

## SAFEGUARDING RIGHT TO REPUTATION IN THE LAW SCHOOLS IN INDIA

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### ABSTRACT

A house may be insured against an act of God but how does one insure a hard-earned reputation. A person burns his midnight oil works hard and someone with malicious intent within seconds destroys the hard-earned reputation. The person can be a hero one moment and in the next the person is turned into a villain. The image is not only shattered in India but within seconds the image is destroyed in the world. After posting the message the world begins to take sides and immediately a hate campaign begins against the person targeted. Law students are taught about various laws and legal consequences. In the classroom the teacher and fellow classmates are most revered. Students are chirpy and pretend to be close friends. On the internet the law students behave like any other students. The through caution to the wind and carry out malicious acts. They vent out hatred towards their teachers and fellow students. Sometimes they might have reasons for such behaviour at other times unintentional. They may write for the sake of writing or maybe just to poke some fun. No person 'can denigrate the other person's reputation.' The State has the authority to regulate 'freedom of speech and expression and ensure that no defamatory speeches are not made.' The law must protect a person's reputation from being damaged in the eyes of their 'family, friends and society.' This Article analyses the Right to Reputation and how individuals are infringing the right to reputation on social media. The Article shows criminal trends and provides preventive strategies to keep users safe on social media.

### Keywords: Online Defamation, Reputation, Rights

Legal environments and speech norms vary. We live in a technological advanced society. Social media is the technology of our age. It is our identity. The Supreme Court of India in *Sachin Choudhary.v. State of Uttar Pradesh*<sup>1</sup> has declared that Social media sites like WhatsApp, Facebook and Twitter have become important venues for users to exercise their right of freedom of speech and expression. In the Learned words of Shashi Tharoor 'On Social media everyone is a writer, everyone is a journalist, everyone is a reporter.'<sup>2</sup> Social media is a double-edged sword. On one hand it is extremely effective in unifying society in times of providing relief and rehabilitation in disasters or when people or animals go missing. While on the other hand it steals a man of his reputation. Reputation is the salt of life. Right to freedom of speech and expression cannot be exercised to sow seeds of hatred, Inflammatory posts can create disharmony in society and invade peace. The damage from social media defamation can be higher since the medium is instantaneous, viral and more potent than traditional media.

The most common term used to describe content on internet is 'social'. The content shared may or may not be social at all. The number of social media users in 2020 is 376.1 million. (www.statistica.com) Facebook remains the most preferred social media in India. Educated people often seek revenge for the harm suffered. (M. Mathur<sup>1</sup>, P. Mathur, 2019) The common standard followed on social media is if the person does not agree with what somebody else is

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<sup>1</sup> Special Leave Petition (CrI.) No. Of 2020

<sup>2</sup> Shashi Tarror on an interview to NDTV  
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saying then a hate movement is initiated on social media against that person. False information which could be inflammatory material is posted on a social networking site. This sums up the perception that there may or may not be any concrete reason for writing defamatory content on social media. The perpetrator may sometimes state statements of facts or cite his/her opinion. Stating facts and opinions may not be considered defamatory in the eyes of law. (Find law,2019)

Defamatory content on social media affects the individual, its repercussions are felt in the family, workplace and society. Law students share content which is originally shared by others. Sometimes they share the information through their own identity and sometimes a fake identity will be created. A ‘user’ as ‘any person who accesses or avails any computer resource of intermediary for the purpose of hosting, publishing, sharing, transacting, displaying or uploading information or views and includes other persons jointly participating in using the computer resource of an intermediary.’<sup>3</sup> Content which is shared could be “ubiquitous”, “voyeuristic,” “mean,” derogatory”. User accounts are filled with defamatory and unauthorized access of photos, videos and classified information.

### **Defamation on Social media**

The growing use of technology has splurged defamatory content all over the internet. Bona fide criticism of any system or institution including the judiciary is aimed at inducing the administration of the system or institution to look inward and improve its public image. A harmonious blend and balanced existence of free speech and fearless justice counsel that law ought to be astute to criticism.<sup>4</sup> The issues which emerge are should a person’s hard-earned reputation be protected on social media. Will the person against whom defamatory content is directed have any redressal? If frivolous statements are made there would be an irreparable loss of reputation. Should the State be under an obligation to protect the human dignity of an individual in such cases. Should Fundamental right to speech and expression include speech made with harmful intent or should harmful intent be punished? (Adv. Pinky Anand, 2016)

A defamation Bill was proposed by the Rajiv Gandhi government. The Defamation Bill, 1988 received criticism hence was withdrawn. (Shivi, 2016) Defamatory content could include ‘any information that is grossly offensive or has menacing character. Information is false. Information which can cause ‘annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will.’ Information which will ‘deceive or to mislead the public.’ A generic term used by social networking sites for such content is ‘hate speech.’ Section 66 A of the Information Technology Act, 2000 punished publishing of all kinds of defamatory content. In *Shreya Singhal.v. Union of India* the Supreme Court of India declared Section 66A of the Information Technology Act, 2000 unconstitutional.

A victim of online defamation has limited remedy. The person could file a complaint under the Indian Penal Code, 1860 or may make a complaint under the Law of Torts. Lack of a proper legislation for offences of Defamation could have led to surge in ‘hate speech’ on social media.

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<sup>3</sup> Rule 2 (1) The Information Technology [Intermediaries Guidelines (Amendment) Rules 2018

<sup>4</sup> *Dr. D.C. Saxena vs. Hon’ble the Chief Justice of India* 1996 SCC (7) 216

The purpose of this Research is to investigate the reasons for increase in online defamation. The focus of this study is to verify the most common social media site used by law students. To understand the reasons for venting out frustration and hatred against a person on social media. To study the remedies available to the victim of online defamation.

## Right to Reputation

Right to reputation is a human right.<sup>5</sup> Honor, dignity and reputation are the constituents of right to life under Article 19(2) and Articles 21 of the Constitution of India. <sup>6</sup>'Dignity is a quintessential quality of a personality and a cherished value.'<sup>7</sup> Right to reputation forms part of religious texts like Bhagavad Gita.<sup>8</sup> No person must 'denigrate the other person's reputation.' The State has the authority to regulate 'freedom of speech and expression and ensure that no defamatory speeches are not made.' The law must protect a person's reputation from being damaged in the eyes of their 'family, friends and society.' Freedom always comes with responsibility. A person's free speech stops where the other person's reputation begins.

In *Swami Ramdev vs. Juggernaut Books Pvt. Ltd*<sup>9</sup> the Court held;

"reputation" of one cannot be allowed to be crucified at the altar of the other's right of free speech and that the balance between the two rights needs to be struck and that the reputation being an inherent component of Article 21 of the Constitution of India, it should not be allowed to be sullied only because another individual can have its freedom."

In *S. Nambi Narayanan v Siby Mathews*<sup>10</sup> the Supreme Court held;

"Reputation of an individual is an inseparable facet of his right to life with dignity, and fundamental right of the scientist under Article 21 has been gravely affected."

In *Vishwanath Agrawal v Sarla Vishwanath Agrawal* the Supreme Court has observed;<sup>11</sup>

"... reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity."

In *Ram Jethmalani vs Subramaniam Swamy*<sup>12</sup> the Delhi High Court defined defamation as 'a public communication which tends to injure the reputation of another. The judicial process must protect an individual's right of privacy and right to protect his honour and reputation is preserved and at the same time his fundamental right to free speech is also protected.' The

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<sup>5</sup> Article 12 No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

<sup>6</sup> *Subramaniam Swamy.v. Union of India* (2016)7SCC 227

<sup>7</sup> *Charu Khurana v. Union of India*: AIR (2015) SC 839,

<sup>8</sup> *Akirtinchapi bhutani kathaishyanti te-a-vyayam, Sambha-vitasya Chakirtir maranadatirichyate.* (2.34)

<sup>9</sup> CM(M) 556/2018 & CM APPL. 19354/2018

<sup>10</sup> Civil Appeal Nos. 6637-6638

<sup>11</sup> (2012) 7 SCC 288

<sup>12</sup> 126 (2006) DLT 535

court also explained the defenses of truth, fair comment and privilege are available in a suit for defamation.

A man may be a thief. In relation to his employment if an investigating agency supplies information of the said fact to the prospective employer, it would be a privileged occasion and no action would lie. But say, the investigating agency reaches the wedding venue when the man is getting married. It would be of no concern nor an occasion for the investigating agency to proclaim to the gathering that the man is a thief. In such a situation, if an action is brought, it would be no defence for the investigating agency to establish that the man is a thief. A lady may be a prostitute but it would not give a license to all and sundry to call her a prostitute as and when they feel like. Of course, where the character of a person is a relevant issue, statements made honestly, bona fide and on some objective facts would qualify as made on privileged occasion.

### **Defamation a criminal offence**

Defamation as a crime is punished under chapter XXI Sections 499-502. The Definition in the Indian Penal Code, 1860 covers cyber defamation. (Vivek Kumar Verma, 2014) Publishing derogatory content even about a dead person may be considered as defamation. These sections protect a person's reputation. A person defaming the state could be punished under the offence of Sedition.<sup>13</sup> Defaming a class or community is punished under Section 153. Malicious acts done to outrage religious feelings of any class by insulting its religion or religious beliefs is punishable under Section 295A.

Section 499 defines Defamation as;

“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 expected, to defame that person.

Explanation 1. It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

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<sup>13</sup> Section 124 A

There are ten exceptions to the rule of defamation. These exceptions are comments which are true which public good requires to be published. Comments about the public conduct of a public servant. Comments on the conduct of a person touching public question. Comments on reports of judicial proceedings. Comments on merits of the case or conduct of witness and others concerned. Comments on merits of public performance. Comments on censure passed in good faith by persons having lawful authority. Comments on accusations preferred in good faith to an authorised person. Comments made in good faith by a person for the protection of his or others interests. Comments on caution intended for good of the person to whom it is conveyed.

The comments may be published only once on the internet, yet it would still amount to publication. (Ratanlal and Dhirajlal, 2005)<sup>14</sup> Any person writing any imputation concerning a company or an association or collection of such persons such comments may amount to defamation. Sending derogatory, defamatory, vulgar and abusive emails to the company's fellow employers and to its subsidiaries all over the world with an intent to defame the company along with its managing directors.<sup>15</sup> A company can file a criminal defamation case on an individual.<sup>16</sup> Sending obscene messages on a person's mobile to impute her character is defamation.<sup>17</sup> The punishment for defamation is simple imprisonment for up to two years or fine or with both.<sup>18</sup> The offence is non-cognizable and bailable. The aggrieved person has to make a complaint to the Magistrate and the Magistrate can initiate proceedings.

In *Subramanian Swamy v. Union of India*<sup>19</sup> the criminal law on defamation was challenged on the ground that it violates freedom of speech and expression under the Constitution of India. The Supreme Court of India held;

“Criminal defamation as an offence is not violative of fundamental right to freedom of speech and expression under Art. 19(1)(a) of the Constitution, being a permissible restriction under Art. 19(2)Ss. 499 and 500 IPC are also not discriminatory, arbitrary, excessive or vague and not violative of right to equality under Art. 14 of the Constitution, being reasonable and a proportionate restriction. While in a democracy an individual has a right to criticise and dissent, but his right under Art. 19(1)(a) is not absolute and he cannot defame another person as that would offend victim's fundamental right to reputation which is a facet of Art. 21 of the Constitution. One fundamental right cannot be given a higher status in comparison to the other and what is required is proper balancing of the two and harmonious construction in light of Preamble objective of fraternity and fundamental duties envisaged under Arts. 51-A(e) & (j) of the Constitution. So construed Art. 499 IPC along with its Explanations and Exceptions and S. 500 IPC are constitutionally valid.”

### **Criminal Acts which constitute Defamation on Social Media**

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<sup>14</sup> *Khawar Butt vs Asif Nazir Mir & Ors* CS(OS) 290/2010

<sup>15</sup> *Smc Pneumatics (India) Pvt. Ltd vs Shri Jogesh Kwatra* Original Suit No. 1279 of 2001

<sup>16</sup> *Priya Parameshwaran Pillai v. Union of India and Ors.*

<sup>17</sup> *Kalandi Charan Lenka vs State of Odisha* BLAPL No.7596 of 2016

<sup>18</sup> Section 500 of Indian Penal Code, 1860

<sup>19</sup> (2016) 7 SCC 221

Most users spend their time on the mobile phone. The younger the most the user more is the time they spend on the mobile phone. The most common activity that users do is follow user profiles on social media. Every day the time spent on social media keeps increasing. Studies indicate that time spent online creates an addiction. The more one is on social media the more the person is exposed to harmful content. This has serious effect on skills related to perception, thought, memory, language, reasoning and intellectual development of individuals. It affects the person's decision-making power. Users are provided with so much of information they have no time to access the quality of the information. Social media is an impressive source of information. Enormous amount of false, inaccurate and misleading information is shared. There are no scientific studies to access the accuracy of such information. Most internet users are caught in filter bubbles.<sup>20</sup> Filter bubbles are harmful as they reinforce common beliefs. (European Parliamentary Research Service, 2019). The interactions between offender and victim in virtual crimes are unique. (J.R. Agustina, 2015)

### 1. Posts

'The internet allows people to connect with each other and pushes them away physically in real life.' The human being is often considered as a "social being." Social networking sites provide free services such as creating profiles, uploading pictures and videos, commenting on actions taken by other members of the network or group, instant messaging, creating stories etc. Social media is used for social interactions. Social media use for young users can be quite dangerous. (M. Diomidous, K. Chardalias, A. Magita, P. Koutonias, P. Panagiotopoulou, J. Mantas, 2016)

A defamatory statement in a written form is called a libel. The statement must be published on the social media. Delay in taking down defamatory content causes not only irreparable but also irreversible damage to reputation which cannot be compensated in any manner. On the author of the defamatory material online. The question is who can be made liable for the defamatory act. Will it be the author of the post or the intermediary? Virtual platform providers are recognised as Intermediaries by Law in India.<sup>21</sup> (S. Potaraju, 2020)

The intermediaries can control the content posted on their websites. When the intermediaries refuse to remove defamatory content, they are sitting in judgment over the person offending. Countries are debating that it will be difficult for the intermediaries to judge which content should be removed and which must not be removed. In India upholding the freedom of speech and expression the Supreme Court of India struck down Section 79(3)(b)<sup>22</sup> in The Information Technology Act, 2000 which made it mandatory for the intermediaries to remove content. The

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<sup>20</sup> Filter bubbles separate users from information that disagrees with their viewpoints and interests, thereby isolating them in their own cultural, political or ideological bubbles. E.g Facebook's personalised news-stream

<sup>21</sup> *Smt Kiran Bedi vs. Committee of Inquiry*; (1989) 1 SCC 494 at page 514, para 22.

<sup>22</sup> (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource, controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

social media intermediaries claim in their policies that they will filter objectionable content in reality fail to filter it. The closed-door formats of whatsapp makes it difficult for the police to trace and report defamatory content.

The Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018 fix the liability for intermediaries in India. The intermediaries who have more than fifty lakh users in India must Appoint in India, a nodal person of contact and alternate senior designated functionary, for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders/requisitions made in accordance with provisions of law or rules.<sup>23</sup> The intermediary within 72 hours of communication must provide information or assistance as asked for by any government agency. The Intermediary shall deploy technology based automated tools or appropriate mechanisms, for proactively identifying and removing or disabling public access to unlawful information or content.<sup>24</sup> The intermediary must report cyber security incidents and also share cyber security incidents related information with the Indian Computer Emergency Response Team.<sup>25</sup> The intermediary must publish on its website the name of the Grievance Officer and his contact details as well as mechanism by which users or any victim who suffers as a result of access or usage of computer resource by any person in violation. The Grievance Officer shall redress the complaints within one month from the date of receipt of complaint. Most intermediaries in India have not published the names of the Grievous officers and the mechanism available for redressal to the victims.

## 2.Tag Profiles

Facebook allows users to ‘tag’ profiles.<sup>26</sup> If a user saves the pictures in the profile and shares them without the persons consent this causes grace risk to the targeted person’s privacy. Users may use this technique to comment on governments, judiciary, workplace, or even on other individuals. Users may also opt to communicate using a pseudonym. The users can re-publish a statement and broadcast it in seconds. Within a short period of time the content shared via social media may become viral. Consequently, reputation may be harmed with minimal effort via the social media.

## 3.Stories

Facebook, Watts up, Instagram enable the user to share posts in the form of stories. Instagram allows cross post, features such as "swipe up" which helps to carry over to Facebook stories. Stories help to engage the viewer and connect to the viewer instantly. (Facebook, How Instagram stories differ from Facebook stories). Users who post defamatory content post the same story across different social media platforms. Targeting the victim across thousands of

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<sup>23</sup> Rule 7

<sup>24</sup> Rule 8

<sup>25</sup> Rule 10

<sup>26</sup> ‘Tagging’ does not necessarily mean photo tagging, but it may mean profile tagging also whereby profile photos and pictures (except those which are in the ‘private albums’) of the person concerned may also be exposed to the target audience chosen by the individual who tagged the former.

users. The stories feature allows users to post pictures, videos which enlarges the defamation content.

#### 4. Pictures

Most social media allow users to post pictures and videos. The pictures and videos shared may be morphed images. Sharing of morphed images is a punishable offence. The users may have pictures posted as watsapp Display pictures or Facebook and Instagram posts. These saved pictures may be used without consent to write defamatory content. Users are usually stalked before the defamatory content is posted. The user posting defamatory content may even check the user's friends and add them as his/her own friends before posting the defamatory content. This will create a hatred among people who most love the person.

#### 5. Hashtags and Emojis

Emojis are often used to portray an emotion or otherwise add to reader's understanding of the text.<sup>27</sup> A Hashtag is a new form of electronic communication to signal an implication of fact. In *AvePoint, Inc. v. Power Tools, Inc.*<sup>28</sup> a United States court-imposed liability for defamation based on a hashtag for the first time. The court reasoned that the hashtag, “#MadeinCHINA,” implied that the plaintiff's products were not made in America but in China. Acknowledging that customers would likely be reluctant to purchase the plaintiff's products if made in China, the court found that a reasonable reader would have interpreted the hashtag to be a factual statement. (N. Pelletier, 2016) A British court has held that an emoji can trigger liability for defamation on social media. In 2013, in *McAlpine v. Bercow*,<sup>29</sup> a British court heard a case between prominent politician Lord McAlpine and popular political figure Sally Bercow. The emoji posted incurred a cost of over twenty thousand dollars.<sup>30</sup> In India using of hashtags and emojis is very popular. However, there is no jurisprudence on the inflammatory use of hashtags or emojis.

#### 5. Repetition and Forwarding Defamatory Content

No person has the right to repeat a slanderous statement without any justification. If a person who is aware that a defamatory statement is false and still repeats or communicates it further, then he can also be held liable for defamation. The Madras High Court has held Forwarded message is equal to accepting the message and endorsing the message. “Words are more powerful than acts. Not all murders are given capital punishment. We look into the circumstances and all related aspects under which the act was done. Those words used in the

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<sup>27</sup> An Emoticon, more commonly referred to as an emoji, is “[a] small digital image or icon used to express an idea, emotion, etc. [.]”

<sup>28</sup> 981 F. Supp. 2d 496 (W.D. Va. 2013) (finding a Twitter user liable for posting a tweet that defamed a competing business' reputation).

<sup>29</sup> *McAlpine v. Bercow* [2013] EWHC (QB) 1342.

<sup>30</sup> Bercow settled for fifteen thousand pounds, equivalent to over twenty-three thousand five hundred dollars. Dutta, *supra* note 146. Notably, this figure most likely does not tell the whole story. Throughout the controversy, Bercow likely also suffered emotional stress, public humiliation, and loss of reputation. She also likely paid sizable attorney and court fees in connection with the litigation and settlement negotiations. Thus, in reality, the emoji probably cost her much more than one lump sum.



message are not said under emotion. People use such words during quarrel and later they may regret but putting things in writing or typing means they know the consequences and do it.” The offender was punished for committing offences under the Sections 504, 505 (1) (c), 509 of IPC and Section 4 of Tamil Nadu Prohibition of Harassments of Women Act, 2002. Bail was denied to him.

In another instance Priyanka Sharma, a BJP leader in West Bengal, shared a meme on Facebook in which Mamata Banerjee’s face had been superimposed with Priyanka Chopra’s from the latter’s photos at the recent Met Gala. The image wasn’t a replica nor was it a sexually explicit image, nor was there any derogatory text on the meme. She was booked under Section 500 of the Indian Penal Code as well as Section 67A<sup>31</sup> and Section 66A. She was asked to apologize and remove the posts. She was remanded to 14 days custody.<sup>32</sup>

## 6. Defamatory Comments on the Indian Judiciary

The law for contempt is enshrined in *The Contempt of Courts Act, 1971*. The term “contempt of court” means civil contempt or criminal contempt.<sup>33</sup> Civil contempt is defined as ‘wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.’<sup>34</sup> Criminal contempt is defined as ‘the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.’<sup>35</sup> The rationale of the law is that the words in the publication above have got the effect of not only scandalizing and lowering the authority of the Courts but has got the effect of interference in the due course of judicial proceedings and obstructing the administration of justice. If the contemnor challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice.

*In Re: Prashant Bhushan & Anr*<sup>36</sup> Mahek Maheshwari filed a petition regarding a tweet made by Mr. Prashant Bhushan who is a practising Advocate. He alleged that the contemnors had wilfully and deliberately used hate and scandalous speech against the Court and entire judicial system. The tweet read as follows; ‘CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice.’ Mr. Prashant Bhushan had also posted another tweet which was published in the Times of India on June 27, 2020, which read; “When historians in future look back at the last 6 years to see how 3 democracy has been

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<sup>31</sup> Publishing obscene images

<sup>32</sup> *Rajib Sharma.v. State of West Bengal Writ Petition(s)(Criminal) No(s). 146/2019*

<sup>33</sup> Section 2(a)

<sup>34</sup> Section 2(b)

<sup>35</sup> Section 2(c)

<sup>36</sup> *Suo Motu Contempt Petition (Crl.) No.1 Of 2020*

destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs.”

The Supreme Court of India held;

“The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. The trust, faith and confidence of the citizens of the country in the judicial system is sine qua non for existence of rule of law. An attempt to shake the very foundation of constitutional democracy has to be dealt with an iron hand. The tweet has the effect of destabilising the very foundation of this important pillar of the Indian democracy. The tweet clearly tends to give an impression, that the Supreme Court, which is a highest constitutional court in the country, has in the last six years played a vital role in destruction of the Indian democracy. The tweets which are based on the distorted facts, in our considered view, amount to committing of ‘criminal contempt’.”

### **Methodology**

V.M. Salgaocar College of Law is located in North Goa while G.R. Kare College of Law is located in South Goa. The college has a social media presence. Every activity and event organized in the college is uploaded on social media, blogs and the college website. The researchers have collected data by adopting survey method. Interviews and group discussions were conducted with victims. Primary as well as secondary data was collected for the study. Anonymity of the participants was ensured throughout the study. The total number of respondents for the study was 901. There were 572 females and 329 male students.

The average age of the participants was 18 to 24 years among the students studying B.A.LL.B. While the average age of the students studying LL. B degree is 23-28. The staff was in the age group of 30 - 60 years. The time period of the study was one year. Majority of the participants were females. Young people are more impulsive and tend to act instantly. Young people are more vulnerable. Most of the students in law schools are active users of social media.

The Researcher has tried to find out the actual number of people suffering from defamatory content on social media in law school. This data is presented according to the gender of the victims. The researcher has tried to find out what kind of defamatory acts are committed on social media. Are there any specific derogatory acts only related to women? Lastly the researcher has investigated the response of the victim towards defamatory content.

### **Data Findings**

Every student enrolled in the law school is on some kind of social media. The most commonly used social media for the fourth year and final year B.A.LL. B students was Facebook. Around 20% of these students used Instagram. While for LL. B Degree students of all three years the preferred portal was Facebook. Students of First, Second, third year B.A.LL. B had only one account around 75% of the students were on Instagram and 25% of the students had no profile on any social networking site. However, every student of the college has a Whatsapp number and used it for messaging.

### **Gender Wise break up of Students and Staff**

The number of female respondents studying in law schools' ins must higher then male respondents. The staff has more females as compared to males. Among the students 23.03% females had defamatory content written about them. 25.07% boys have defamatory content written about them. The average defamatory content written about both boys and girls was 23.88%. The students in law school opined that they had relationships with the person posting the content. Relationships were not limited to the students of the same class but also across classes and across courses. Some students opined that besides romantic linkups they were in the same peer group. The college conducts a number of activities like law festivals, moot courts, legal aid groups, the students were earlier part of such groups when the defamatory content was written about them. The reason for the defamatory content was difference in opinions, preference given by the institution to some students towards participation, in charge-ship or even scholarships awarded to students. The students silently collect written as well as pictorial evidence and slowly release it on social media once they are no longer acquainted with the student about whom they are writing defamatory content.

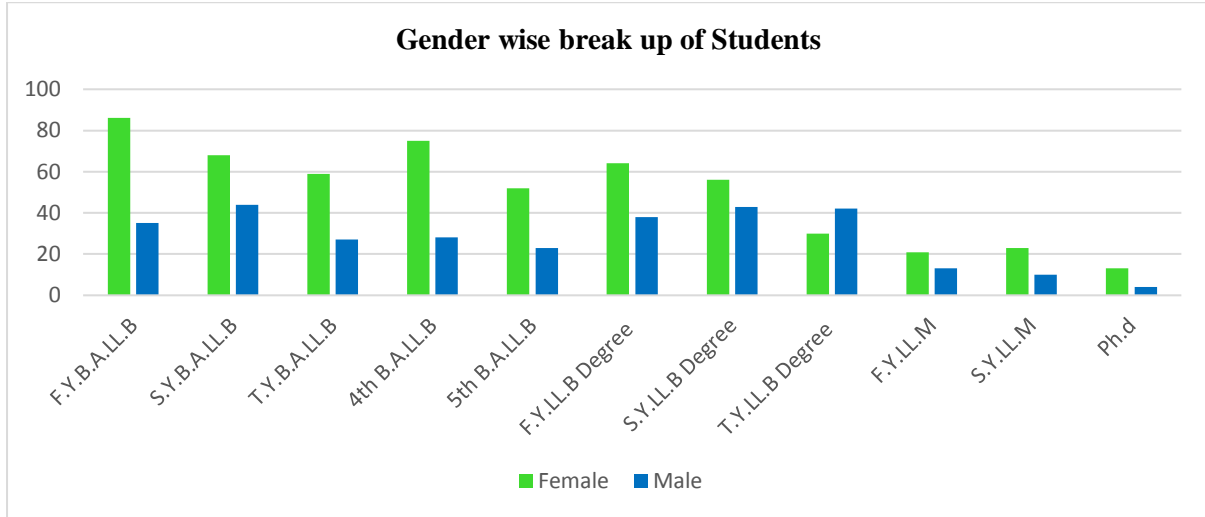
Among the staff 36% female staff witnessed defamatory content. 45.45% male staff faced defamatory content. The average percentage of staff facing defamatory content was 42.22%. Defamatory content written about males is higher than those of females. In all cases students were the ones who wrote defamatory content about the staff. The content was written not only when the students where studying in the respective class but even when the teacher was not teaching them. The teachers selected to post defamatory content were those who have accomplished work in different areas. The staff who had a global reputation and who was well known were the victims. Like those involved in high positions of the college, those that have received international scholarships and those who are constantly invited by other institutions for their expertise on a subject. Derogatory, inflammatory, and obscure words were used in the content of the posts shared.

Table No1 Gender Wise break up of Students

Class	Female	Male	Total
F.Y.B.A.LL.B	86	35	121
S.Y.B.A.LL.B	68	44	112
T.Y.B.A.LL.B	59	27	86
4 <sup>th</sup> B.A.LL.B	75	28	103
5 <sup>th</sup> B.A.LL.B	52	23	75
F.Y.LL.B Degree	64	38	102
S.Y.LL.B Degree	56	43	99
T.Y.LL.B Degree	30	42	72
F.Y.LL.M	21	13	34
S.Y.LL.M	23	10	33
Ph.d	13	4	17
Total	547	307	854

Source – V.M. Salgaocar College of Law

Graph No.1 Gender Wise break up of Students



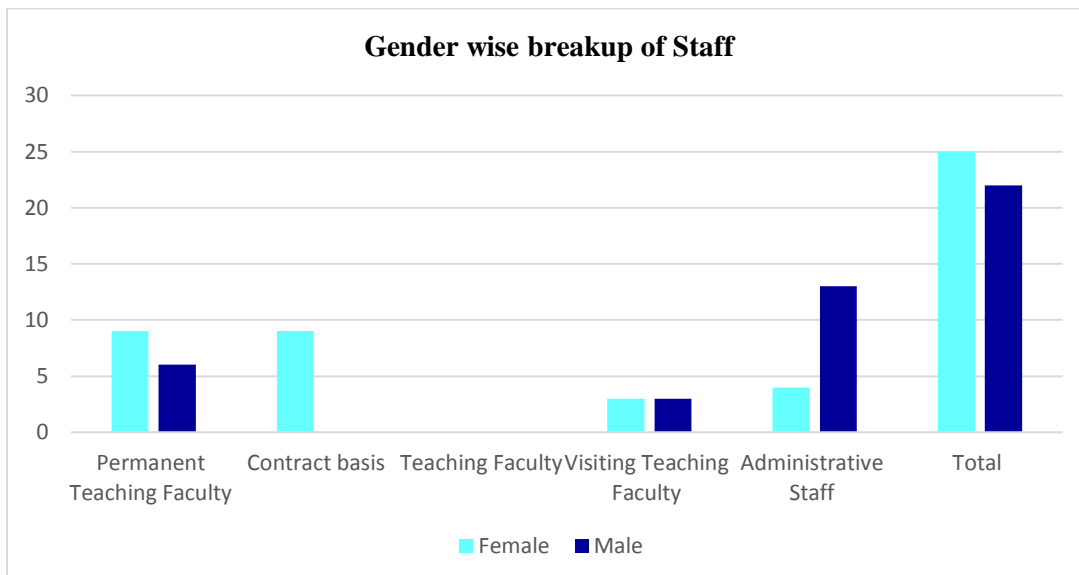
Source – V.M. Salgaocar College of Law

Table No. 2 Gender wise break up of Staff

Class	Female	Male	Total
Permanent Teaching Faculty	9	6	15
Contract basis Teaching Faculty	9	0	9
Visiting Teaching Faculty	3	3	6
Administrative Staff	4	13	17
<b>Total</b>	<b>25</b>	<b>22</b>	<b>47</b>

Source – V.M.Salgaocar College of Law

Graph No. 2 Gender wise break up of Staff



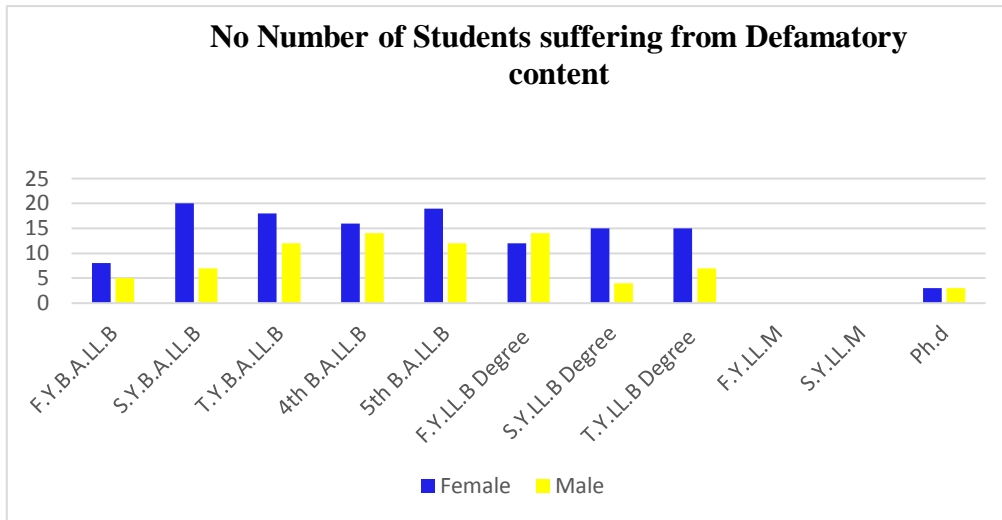
## Number of People suffering from Defamatory content

**Table No3 Number of Students suffering from Defamatory content**

Class	Students	Female	Male	Total
F.Y.B.A.LL.B		8	5	13
S.Y.B.A.LL.B		20	7	27
T.Y.B.A.LL.B		18	12	30
4 <sup>th</sup> B.A.LL.B		16	14	30
5 <sup>th</sup> B.A.LL.B		19	12	31
F.Y.LL.B Degree		12	14	26
S.Y.LL.B Degree		15	4	19
T.Y.LL.B Degree		15	7	22
F.Y.LL.M		0	0	0
S.Y.LL.M		0	0	0
Ph.d		3	3	6
<b>Total</b>		<b>126</b>	<b>78</b>	<b>204</b>

Source – Data from Questionnaire

**Graph No 3 Number of Students suffering from Defamatory content**



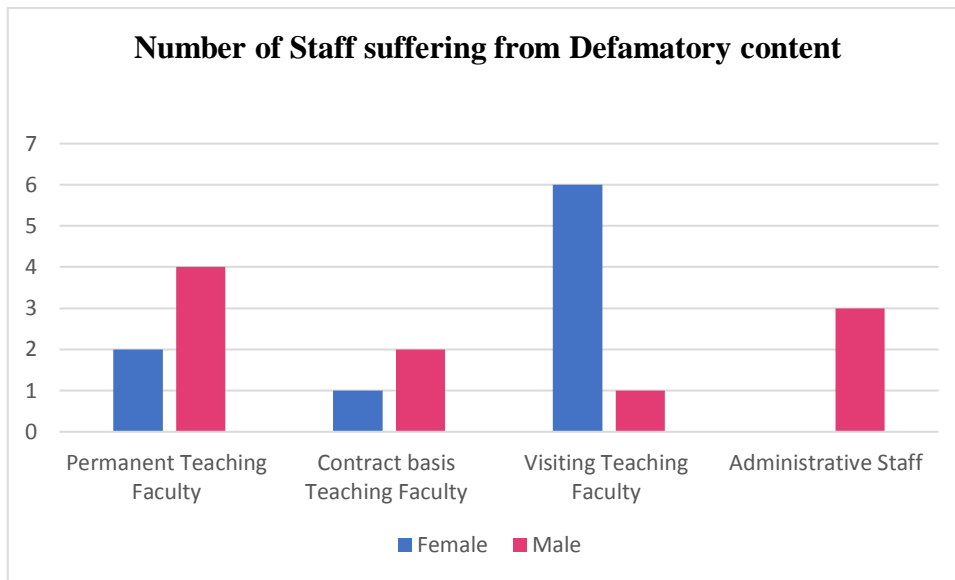
Source – Data from Questionnaire

**Table No 4 Number of Staff suffering from Defamatory content**

Designation of the Staff	Female	Male	Total
Permanent Teaching Faculty	2	4	6
Contract basis Teaching Faculty	1	2	3
Visiting Teaching Faculty	6	1	7
Administrative Staff	0	3	3
	<b>9</b>	<b>10</b>	<b>19</b>

Source – Data from Questionnaire

Graph No 4 Number of Staff suffering from Defamatory content



Source – Data from Questionnaire

### Kinds of Defamatory acts committed

Almost all the respondents knew the person posting the defamatory posts. 60.2% perpetrators posted defamatory content on Facebook. While 40% perpetrators posted on both WhatsApp and Facebook. 38.05% perpetrators stalked the victims in online and as well as their physical environment. 24.3% perpetrators committed voyeuristic acts before selected the targets. 38% of the perpetrators followed the victims on social media.

The perpetrators adopt different forms to share their defamatory content. 13.67% used stories in Facebook, WhatsApp, Instagram and then posted the message on Facebook. 24.6% of the perpetrators posted the message in a WhatsApp group and also made it their display picture. 36.5% perpetrators went ahead and posted the defamatory content on blogs, websites, and even sent emails. 25.23% perpetrators used every method cited. The effect of the defamatory post caused immense damage to the victims and loss of reputation of hard-earned goodwill. Use of emojis and hashtags emerged as the new form of communication in almost every posted message.

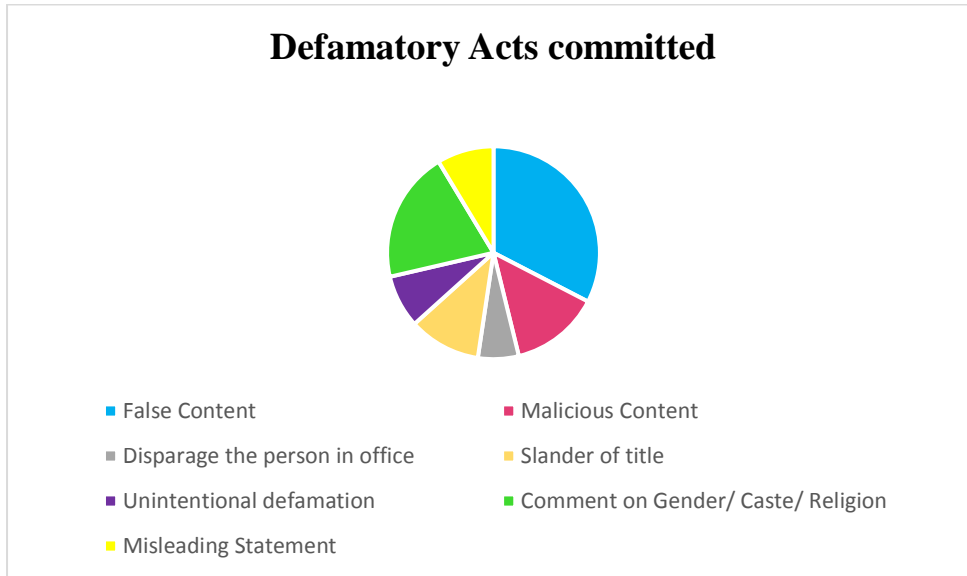
Table No 5 Defamatory Acts committed

Defamatory Acts	Percentage
False Content	30%
Malicious Content	12.5%
Disparage the person in office	5.7%
Slander of title	10.1%
Unintentional defamation	7.4%
Comment on Gender/ Caste/ Religion	18.4%
Misleading Statement	7.95%

False Allegations	7.95%
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Source – Data from Questionnaire

Graph No 5 Defamatory Acts committed



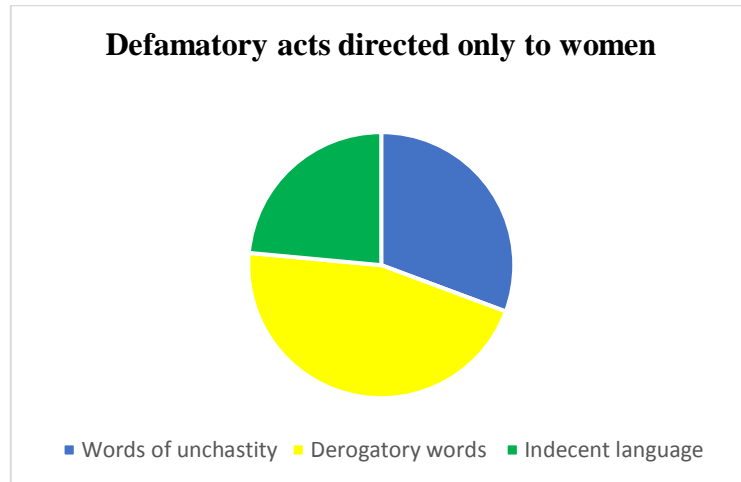
Source – Data from Questionnaire

Table No 6 Defamatory acts directed only to women

Act	Percentage
Words of unchastity	30.67%
Derogatory words	45.8%
Indecent language	23.53%

Source – Data from Questionnaire

Graph No 6 Defamatory Acts committed



Source – Data from Questionnaire

In other countries there is no need for proof when defamatory content in the form of words of unchastity, derogatory words or indecent language is used against a woman. In India there is no specific provision. Women are not likely to complain about the derogatory act committed.

Users on social media enjoy reading, liking and sharing defamatory content. They have something to talk about when such posts are posted. 40.5% perpetrators claimed they posted defamatory content to ruin the reputation of the other person. 32% perpetrators claimed they had done defamatory messages to gain popularity among colleagues and friends. 20.5% perpetrators cited they wanted to punish the victim for some hurt they had undergone. 7% of the perpetrators posted defamatory content due to an inherent error on their part. They were misguided by someone else’s post or information.

70.3% of the victims opined that they discovered the defamatory content themselves. 12.3% of the victims were informed by either their friends or colleagues. 17.4% of the victims were informed by strangers or third parties.

The law school has The College Students Discipline and Conduct Rules, 2019. The law school has also issued Social Media Guidelines for Students. According to the rules of Disciplinary conduct posting defamatory content on social media is an offence. The people who post defamatory content throw caution to the wind. 31.9% of the victims feel that the law school must take action. 61.1% Victims felt they were left helpless with no redressal mechanism. They had to take self-precautionary measures to safeguard their reputation. Victims had resorted to techniques like block the users, hide the post if posted on the timeline, remove the tags which identified them or deleted their social media account. All these methods did not stop the spreading of the defamatory message like wild fire. 7% of the Victims had the courage to report the defamatory post to the legal authorities for action. The legal authorities like police cited reasons like lack of a law to prosecute the offenders or that the post was just an opinion and not a derogatory comment.



Strange is the reaction of society to the victim. 40% of the users on social media liked defamatory posts. When such users were asked the reason, they cited that no one ever reads the post but the instant reaction is to like the post. 15% of the users refused to talk to the victim. These people were afraid the victim would approach them for help. 34.7% of the Victim began gossiping about the victim and wondering if the facts of the defamatory message posted could be true. 10.3% of the users ridiculed the victim for having instigated the perpetrator to write about them.

### Effect of Defamation on Victims in India

Prof. Jaishankar has coined the term "Cyber Criminology" in 2007 which is defined as "the study of causation of crimes that occur in the cyberspace and its impact in the physical space". Cyber defamation affects the day to day life of the individual against whom the defamatory content is directed.(Jaishankar, 2008) The victims in many cases are left with no options. They can either file a complaint with the police or get an order from the court directing the company, i.e., Facebook, Twitter, Instagram to remove the offensive contents. This may be a limited remedy as in many instances the users of abusive content are fake profiles. This makes it difficult for the police to trace the users. At the most the victims may delete their accounts or block the person posting offensive posts. This will not stop the posting and reposting of the posts. If the content is published on a blog or a website it cannot be blocked the victims take up irrational coping methods like contacting amateur hackers or even commit suicide for the shame generated. The Courts have held the victims 'suffer immense loss of reputation, mental trauma, harassment and humiliation.'<sup>37</sup>Creating fake profiles and uploading morphed pictures is a huge menace not only to the individual but to the society. (Zee Media Bureau, 2019)<sup>38</sup>

At the same time India is now debating of whether curbs can be introduced to access social media. In *Sachin Chowdary.v. State of Uttar Pradesh* the Supreme Court of India held that the courts must 'consider laying down a law on whether a trial court while granting bail, could restrict a person from using social media.' The Court held;

"We don't think it's too onerous if a person's participation on social media creates mischief. Why can't the Court say you don't use the instrument by which you caused mischief?"

Indian has resorted to online petitions to call for responses to gender-based violence and discrimination. Some states in India have taken action in the form of suspending internet services. In the year 2019 Internet services were stopped in Bihar over a protest over a gang rape.<sup>39</sup>Mobile Internet was suspended in Jaipur after people began protesting over Rape of a 7-year-old.(The Logical Indian, 2019)

In *Court on its own Motion.v. Union of India and Ors*<sup>40</sup> the Delhi High Court impleaded Google, Facebook, Twitter, Bing and YouTube as Respondents for disclosing the identity of

<sup>37</sup>*Vyakti Vikas Kendra, India Public ... vs Jitender Bagga & Anr* CS(OS) No.1340/2012

<sup>38</sup>*Kalandi Charan Lenka v. State of Odisha* BLAPL No.7596 of 2016

<sup>39</sup> Section 144 withdrawn,

<sup>40</sup> W.P(C) 3725 of 2018 and CM Appl 16363 -66 of 2018

the eight-year-old girl who was raped and murdered in Kathua. The Delhi High Court was of the opinion that the social media giants have;

“done disservice to the nation. India has been branded. It has done injustice to the nation and to the victim's family.”

The Delhi High Court directed the media houses to deposit Rs. 10 lakh each, as penalty for disclosing the name and other details of the Kathua gangrape victim. (A. Gambhir, 2018)

### **Reliefs to the victim in a suit for defamation**

Users are in a habit of impulsively posting immediately to keep up with the buzz on a trending topic, and in the heat of the moment. People usually say something which they may regret later. Yet no one pauses to think about what they are writing before they post it. Defamation in traditional media would make the author, editor and publisher equally responsible whereas in social media the entire burden is on the author. The victim may have a limited remedy to claim damages, a mandatory injunction and directing the person to publish an unconditional apology. The petitioner can ask the social media platform to remove the inflammatory content.

Not only individuals but companies are also facing the heat of defamation. ITC Ltd has filed two suits in Bangalore and Kolkata courts against Suhel Seth claiming from him Rs 200 crore for posting ‘defamatory’ tweets and newspaper articles against ITC and its chairman, YC Deveshwar. (W. Mukherjee, 2011) ITC has also filed Rs1,000 crore defamation suit against proxy advisory firm IiAS at the Calcutta HC for making ‘defamatory’ statements against the company and its directors. Institutional Investor Advisory Services (IiAS) had published two reports that were “false, defamatory and malicious” on its website [www.iiasadvisory.com](http://www.iiasadvisory.com) in July 2017. (PTI News, 2017)

### **Right to be Forgotten**

The right to be forgotten or the right to erasure gives individuals the right to ask intermediaries to delete their personal data. But intermediaries don’t always do it. Individuals have to resort to legal intervention of the courts.

In *Swami Ramdev & Anr. vs Facebook, Inc. & Ors*<sup>41</sup> Swami Ramdev, is a public figure and yoga guru in India. He filed a petition to seek a global injunction against the publication of a defamatory video. He prayed to stop the sharing of the video and prevent it from being re-uploaded on social media platforms. The Delhi High Court issued an injunction against Facebook, Google, YouTube and Twitter (Defendants) and other online intermediaries, directing them to globally take down a list of URLs from their platforms which were allegedly defamatory to the Plaintiffs. The Court held that the intermediaries were obliged to take down and block all such illegal content and videos which had been uploaded from I.P. addresses within India, on a global basis. Further, for illegal content which was uploaded outside the

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<sup>41</sup> CS (OS) 27/2019

Indian territory, the Court directed geo-blocking access and disabling viewership of such content from within India.

In *Subodh Gupta.V. Herdsceneand & Ors*<sup>42</sup> an anonymous Instagram handle had published a string of sexual harassment allegations against the leading contemporary artist Subodh Gupta the defamatory content on a media handle / Instagram account 'Herdsceneand@gmail.com' and contents whereof are available on Google. The Delhi High Court restrained 'Herdsceneand' from posting on its Instagram account any content pertaining to the plaintiff. The Court directed Herdsceneand, Instagram LLC, Facebook, Incorporated, Facebook Ireland Limited, Google Incorporated and Google India Pvt. Ltd. to remove/take down the defamatory posts/articles/all content pertaining to the plaintiff and block the following URLs/web links: The Delhi High Court also asked the Instagram account 'Herdsceneand' to decide as to whether she would want to be impleaded in representative capacity of all women who had raised sexual harassment allegations through the account against artist Subodh Gupta.

### Conclusion

'The Ministry of Electronics and Information Technology (MeitY) in India has opined that Technology had led to an exponential rise in hate speech, fake news and anti-national activities.' 'Hate Speech creates an environment of intimidation and exclusion and in some cases may promote real-world violence.' The Bombay High Court has opined that 'Right to freedom of speech and expression cannot be exercised to sow seeds of hatred, Inflammatory posts can create disharmony in society and invade peace. The State must introduce a regime of conduct with stricter norms to deal with rapidly rising inflammatory posts on social media.'<sup>43</sup>

There is an urgent need that India must enact a law to curb online Defamation. There is no definition of what content could be harmful and could be considered defamatory. The Social media is filled with harmful acts. People are not aware of what content is prohibited on the internet hence they end up typing without thinking. Social media companies need to regulate and filter the content posted online. Social networking platforms are passing off responsibilities. Social media is able to record every post made by a user and it even logs the IP address used by the user. They can even provide the location of the user. All this is useful when an anonymous user posts a defamatory content. Artificial intelligence (AI) that analyses an individual's social media content. Artificial Intelligence can assist human moderators by increasing their productivity and reducing the potentially harmful effects of content moderation on individual moderators. Artificial Intelligence can be used to clean up language. The offensive-comment filter can be used to hide inflammatory and abusive content.

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