



SINGLE PUBLICATION RULE IN INDIA: AN EVALUATION

By Priyanshu Kar
From West Bengal National University of
Juridical Sciences

INTRODUCTION

“We are living toward incredible times where the only constant is change, and the rate of change is increasing.”¹ - Peter H. Diamandis.

The world is indeed in a state of frenzied evolution. Where the imagination of yesterday is the reality of today. Laws need to change too. This is necessary to accommodate the changing demands and needs for regulation and meeting the ends of justice. With the advent of the internet as an inexpensive and massive source of information, a click of a button can generate information about anything under and beyond the sun. This has come to another level by the widespread rise of social media platforms. They have facilitated the rise of a new arena of interaction at the virtual strata that is instantaneous and time saving to a large extent.

However, this has led to an increase in anomalies associated with social media as far as the defamation law is concerned. Issues of intermediary liability, cyber defamation, SLAPP² suits have come to the fore and demand significant changes in the law.

¹ Quote available at :

https://www.brainyquote.com/quotes/peter_diamandis_690476#:~:text=Peter%20Diamandis%20Quotes&text=We%20are%20living%20toward%20incredible%20times%20where%20the%20only%20constant,rate%20of%20change%20is%20increasing.

This paper shall delve into the analysis of the rule of single publication rule of defamation in social media specifically focusing on civil defamation. Thus, arguing the need and advantages for adopting the Single Publication rule of defamation in the Indian system.

The following outline is hereby presented. Firstly, the paper shall discuss defamation as a concept in general and specifically on the tort of defamation in particular. Secondly, it will delve into the idea of cyber defamation. Thirdly, an understanding of the single publication rule will be presented and finally, the analysis and evaluation of the single publication rule in the arena of social media shall be presented with lessons learnt from foreign jurisdictions before the conclusion.

DEFAMATION - THE CONCEPT

“It takes many good deeds to build a good reputation, and only one bad one to lose it.”
- Benjamin Franklin

The law of defamation sees the intersection of right to free speech and right of reputation.³ Defamation occurs by the publication of an explicit or implied statement that seeks to lower the reputation of the plaintiff in the “estimation of right-thinking members of society generally.”⁴

As per Black’s Law Dictionary defamation includes, “The offence of injuring a person’s character, fame, or reputation by false and

² Strategic Lawsuit Against Public Participation

³ John Murphy, Street on Torts, 533(2012)

⁴ *Sim v Stretch* [1936] 2 All ER 1237, (per Lord Atkin)



malicious statements”.⁵ It may appear in two forms viz. Libel and Slander. Slander incorporates all statements that are transient and spoken whereas Libel incorporates statements that are written or recorded thus being permanent.

In general, the elements of defamation include⁶ - (1) A statement, (2) The statement must refer to the plaintiff (without his/her consent⁷), (3) Statement should be false, (4) It must be published, (5) The third party believes it to be true and thus lowers the reputation of the plaintiff.

Defamation as a tort was prevalent for a long time. Although credited to have an English origin⁸, law of defamation existed in Roman jurisdiction thousands of years ago in different forms. It is said that punishments were very harsh in cases of abusive chants wherein capital punishments were awarded.⁹The law gained importance and popularity in the nineteenth century with the advent of the printing press which heralded mass circulation of information by the novel and popular press.¹⁰In India, defamation is divided into civil and criminal defamation. Civil defamation focuses on the tort of defamation wherein the right in rem of a

person’s reputation is hampered. The plaintiff here claims monetary compensation through a civil suit. Criminal defamation is covered by Section 499¹¹ and 500¹² of the Indian Penal Code (IPC). Here, intention to defame has to be proved. “The allegation should be made with malice intent to defame another or at least the knowledge that the publication is likely to defame another is essential. It has to be proved beyond reasonable doubt that the act was being done to lower the reputation of another.”¹³So, it is to be noted that the primary difference between criminal and civil defamation in India lies in the choice of the aggrieved between civil and criminal proceedings.

Defamation has had a wide range of defences that need to be taken into consideration. A true statement despite being defamatory is justified. “Calling a thief a thief may damage his reputation but this is hardly a thief can complain about.”¹⁴ “The law will not permit a man to recover damages in respect of an injury to character which he does not or ought not possess.”¹⁵In fact, to show that the defamatory statement was true, one has to show that it was ‘true in substance and fact.’¹⁶ Privilege is another defence which gives the

⁵ Henry Campbell Black, Black’s Law Dictionary, 505(1968)

⁶ Saumya Saxena, *Law of Defamation in India*, May 14, 2019, available at : <https://blog.ipleaders.in/law-of-defamation-in-india/>

⁷ Britannica, *Defamation*, available at : <https://www.britannica.com/topic/defamation>

⁸ *Id*

⁹ *Id*

¹⁰ Supra note 3,534

¹¹ 499 - Defamation.—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.

¹² 500. Punishment for defamation. —Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

¹³ Defamation, available at :

<https://lexlife.in/2020/05/03/defamation-law-in-india/>

¹⁴ Kirtsy Horsey and Erika Rackley, *Defamation and Invasion of Privacy - Tort Law*, 429(2019)

¹⁵ *McPherson v Daniels* [1829] at 272

¹⁶ *Sutherland v Stopes*[1925] AC 47



person the shield to be protected despite publishing defamatory statements. This is done to promote people speak freely without any fear of being sued.¹⁷ It is divided into a narrow scoped Absolute privilege and Qualified privilege. The other defence includes fair comment and public interest.

CYBER DEFAMATION - AN EMERGING FIELD

Defamation law has undergone immense changes with the advent of the internet. Paper based messaging systems including letters, have undergone transformation with the advent of instantaneous modes of communications like e-mails and most importantly social media like Facebook, WhatsApp, twitter, etc. Virtual interactions have opened a Pandora's box of anomalies of regulation, jurisdiction and privacy among others. One such issue is cyber defamation.

Platforms of traditional media like radio and television which fostered sharing of information and broadcasting had a 'fact checking mandate'¹⁸ before publication. However, modern day social media lacks such a mechanism. As a result, defamation cases have to deal with issues of jurisdiction

(place of publication), publication platform and liability of intermediaries. Questions of liability of the internet service provider¹⁹ and the social media platforms have long been deliberated.

The definition of cyber defamation is developing.²⁰ The cheap and inexpensive nature of the cyber world has led to loss of user credibility and sense of social responsibility.²¹ This has aggravated the scope of defamation. In cases of cyber defamation therefore, the defamatory statement may not be directed to a specific person but it could be harmful to the whole society. Thus, making it a criminal offence. The statement propagated through the cyber world may also have the capacity of spreading hatred and inciting disturbance in the society. Laws have sought to bar such acts of defamation in the online sphere in India through the Information Technology Act, 2000. It seeks to curb a range of cybercrimes. However, it fails to expressly address cyber defamation specifically, despite having Section 67²² of the IT Act, 2000.

Interestingly, the first case of cyber defamation in Asia²³ was filed in India in *SMC Pneumatics Ltd. v. Jogesh*

¹⁷ Supra note 14,432

¹⁸ St. Kitts and Nevis Bar Association Continuing Legal Education Session, *Defamation and Social Media: How the law has Changed?*, available at : <http://www.danielbrantley.com/wp-content/uploads/2018/07/SKN-CLE-24-March-2018-Defamation-and-Social-Media-presented-by-Dia-C-Forrester.pdf>

¹⁹ Nikita Barman, *Legal Implications of Cyber Crimes on Social Networking Websites*, International Journal of Scientific and Research Publications, Volume 5, Issue 12, December 2015

²⁰ Neha Rai and Reuben George Chacko, *Defamation in cyberspace*, available at :

<http://www.legalservicesindia.com/articles/defcy.htm>

²¹ *Id*
²² Section 67 of the Information Technology Act, 2000 provides for punishment to whoever transmits or publishes or causes to be published or transmitted, any material which is obscene in electronic form with imprisonment for a term which may extend to two years and with fine which may extend to twenty five thousand rupees on first conviction and in the event of second may extend to five years and also with fine which may extend to fifty thousand rupees.

²³ Supra note 20



Kwatra.²⁴The case is of immense significance as it not only recognised cyber defamation as a cause of action but also it ordered an “ex-parte injunction restraining the defendant from defaming the plaintiffs by sending derogatory, defamatory, abusive and obscene emails either to the plaintiffs or their subsidiaries.”²⁵

It is now pertinent to note how publication, an important element of defamation, has played out in cyberspace and evolved itself in the field of social media defamation. In this endeavour, the importance and evolution of various publication rules will be evaluated.

SINGLE PUBLICATION RULE - ITS EVOLUTION

Defamation is not possible unless the statement is published. The term ‘publication’ is a misnomer.²⁶ Infact, communication²⁷ is important as the statement needs to be communicated to a third party. Publication is not necessarily written or recorded; it can also take place when the statement reaches a third party’s ear.²⁸ The statement should be capable enough to be comprehended by the third party.²⁹ If the plaintiff argues that he did not have the intention to make his publication known to a third party, the test of reasonable foreseeability is applied.³⁰ If it is so, the

plaintiff shall be held liable.

The issue of republication of a defamatory statement and the liability arising out of it is worth discussion. The question here is whether the original author is alone liable or the republishers are also liable.³¹ This leads to two rules viz the single publication and the multi publication rule of defamation. Choice between the two has been very contentious among jurisdictions. One of the earliest cases to deal with this issue was the *Duke of Brunswick*.³² Here, the Duke sued for two alleged defamatory publications 17 years after they were first published. The defendants contended that the claim was time barred based on the first publication.³³ The court held that defendants were liable and “each individual publication of a libel gives rise to a separate cause of action.”³⁴(multiple publication rule). The rule went well with closely knit and small communities which involved printed materials of a limited number. However with the rise in population and technological developments, courts faced a confusion. It seemed impossible to cope with the increasing number of suits that faced the courts as now defamatory statements could reach millions through the internet.³⁵ The time had come for devising a rule that could guard the reputation of the aggrieved while safeguarding the publishers from endless lawsuits.³⁶

²⁴ Suit No. 1279/2001, District Court of Delhi

²⁵ Supra note 20

²⁶ Supra note 14, 426

²⁷ *Id*

²⁸ *Id*

²⁹ *Id*

³⁰ *Id*

³¹ Assuming that no changes have been made on the original defamatory statement.

³² *Duke of Brunswick v Harmer* [1849] 14 QB 185, UK

³³ *Duke of Brunswick v Harmer: QBD 2 Nov 1849*, available at : <https://swarb.co.uk/duke-of-brunswick-v-harmer-qbd-2-nov-1849/>

³⁴ David Pallister, *Libel legacy of ousted aristocrat threatens internet*, December 27, 2005, available at : <https://www.theguardian.com/technology/2005/dec/27/news.constitution>

³⁵ Manjeet Kumar Sahoo, *Defamation on Social Media : An adoption of the single publication rule*, Social Science Research Network (2016)

³⁶ *Id*



Thus was born the Single Publication rule which went as, “any form of mass communication or aggregate publication is a single communication and can give rise to only one action for libel.”³⁷This rule gives importance to the date of first publication. The cause of action arises from that date. The USA has a well established single publication rule since 1938.³⁸It rejected the multiple publication rule in *Wolfson v Syracuse Newspapers Inc*³⁹ holding that the limitation period would never end and render it useless⁴⁰ “as long as a copy of the published material remains in stock.”⁴¹This was also accepted in the cyber world in the USA.

India, though initially followed the multiple publication rule by common law(IT Act, 2000 does not codify this rule), seems to now adopt a favourable approach towards Single Publication rule. This is understood by the landmark judgement of the Delhi High Court in *Khawar Butt vs Asif Nazir Mir*⁴². The facts of the case arise from an alleged libellous post on facebook (published on October 25,2008 and again on December 25,2008) wherein it was made out that the plaintiff was in illicit relationship with the defendant’s wife.⁴³ The plaintiff here argued that every time the defamatory statement remained on facebook, a fresh and continuous cause of action would arise. Thus, he claimed that the

suit was not barred by limitation.⁴⁴

The issue in this case was “Whether, the leaving of the allegedly defamatory material on the internet/facebook page gives rise to a fresh cause of action every moment the said offending material is so left on the web page - which can be viewed by others at any time, or whether the cause of action arises only when the offending material is first posted on the webpage/internet.”⁴⁵

Court here favoured the single publication rule because of its practicality and the law of limitation.⁴⁶ It stated that if the defamatory material would arise a new cause of action every time it is on the website, then the purpose of the time bar would be defeated. However, the caveat put forward was that if the re-publication was directed to a different larger audience, then the period of limitation would be refreshed.

SINGLE PUBLICATION RULE FOR SOCIAL MEDIA

The above well researched judgement thus laid down the principles of Single Publication rule in a nutshell. France, USA, and England have adopted this rule. Their reasons for adoption stem from the well documented problems of multi publication rule viz. “subjecting publishers to a multiplicity of

³⁷ Vaishnavi Pandey, *The "Single Publication" Rule Of Defamation On Social Networking Websites*, October 13, 2014, available at :

<https://www.mondaq.com/india/libel-defamation/346258/the-single-publication-rule-of-defamation-on-social-networking-websites>

³⁸ *Id*

³⁹ *Wolfson v. Syracuse Newspapers, Inc.*, 254 App. Div. 211

⁴⁰ “such a rule would nullify the clear purpose of the Statute of Limitations”(Justice Lewis)

⁴¹ *Id*

⁴² *Khawar Butt v/s Asif Nazir Mir & Others*, CS(OS) No. 290 of 2010(Justice Vipin Sanghi)

⁴³ *Id*

⁴⁴ According to Entry 75 of the Schedule to the Limitation Act, 1963, the limitation period in a suit to claim compensation for libel is one year from the date of publication of the libel.

⁴⁵ *Supra* note 42

⁴⁶ *Id*, “ I am of the view that the Single Publication Rule is more appropriate and pragmatic to apply, rather the Multiple Publication Rule.”



actions and possible harassment, and also conserves judicial resources.”⁴⁷

Social Media, according to Merriam Webster, constitutes “*forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content.*”

In the scope of social media, I argue, this rule should be adopted. As to deciding on the date of publication, scholars like Sapna Kumar claim that the date of posting should be determined and not the date of discovery.⁴⁸ This view was also endorsed by the above judgement. However, the Ontario's Act(s.6) stipulates, “the date when the libel first came to the plaintiffs' knowledge, not the date of publication, triggers the running of the limitation period.”⁴⁹

The stakeholders in a social media post are - the content creator, the intermediary, the user who reads the post and the user who shares it. The latter can be further classified into one who shares it without alteration while the other who shares it after alteration. I argue, in the latter case, there should be an exception to the rule of single publication. Wherein, the original post remains on social media and is shared after changes are made to it. Here the limitation period should refresh itself once the defamatory statement is reshared after

making changes. This view has been affirmed by the US Supreme Court of Kentucky⁵⁰ and should be adopted in India. It is called the Doctrine of Republication.⁵¹ “Republishing material including publishing a second edition or a book or periodical, editing and republishing defamatory material, or placing it in a new form – resets the statute of limitations.”⁵² Here, the law provides a protection to the plaintiff from being defamed by a material republished with additions and alterations in a new form. It presumes the goal of the defamatory content reaching a new audience.⁵³ However, a caveat placed notes that mere *old wine in a new bottle* does not refresh the limitation period and re-start the cause of action that is, mere addition or subtraction of unrelated material will not do.

Thus, the law while permitting single publication rule in the internet vis a vis social media, it has presented caveats. Hence establishing checks and balances on possible misuse.

CONCLUSION

Although many countries have retained the multiple publication rule on the internet even today,⁵⁴ the necessities of single publication rule cannot be denied. I therefore advocate for the faster adoption of the rule in the Indian context as is done in the UK by the

⁴⁷ *THE SINGLE PUBLICATION RULE AND ONLINE COPYRIGHT: TENSIONS BETWEEN BROADCAST, LICENSING, AND DEFAMATION LAW*, Harvard Law Review, 123

⁴⁸ Sapna Kumar, *Website Libel and the Single Publication Rule*, 70 U. CHI. L. REV. 639, 657–59 (2003)

⁴⁹ *Supra* note 42

⁵⁰ Emory M. Davis, et al. v. Frank Mitran Civil Action No. 06-88-C (W.D. Ky., August 14, 2006) available at <http://www.internetlibrary.com/pdf/Davis-Mitran-WD-Ky.pdf>

⁵¹ *Supra* note 35, 4

⁵² *Supra* note 42, 4

⁵³ *Id*

⁵⁴ *Supra* note 42, Australia, Canada



Defamation Act, 2013⁵⁵. This will surely reduce the burden of defamation cases in the courts and give a clear picture of liability by balancing the publisher's right to freedom of expression and the plaintiff's right to reputation.

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⁵⁵ Section 8 has introduced the Single Publication Rule



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