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DEFAMATION OVER SOCIAL MEDIA APPS

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INTRODUCTION

With the advancements made in technology, enabling people to connect and interact with each other over large distances come the widened scope of the existing crimes in the social sphere. One such crime is Defamation. Defamation basically refers to a statement that is a false or derogatory statement that tends to harm the image, reputation, and respect of a person in society and is defined under section 499 of the Indian Penal Code, 1860. Cyber defamation has come into existence with the increasing number of social media apps on the net and people exercising their freedom of speech and expression in malicious ways to bring down the reputation of others knowingly, unknowingly, or recklessly. Defamation is of two types, i.e., Slander and Libel. Slander refers to a derogatory statement made in a verbal form, and Libel refers to malicious statements, which are statements published in some written form. When such acts occur in cyberspace, they are termed cyber defamation or online defamation. Cyber defamation happens when a computer connected to the internet is used as a tool or medium to defame an individual or entity. Examples include publishing a defamatory statement about someone on social networking sites like Facebook or Twitter or sending emails containing defamatory content about a person with the intent to defame them¹.

MAIN BODY

Freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the constitution, allows citizens the right to speak freely and express their opinions without being subjected to the fear of imprisonment. However, this freedom is subjected to some restrictions to ensure the fair use of the same. Protecting an individual's reputation falls within these

¹ <https://s3.amazonaws.com/documents.lexology.com/9bfc13ae-fb21-4346-95c6-428ffad20ca2.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1717741837&Signature=kWkb8ZQjTSEqq5OWa9AcWhSOa8w%3D>

permissible restrictions. Therefore, any remark or statement that damages another person's reputation (unless the statement is true or made in the public interest) can result in liability.

Social media has become an indispensable part of everyone's life, be it students, corporate workers, and even children, because of the services it offers, including knowledge, entertainment, news updates, etc., thus covering people of all ages within its ambit of use. People tend to spread misinformation over the web knowingly and sometimes recklessly, just because they believe something to be true or misuse social media platforms to take revenge on others and harm their public image and reputation out of envy and under other aversive emotions. 'Roasting' is one of the trending forms of entertainment consumed mainly by the young people of this generation and is considered to be an exercise of freedom of speech. It is widely popular on the social media platform 'YouTube'. The content in these videos doesn't necessarily constitute defamation and it depends from case to case as per the video.

Recently, Jackie Shroff approached the Delhi High Court, and while granting relief to Shroff against several social media accounts for allegedly infringing on his personality and publicity rights by using his name, voice, or image, the court rejected Shroff's claim that the use of the term "Thug-Life" was derogatory and damaged his reputation. The court denied Shroff any relief against YouTuber Mahesh Keshwala, determining that the term "Thug-Life" was not derogatory but rather a compliment as it was used in the video and stated that "The video compiles publicly available interview clips where Mr Shroff is portrayed with forthrightness and wit². The additions made by the creator— such as the 'Thug Life' caption and accompanying visual embellishments— are intended to underscore Mr. Shroff's charismatic and assertive persona, aligning with the meme culture's characteristic celebration of such traits. Therefore, Mr. Anand's contention that the video casts Mr. Shroff in a derogatory light may not align with the broader, more contemporary understanding and use of the term 'Thug Life' in popular culture. The portrayal does not introduce any falsehoods; rather, it embellishes the existing public perception of Mr. Shroff as a formidable and commendable figure." "These videos represent a form of artistic expression that requires creators to engage thoughtfully with their content. This involves researching target demographics, curating videos anticipated to resonate with audiences, and editing a diverse array of available content into a cohesive and entertaining package. Consequently, this creative process can be seen as generating not only

² <https://news.abplive.com/news/india/jackie-shroff-case-delhi-hc-bhidu-thugh-life-personality-rights-1688560>

economic value but also employment opportunities for a significant number of young individuals.³"

Roasting is legal until it turns into slander or libel. There is a very thin line between roasting and indulging in defamation and this line can be crossed at times. For instance, the name MBA Chai Wala has been used in several roasting videos in a derogatory sense, for instance, calling him 'MBA Fraud Wala' and so on. Subsequently, the Delhi High Court ordered the defendants in the case to take down and delete the videos from the internet and YouTube on the grounds that they targeted his tea cafes, tarnishing his public reputation on no established and proven facts⁴. This move comes in the wake of a similar order earlier this year by the Bombay High Court, which directed five users to remove defamatory content about vaccine manufacturer Adar Poonawalla.

Instagram is another social media app that enjoys popularity among the youth and older generations as well. People post their pictures, stories, and reels, and they interact with other people's posts as well. This social media platform is also used by people with malicious intentions to hurt the public image of others to subject them to hatred and aggression of the netizens. In *Achor v Ihekwe*⁵, the court awarded damages to the plaintiff for defamation by a social media influencer. The defendant, with around 16,000 followers, had posted defamatory content against the plaintiff on Instagram, which included allegations of illegal conduct and immorality, which caused hurt to their reputation within their community. Following a fallout over unreturned borrowed clothing, the defendant escalated her online attacks, leading to multiple legal actions, including restraining orders and a contempt order. The court deemed the defamatory posts published as they were communicated to third parties and found them damaging to the plaintiff's reputation. Damages were presumed in accordance with the nature of defamation cases.

On many social media platforms, people enjoy and use the option of posting and uploading a story, which can be a photo, a video, captions, or audio. Now, one of the questions that has been raised concerning this is whether these stories can constitute defamation even though they are short-lived and not published in a permanent form. This question was answered in the case of *BeautyFULL CMC Pty Ltd*,⁶ and it was held that these stories can indeed lead to a legal

³ Jaikishan Kakubhai Saraf Alias Jackie Shroff v Peppy Store and Others, 2024 SCC OnLine Del 3664

⁴ <https://www.medianama.com/2023/08/223-delhi-hc-youtubers-take-down-defamatory-videos-mba-chai-wala-praful-billore/>

⁵ *Achor v Ihekwe*, 2023 ABKB 606 (CanLII)

⁶ *BeautyFULL CMC Pty Ltd* [2021] QDC 111

liability under defamation⁷. In this case, the plaintiffs, a cosmetic medical clinic and its directors, sued an ex-employee for defamatory Instagram posts. The defendant had posted stories accusing the clinic of fabricating a photo of "Dr. Margaret" working on the COVID-19 frontline. These posts implied that the clinic was dishonest and disrespectful to actual frontline workers. Additionally, the defendant posted that she had been assaulted, suggesting the plaintiffs were involved. The court came to the conclusion that these publications were defamatory in nature as they harmed the plaintiff's reputation. The defendant pleaded defense of truth, but the court rejected it on the grounds of lack of evidence. The plaintiffs were awarded \$75,000 in damages, including aggravated damages for the defendant's refusal to apologize and baseless defense, and also issued an injunction preventing the defendant from further defamatory posts about the plaintiffs.

There is another famous case that revolves around defamation through social media and is referred to as the "WAGatha Christie" case⁸ in which London's High Court ruled in favor of Coleen Rooney who had accused Rebekah Vardy of leaking stories about her to the media, as she had effectively proven the truth of her allegation. Justice Karen Steyn stated that Rooney had effectively proven the truth of her allegation, finding Vardy aware of and endorsing the leaks by her agent⁹.

Vicarious liability can also come into play when the liability related to defamation arises. This is evident from the case of *Monir v Wood*¹⁰. In this case, the Vice Chairman of Bristol UKIP posted a tweet accusing Monir of child grooming. Although the tweet was made by the Vice Chairman, the Chairman was found vicariously liable for the former's case. This case highlights how an individual who did not personally make defamatory comments on social media can still be held accountable for them¹¹.

Even the use of emojis can be deemed defamatory in certain cases, as held in *Burrows v. Houda*.¹² In this case, the defendant had posted a tweet containing a link to an article about the plaintiff's disciplinary case accompanied by a zipper-mouth face emoji¹³. The judge, consulting

⁷ <https://www.claytonutz.com/insights/2021/august/did-you-see-that-story-on-her-instagram-instagram-post-provides-basis-for-defamation-suit>

⁸ *Vardy v Rooney* [2022] EWHC 2017 (QB)

⁹ <https://www.bbc.com/news/uk-62345915>

¹⁰ *Monir v Wood* [2018] EWHC 3525 (QB)

¹¹ <https://www.saunders.co.uk/services/media-law/social-media-defamation-slander-libel/>

¹² *Burrows v. Houda* [(2020) NSWDC 485]

¹³ <https://asalawpractice.org/social-media-emojis-and-legal-implications-of-the-use-of/#:~:text=Emojis%20may%20seem%20harmless%2C%20but,can%20convey%20a%20defamatory%20meaning.>

an online emoji dictionary, concluded that the tweet had been disciplined for misconduct. This would likely create negative impressions among social media users.

CONCLUSION

The prevalence of defamation over social media apps underscores the need for careful consideration of the impact of online communications. While platforms like Facebook, Twitter (now changed to the name X), and Instagram provide avenues for free expression, they also carry risks of misinformation, malicious intent, and reputational harm. With these technological advancements, accommodative legislation should be introduced in order to keep a check on the complexities that come with modernization and technology. Amendments to the law should be made from time to time to address various new issues that arise with the introduction of new spheres in the social world. Additionally, individuals should exercise responsibility and discretion in their online interactions, recognizing the potential consequences of their words and actions. Ultimately, fostering a culture of digital civility and accountability is essential to promoting a safer and more respectful online environment for all users.