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ONLINE DEFAMATION IN THE DIGITAL AGE – BALANCING REPUTATION AND FREEDOM OF SPEECH: A CASE COMMENTARY ON SWAMI RAMADEV v. FACEBOOK INC

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INTRODUCTION

The internet has a long memory. Unlike traditional forms of publication, once a piece of content is online, it is perpetually replicable, shareable and accessible across multiple jurisdictions. Whilst this unprecedented interconnectedness has amplified democratic dialogue, it has also increased the propensity for reputational damage. The case of Swami Ramdev's Facebook Inc. brings the legal question of what duty online intermediaries have when purportedly defamatory content is distributed through the internet to the forefront. The conflict is whether reputation must triumph over freedom of speech.

The widespread use of digital media has redefined the way people interact and consume information. While social media facilitates instantaneous sharing of opinions, news and views, it is also an efficient vehicle for the propagation of defamatory statements. Consequently, the judiciary is now faced with the perpetual challenge of balancing the constitutional value of freedom of speech with the equally important right to reputation. The decision of the Delhi High Court in *swami Ramdev v. Facebook Inc.* [2019] is a significant contribution towards this balancing act, through its addressing of the issue of intermediary liability and the subsequent takedown of purportedly defamatory content.

FACTS OF THE CASE

The original dispute arose out of the publication of *Godman Top Tycoon: The Untold Story of Baba Ramdev* by journalist Priyanka Pathak Narian. Swami Ramdev and Patanjali Ayurveda Ltd. argued that portions of the book constituted defamatory statements, which caused them reputational damage, and other proceedings had already led to orders restraining publication of certain portions. However, summaries, excerpts, video clippings and debates related to the book were circulated on platforms such as Facebook, Twitter, Google and YouTube. The plaintiffs approached the Delhi court to issue directions to intermediaries, ordering the removal of such online content which continued to cause them reputational damage. The intermediaries partially complied and blocked access to such content within the territory of India; however, they did not accede to the plaintiff's request for an order for removal and takedown of such

content across the globe. This disparity formed the subject of the present litigation before the Delhi High Court.

Issues before the court

The court was posed with four crucial questions.

1. Are online intermediaries legally obliged to take down defamatory material upon being served with a proper court order?
2. Does a geo-block within the territory of India adequately address the problem posed by online content?
3. Can an Indian court order a worldwide takedown of unlawful content online?
4. What legal framework must the court adopt to balance freedom of speech and the protection of one's reputation?

Arguments of the parties

The plaintiffs argued that an order restricting access solely to India was futile. They maintained that the nature of the internet meant it transcended all territorial limitations, and that the continued availability of the objectionable material on foreign domains, through search engines and various other media, ensured continued damage to reputation.

The defendants, however, argued that granting a worldwide takedown would lead to violations of other legal systems, each having a different approach to what constitutes defamation. They also stressed the importance of freedom of speech, stating that the geo-block was a balanced and proportionate solution that balanced both sides.

Judgement of the court

The Delhi High Court overwhelmingly accepted the plaintiff's argument and confirmed that due to the globally reaching nature and the permanent persistence of online content, a mere geo-block within India would not suffice and that a judicial order for a worldwide takedown of defamatory content, where the same originated from India and had been deemed unlawful by a competent court in India, was within its jurisdiction to pass.

Critical analysis

The decision is crucial in modern jurisprudence. While the internet never forgets, neither should a legal system. As discussed above, it is necessarily impossible to unpublish content online; the continued presence of defamatory statements continues to cause irreparable damage to a person's reputation. However, a cause of concern remains. Firstly, as highlighted by the defendants, such worldwide takedowns could impact freedom of speech. The nuances between defamation laws in different countries could lead to conflicting orders and, more importantly, allow one country's defamation laws to govern a worldwide phenomenon. It could also lead to situations where even legally defensible content is taken down by intermediaries to avoid liability. Hence, while the court correctly recognised that a remedy restricted to India would be inefficient and insufficient, its ability to grant global takedowns without international coordination needs scrutiny. The challenge before courts and lawmakers is how to implement

effective measures to counter online defamation while safeguarding fundamental freedoms of speech and expression without impinging upon international legal norms. I personally agree with the reasoning that restricting access to information and ideas only within India is simply not viable in the Internet age. However, courts should be vigilant and exercise this power judiciously to prevent such orders from being used as tools for censorship and oppression. It also raises important issues of intermediary liability that could be further explored, specifically regarding their obligation to monitor and take down content they have reason to believe may be defamatory.

Relevance to online defamation

Swami Ramdev v Facebook Inc. signifies an evolution in the approach to online defamation and intermediary liability in India, setting a precedent for future cases. In the age of viral social media, any statement that goes viral could cause massive financial and reputational damages that could cripple the existence of a person, irrespective of the fact whether they were an individual or a company. The judgement sets out to balance these rights in a digitally interconnected world.

Conclusion

The Delhi High Court in swami Ramdev v Facebook Inc. rendered a landmark judgement, acknowledging the global nature of the internet and its implications for defamation. The court emphasised the need for effective, worldwide remedies for reputational damage caused by unlawful online content, while also underscoring the importance of freedom of speech. This decision has significant implications for intermediaries, content creators and individuals alike, highlighting the ongoing challenge in balancing competing rights in the digital era and setting a critical precedent for future judicial interpretations of online defamation law.

Citation

Swami Ramdev & Anr. V. Facebook Inc. & Ors., CS(OS) 27/2019, Delhi High Court.