamatory statements without fully appreciating their potential liability.[[7]](#footnote-8)

Cyber-crimes can involve criminal activities that are traditional in nature, such as defamation, theft, fraud, forgery, defamation and mischief, all of which are subject to the Indian Penal Code.

The numbers of cases registered under the IT Act and IPC have been growing continuously. The cases registered under the IT act grew at more than 50% in 2012 & 2013. The cases registered under the IPC in 2013 more than doubled from 2012. Similar trend is observed in the number of persons arrested. The government also accepts that with the introduction of technologies, devices including smart phones and complex applications, and rise in usage of cyber space for businesses, cyber-crimes are on the rise in the country.

Cyber Crimes in India are registered under two different acts, the IT Act and the Indian Penal Code (IPC).

**LEGAL ANALYSIS**

**DEFAMATION UNDER ENGLISH LAW AND THE INDIAN CONSTITUTION**

**English Common Law**

* Reputation is the most clearly protected and is remedied almost exclusively in civil law by an award of damages after trial by a jury.
* The Law of Defamation like many other branches of tort law aims at balancing the interests of the parties concerned. These are the rights that a person has to his reputation vis-a-vis the right to freedom of speech
* The Law of Defamation provides defenses to the wrong such as truth and privilege, protecting right of freedom of speech.[[8]](#footnote-9)

**The Indian Constitution**

* This word includes expressions like libel and slander covering many other species of libel, such as obscene libels, seditious libels and blasphemous libels and so on.
* The law of defamation does not infringe the right of freedom of speech guaranteed by article 19(1) (a). It is saved by Article 19(2).
* The law relating to the tort of defamation, from the point of view of distribution of legislative power, would fall under ‘Actionable wrongs’ mentioned in Entry 8 of the Concurrent List in the Seventh Schedule to the Constitution of India.[[9]](#footnote-10)

**STATUTORY PROVISIONS GOVERNING CYBER DEFAMATION IN INDIA**

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| --- |
| ***INDIAN PENAL CODE, 1860***  The Indian Penal Code, 1860 contains provisions to deal with the menace of cyber defamation.  **1. Section 499 of IPC**:   * Section 499 of IPC says that **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.** * The offence of defamation is punishable under Section 500 of IPC with a simple imprisonment up to 2 years or fine or both. * The law of defamation under Section 499 got extended to "Speech" and "Documents" in electronic form with the enactment of the Information Technology Act, 2000.   **2. Section 469 of IPC**:   * Section 469 of IPC says 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.   **3. Section 503 of IPC** :   * Section 503 of IPC defines the offense of criminal intimidation by use of emails and other electronic means of communication for threatening or intimidating any person or his property or reputation. * Section 503 says that whoever, threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.[[10]](#footnote-11) |

**4. Information Technology Act, 2000 ( IT ACT)**- Section 66A of the Information Technology Act, 2000 provides punishment for online Defamation. Section 66A can be read as follows:-

Any person who sends, by means of a computer resource or a communication device,-

* Any information that is grossly offensive or has menacing character; or
* Any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device;
* Any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,shall be punishable with imprisonment for a term which may extend to three years and with fine.[[11]](#footnote-12)[[12]](#footnote-13)

**ESSENTIALS OF DEFAMATION**

Defamation as a tort in India it is considered wrong only if it fulfills following essentials:-

***1) Words must be Defamatory***

The statement must be defamatory. According to Lord Atkin, the statement must tend to lower the claimant in the estimation of right-thinking members of society generally, and in particular cause him to be regarded with feelings of hatred, contempt, ridicule, fear and disesteem.

***2) Reference to the Claimant***

The statement must refer to the claimant, ie, identify him or her, either directly or indirectly.

***Defamation of a Class***

If a class of people is defamed, there will only be an action available to individual members of that class if they are identifiable as individuals. "If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there was something to point to the particular individual"

***3) Publication***

The statement must be published, ie communicated, to a person other than the claimant. For example, dictating a defamatory letter to a typist is probably slander but when the letter is published to a third party it is libel.

**INNUENDO**

* Where the statement does not refer to plaintiff directly, the doctrine of innuendo may be pressed into service. Words are prima facie defamatory when their natural, obvious and primary sense is defamatory.
* Words prima facie innocent are not actionable unless their secondary or latent meaning is proved by the plaintiff. Where the words alleged to be defamatory do not appear to be such on their face, the plaintiff must make out the circumstances which made them actionable, and he must set forth in his pleading the defamatory sense he attributes to them.
* Such explanatory statement is called an innuendo. Thus innuendo means the words which are not defamatory in their ordinary sense, but may nevertheless convey a defamatory meaning owing to the circumstances. Mere interpretation of statement is not sufficient to allege an Innuendo. But it must be supported by extrinsic facts or matters. E.g. A says to B that C is MANTHARA (who was wicked servant in the house of Lord Ram, who caused Ramayan). It is innuendo.

**DEFENSES**

1. **Defense of justification of truth:** The truth of a defamatory words is pleaded with a complete defense in Civil proceedings and for that reason even though the words were published spite to be and maliciously. A publication based on verifiable facts can extinguish liability for defamation. It negatives the charge of malice and it shows that plaintiff is not entitled to recover damages too.
2. **Defense of fair comment:** A fair and bona fide comment on a matter of public interest is not libel. For the purposes of the defense of fair comment on a matter of public interest such matters must be
3. In which the public in general have a legitimate interest, directly or indirectly, nationally or locally, e.g. matters connected with national and local government, public services and institutions and
4. matters which are at public theatres and performances of theatrical artists offered for public entertainment but not including the private lives of public performers.
5. **Defense of absolute privilege:** 'Privilege' means a person stands in such relations to the fact of the case that he is justified in saying or writing what would be slander or libel by anyone else. The general principle under laying the defense of privilege is the common convenience and welfare of society or the general interest of society. Privileges can be absolute or qualified.
6. **Consent:** Where the defendant has communicated or published certain material with the consent of plaintiff or plaintiff himself has invited the defendant to repeat the defamatory words, the defendant can plead this defence of consent. If a person telephones a newspaper with false information about himself, he would not be able to sue in defamation when the newspaper publishes it.[[13]](#footnote-14)
7. **Apology:** Apology is available as a defence in actions for libel against newspapers and another periodical publication, if the newspaper inserts a sufficient apology and adheres to certain other conditions. When there is an apology and an acceptance thereof, the defendant can resist plaintiff's suit for reimbursement for defamation. Nevertheless, there has been no similar legislation in India. In past judgments it is been held that even if the plaintiff accepted an apology and withdraw a criminal prosecution for defamation he can still sue the defendant in a civil suit. [[14]](#footnote-15)

**Where to Lodge a Complaint for Cyber-Defamation**

A person aggrieved of the offence of offence of cyber defamation can make a complaint to the Cyber Crime Investigation Cell. The Cyber Crime Investigation Cell is a branch of the Criminal Investigation Department (CID). Cyber Crime Investigation Cells have opened up in many cities like Delhi, Mumbai, Chandigarh, Hyderabad, Bangalore, Tamil-Nadu, Gurgaon, Pune, Madhya-Pradesh, Lucknow, etc. The Cyber Crime investigation Cells deal with offences related to the computer, computer network, computer resource, computer systems, computer devices and Internet. It also has power to look into other high-tech crimes.

**ROLE OF JUDICIARY**

Judiciary has played an important role in developing the principles and precedents in the cases of cyber defamation in India. Some of the landmark judgments for cyber defamation are:-

1. ***SMC PNEUMATICS (INDIA) PVT. LTD. V. JOGESH KWATRA[[15]](#footnote-16)***

* In this case, the defendant Jogesh Kwatra being an employ of the plaintiff company started sending derogatory, defamatory, obscene, vulgar, filthy and abusive emails to his employers as also to different subsidiaries of the said company all over the world with the aim to defame the company and its Managing Director Mr. R K Malhotra.
* The plaintiff filed a suit for permanent injunction restraining the defendant from doing his illegal acts of sending derogatory emails to the plaintiff.
* On behalf of the plaintiffs it was contended that the emails sent by the defendant were distinctly obscene, vulgar, abusive, intimidating, humiliating and defamatory in nature.
* Counsel further argued that the aim of sending the said emails was to malign the high reputation of the plaintiffs all over India and the world. He further contended that the acts of the defendant in sending the emails had resulted in invasion of legal rights of the plaintiffs.
* Further the defendant is under a duty not to send the aforesaid emails. It is pertinent to note that after the plaintiff company discovered the said employee could be indulging in the matter of sending abusive emails, the plaintiff terminated the services of the defendant.
* After hearing detailed arguments of Counsel for Plaintiff, 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.
* Further, Hon'ble Judge also restrained the defendant from publishing, transmitting or causing to be published any information in the actual world as also in cyberspace which is derogatory or defamatory or abusive of the plaintiff.

1. ***TAMIL NADU V. SUHAS KATTI****[[16]](#footnote-17)*

* 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. Based on a complaint made by the victim in February    2004, the Police traced the accused to Mumbai and arrested him within the next few days.
* Relying on the expert witnesses and other evidence produced before it, including the witnesses of the Cyber Cafe owners, the Additional Chief Metropolitan Magistrate held the accused guilty of offences under section 469, 509 IPC and 67 of IT Act, 2000 and the accused is convicted and is sentenced for the offence to undergo RI for 2 years under 469 IPC and to pay fine of Rs.500/-and for the offence u/s 509 IPC sentenced to undergo 1 year Simple imprisonment and to pay fine of Rs.500/- and for the offence u/s 67 of IT Act 2000 to undergo RI for 2 years and to pay fine of Rs.4000/- All sentences to run concurrently.
* The conviction of the accused was achieved successfully within a relatively quick time of 7 months from the filing of the FIR.

1. **TATA SONS VS. TURTLE INTERNATIONAL**

* The Delhi High Court has held 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.
* There is much sense to have more defined criteria taking into account the nature of the internet content. 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.
* Secondly, 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.  These are only some of the concerns which set the internet apart and it is desirable to have a nuanced appreciation.

1. **ASEEM TRIVEDI CASE**

In this case Aseem Trivedi a cartoonist made some cartoons on the national emblem and on some politicians. It was held that though the cartoonist as a citizen of India had freedom of speech and expression but there were reasonable restrictions applicable which restricted him to make obscene comments on people through his cartoons.

***SECTION 66(A)***

While it may have been a major relief that the Supreme Court of India struck down the draconian Section 66A of the Information Technology Act (IT Act), this, however, should not be seen as a license to post anything and everything on the internet. It is not a freedom to abuse, legal experts say while adding that the provisions under the Indian Penal Code can still be evoked to book persons who indulge in defaming people.

The Supreme Court in a landmark verdict on 24th March, 2015 struck down Section 66A of the IT Act terming it open-ended and unconstitutionally vague.[[17]](#footnote-18)

**Life after section 66(a) of the IT Act, 2000**

**Q. What happens to cases booked under Section 66A?**

**A.** All cases under filed under Section 66A will now be withdrawn. One cannot expect the police to go up to the court and file an application to withdraw cases filed under this draconian section. Those who have been booked under this section can however approach the courts and seek withdrawal of the section quoting the latest judgment by the Supreme Court of India.

**Q. Will cases under Section 66A completely be withdrawn?**

A. This would entirely depend on the cases that have been booked. Those persons booked only under Section 66A will get relief in the wake of the Supreme Court verdict. However if the police have invoked the provisions under the Indian Penal Code, then those cases would continue before the court. There are a good number of cases filed under Section 66A which also have provisions of the Indian Penal Code as per the previous Judgements of the Supreme Court. In such cases those persons who have been booked will still have to fight it out in court.

**OBSERVATIONS/FINDINGS**

* + 1. India is the only country which has both civil as well as criminal defamation in its legal books. That is another reason why rights of the people should clearly be laid down. People in India are liable for defamation not just to the extent of payment of damages but also undergoing imprisonment. Millions of people could be charged for defamation just by giving their opinion which in the eyes of some may be defamatory.
    2. 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. The IT revolution is sprawling new business and forcing the old modes to either change or die out. Hence most commercial organizations around the globe will be affected in some significant manner by the internet and therefore crimes in cyber space as well.
    3. The problems for ISP’s are just beginning. Some sites have already been blocked due to government directives. Bloggers in India are getting together to protest against the sudden blocking of popular Google-owned blog-hosting site Blogger by some (ISPs) like Spectranet, Mahanagar Telephone Nigam Limited (MTNL), Reliance Powersurfer, Airtel Broadband and Sify. On July 15, the Department of Telecommunications (DoT) had sent ISPs a list of sites to be blocked. R H Sharma, senior engineer with MTNL, said the list ran into some 22 pages. Now, several bloggers have organized themselves into a Blogger’s Collective and are planning to file a Right to Information application to obtain the list.[[18]](#footnote-19)[[19]](#footnote-20)
    4. Under the Information Technology Act, 2000, a body called the Computer Emergency Response Team, or CERT-IN, was created along the lines of similar authorities the world over. Although its main task is in the domain of Internet security, it also oversees Internet censorship under a clause that seeks to ensure 'balanced flow of information.' Any government department seeking a block on any web site has to approach CERT-IN, which then instructs the DoT to block the site after confirming the authenticity of the complaint. In 2003, one of the first things CERT-IN did was to approve the blocking of an obscure mailing list run by a banned militant outfit, the Hynniewtrep National Liberation Council (HNLC) of the Khasi tribe in Meghalaya. Ironically, the popularity and visibility of the list went up by leaps and bounds, despite it being blocked by all ISPs. Many could still see the list via email or proxy surfing. Whether such blocking is arbitrary, unreasonable and unfair and in violation of Articles 14, 19 and 21 of the Constitution of India is a question, which remains to be answered by the Indian Courts

***Drawbacks/lacunas/gap in cyber defamation laws in India***

### Single Publication Rule: Under this rule, "any form of mass communication or aggregate publication is a single communication and can give rise to only one action for libel." The rule applies "where communication is simultaneously available to multiple persons." Under the single-publication rule, the statement is considered published and "the statute of limitations runs as soon as the communication enters the stream of commerce."

### Multiple Publication Rule: Under this rule, a fresh cause of action arises for every moment the offending matter is left on a webpage. So, the 'date of publication' and the limitation period for the offense of libel lose significance.

### VIEW OF THE INDIAN COURTS

Law in India had entered the cyber foray with the IT Act, 2000, but the act did not talk about Torts like defamation in the cyber space. So since defamation online is considered in the form of Libel, Indian courts were following the common law rule of Multiple publication as far as Cyber Defamation was considered. Though there would have been only a handful of cases in this regard.

The Limitation Act, 1963 fixes the limitation period for Libel at 1 year, so that would mean with each hit to the webpage with the defamatory content, the limitation period of one year got renewed, thus providing a longer limitation period to the Libel that could last years.

**CONCLUSION AND SUGGESTIONS**

* The present trend of legislation and also the judicial approach to such offences appears to be such that these offences are treated lightly and the punishments are not adequate having regard to the gravity of such offences. Though the Government of India sought the Law Commission to come up with a well-considered opinion as regards desirability of dealing with adequately and swiftly certain anti-social and economic offences, such as, those offences calculated to prevent or obstruct the economic development of the country and endanger its economic health, evasion of taxes, hoarding and black-marketing etc.; but it has not expressly included cyber crimes such as defamation in cyber space.
* 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. The ultimate aim of legislation world-wide should be to reduce the costs of world trade by issuing out inconsistencies and uncertainties resulting from differences in national laws.
* It may be noted here that there has been an increasing awareness among law enforcement agencies on the need to set up special cells to handle cyber crimes. The CBI has a well-established cyber crime cell. The first such cyber crime police station has also come up in Bangalore. As the network environment becomes more pervasive and easier to use, it will also be a medium through which crime and fraud can take place. It is therefore necessary to review the current legislative provisions to ensure that the network environment is adequately protected against criminal activities. Under the current legislation there is no definition of damage and it is consequently difficult for the current enhanced penalties to be imposed.
* In our opinion the Law Commission should take up the brave task of analyzing such crimes, which are at the threshold and come up with recommendations in order to equip the existing legal machinery against such offences. For the said purpose necessary amendments could be brought to Section 67 of the Information Technology Act, 2000 and also to Section 499 of the Indian Penal Code, by expressly bring within their ambit offences such as defamation in cyber space, which is certainly a socio-economic offence.

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