

Section 57 of ICT Act: A threat to the freedom of expression through the suit of defamation

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ABSTRACT: The purpose of this paper is to draw how the cyber law is being abused by the political leader, affluent people of our country. The country of Bangladesh believes in the equal contribution of every people. To make our country great, our Constitution has introduced the idea of freedom of expression. The action which is taken by any public figure can be questioned if anyone thinks that it is against the interest of people and obviously through the application of some restrictions. So comment or criticism on public matter cannot be stopped by filing suit on the base of defamation. If we do not take necessary steps to stop the misuse of defamation under section 57 of ICT Act then the idea of freedom of expression will be a joke.

Keywords: Freedom of Expression, Defamation, Case, Criticism, Restrictions

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I. INTRODUCTION

Although it seems there is no prohibition on expressing thoughts generally but constructive criticism on a particular matter or public figure's work is getting questioned through the application of certain laws. As a country of believing freedom of expression, we can express any thoughts with some limitations of law but it cannot be attacked politically or intentionally. Infringement of freedom expression has become a daily harassment where some journalists, editors, teachers, social activists are facing cases of defamation under section 57 of the Information and Communication Technology Act, 2006, a threat to freedom of expression. The situation of harassing people vigorously has been going on since March of this year. Even they are being arrested by police officer without being delay.

II. UNDERSTANDING THE FREEDOM OF EXPRESSION

2.1 According to business dictionary

Freedom of expression means 'Right to express one's ideas and opinions freely through speech, writing, and other forms of communication but without deliberately causing harm to others' character or reputation by false or misleading statements. Freedom of press is also a part of freedom of expression. [1]

According to Bangladesh Constitution

Article 39 of the Bangladesh Constitution has been illustrated that 'Freedom of thought and conscience is guaranteed which is subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence-

- (a) The right of every citizen to freedom of speech and expression and
- (b) Freedom of the press, are guaranteed.' [2]

Freedom of Press as freedom of expression

Article 39(2) ensures the freedom of press but it is not unlimited, hence it follows that before publication or communication of one's opinion, the State has no right to restrain it. So any sort of pre-censorship on the media is unconstitutional. As Lord Mansfield says, 'press has the liberty to publish anything but if it infringes on anyone rights then it will face the consequence of his temerity'. [3]

2.2 Grounds of restriction on freedom of expressions

Article 39(2) of the Constitution provides that freedom of expression, speech and press shall be 'subject to any reasonable restrictions imposed by law in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to

an offence.' The grounds of restriction and examples of laws regulating the restrictions may be summed up as follows:

- i) Security of the state- The penal Code 1860, The Post Office Act 1869, The Telegraph Act 1885.
- ii) Friendly relation with foreign states: The Foreign Relations Act, 1932.
- iii) Public Order: The Special Powers Act 1974 and Emergency Provisions of the Constitution (Article 141B and 141C)
- iv) Decency or Morality: The Indecent Advertisement Prohibition Act 1963.
- v) Contempt of Court: The Contempt of Court Act, 1926
- vi) Defamation: Section 499 of the Penal Code. The civil law relating to defamation is still uncodified in Bangladesh and courts follow the English law of tort subject to single modifications.
- vii) Incitement to an Offence: The Penal Code 1860 [4]

III. DENOTATION OF DEFAMATION

3.1 Literal meaning of defamation

Defamation means an intentional false communication, either published or publicly spoken, that injures another's reputation or good name.

Ingredients of defamation:

- a) Publication of a statement
- b) Statement makes reference to the plaintiff
- c) Statement is communicated to some person or persons other than the plaintiff himself
- d) Statement causes actual or presumed damage to the plaintiff [5]

Defamation in cyber space

The internet has made it revolution on fundamental right to freedom of speech and expression. By using internet any one can publish his thought, expression globally. As a medium of speech and expression, the internet is equally powerful for use as well as misuse. [6]

Defamation under ICT Act (Section 57)

(1) If any person deliberately publishes or transmits or causes to be published or transmitted in the website or in electronic form any material which is fake and obscene or its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the image of the State or person or causes to hurt or may hurt religious belief or instigate against any person or organization, then this activity of his will be regarded as an offence.

Punishment

(2) Whoever commits offence under sub-section (1) of this section he shall be punishable with imprisonment for a term which may extend to maximum 14 years and minimum 7 years and with the fine which may extend to taka ten crore.[7]

IV. ONGOING CASES UNDER THE SECTION 57

The nature of litigants and litigation is very fascinating. If we go through the following cases then we will realize that most of the cases are filed in a jiffy. The agony, incitement, intention to curtail the dissenting voices are seen everywhere.

Case 1: On the matter of defamation a Dhaka University teacher sued against his colleague.

Case 2: A senior assistant judge filed a suit against a journalist of Manikganj.

Case 3: An editor and a reporter of a local daily Official were sued by the Chief Metropolitan Magistrate in Khulna.

Case 4: An executive editor of an online news portal sued by a private company.

Case 5: Some journalists and social media users also faced defamation case for sharing such news reports in Facebook posts.

Case 6: Arrest of journalist Probir Sikder in August 2015 on the accusation of tarnishing the image of LGRD minister.

Case 7: A lawyer of dinajpur bar association filed a case against a senior reporter of Jamuna television on the basis of his Facebook post.

Case 8: Morsalin Babla, editor and publisher of Juger Chinta in Narayanganj, filed a case against him by Sohel Ali, President of Fatullah thana jubo league, over publishing of a report.

Case 9: Journalist Hasibur Rahman Rizu sued Hasan Ali, Kushtia's correspondent of Bangla Vision and bdnews24.com and Aslam Ali, staff correspondent of local Bangla daily Darpan, alleged for their derogatory posts on Facebook against him.

Case 10: A suit has been filed against Ahmed Razu, an executive editor of natunsomoy.com by a private company, accusing that the report which is published to turn the image of the company.

Case 11: Lt Gen (ret'd) Masud Uddin Chowdhury filed a defamation case against a teacher of Brac University and Afsan Chowdhury, who is a journalist on the basis of their Facebook posts.

Case 12: A trader named Shafiqul Islam filed a case against Imtiaz Mahmood, is a Supreme Court lawyer on the base of his Facebook post which is instigating to spread communal violence.

Case 13: Narayan Chandra Chanda, local MP, sued Abdul Latif Morol, a local reporter of Daily Prabha for criticizing him on the quality of livestock and poultry which he distributed among the poor. [8]

V. MOTIVE ON FILING A LOT OF CASES UNDER CYBER DEFAMATION

- a) **Political purpose:** When a political party wins then in their ruling time normally they filed a lot of cases against the opposite party and this section has become a great help to harass the people as the punishment is high.
- b) **To redress criticism:** To increase the popularity of a leader always he wants to see less criticism and if he finds anything against him then there is nothing to stop him from filing a suit.
- c) **Self interest:** In some situations where our leader has become greedy, use their leadership to gain self profit. If the information gets leaked then that makes them so furious and instigates to file suit under defamation.
- d) **To hide corruption:** Sometimes to hide their corruption they file suit against the reporter or the member of civil society.
- e) **To take advantage of the law being a member of upper class:** There is a proverb that 'law has always helped the people who are rich'. In our society we see that most of the cases the upper class people are the aggrieved person to file the suit of defamation as the law has become a personal tool to them.
- f) **To create threat as law prescribes huge amount of fine:** Section 57 of ICT Act, 2006 has prescribed a huge amount of fine as punishment which always instigates the clever people of the society to file suit against the opponent.
- g) **Influence on police:** Enforcement of law in a society has been done by police and it is a easy work to influence the police by the political leader.

VI. LEARNING EXAMPLES FROM THE CASES OF INDIA

Case 1: On November 18, 2012 two girls in Mumbai were arrested where one of the girl has made a Facebook post lamenting the shutdown which was imposed after the death of Shiv sena supremo Bal Thackeray a day earlier. Her friend who was arrested along with her had clicked 'like' on the Facebook post.

A girl of 24 challenged the extreme provision of section 66A of the Information Technology Act, 2008 where drastic power of arrest has been given to the police officer.

In this case a lot of argument has been given like that this kind of status in Facebook may create outrage among the class and religion of the people but the SC did not accept the ground by stating the Article 19(2) of Indian Constitution. In the landmark verdict the SC said 'the liberty of thought and expression is not merely an aspirational ideal. It is also a cardinal value of our constitutional scheme.'

Case 2: When Jayalalitha was chief minister of Tamil Nadu then her govt filed more than 213 cases of defamation in five years since 2011 against political opponents and media houses for derogatory statements.

The SC slammed the chief minister for misusing the defamation law to stifle dissent and criticism. 'This is not how a healthy democracy functions. You must face criticism if you are a public figure,' the court observed in August 2016 in a hearing of an appeal filed against the state government's defamation case. The Court clearly said that defamation can not be used as a weapon in good governance where anyone can call any government 'corrupt' or 'unfit'.

On the other hand court asked Jayalalitha that to concentrate on good governance and not to use the defamation law to strangle democracy. [9]

VII. USING LAW AS A WEAPON TO CONFUSE LITIGATION PROCESS

In many aspects a large number of defamation cases were filed against editors and journalists in recent years under Section 499 of Penal Code apart from section 57 of the ICT Act, 2006.

The nature of the cases and litigants shows how they have been using the defamation law to confuse dissenting voices and litigations. They are not allowed to file case because of the restriction of section 198 of the Code of Criminal Procedure, 1898, but some of magistrates have taken the cognizance regarding the matter.

Section 198 of CRPC: ‘Court shall not take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.’ [10]

VIII. SOME SUGGESTION ON SETTLING THE PROBLEM ON DEFAMATION

- a) Make our leader to understand that the law is not their private property which can be used as how they want.
- b) Law making authority should take some steps to using the section more significantly.
- c) Punishment for cyber defamation needs to be reduced as it has been given on the discussion on the matter of fact.
- d) People should raise their voice to demolish the section 57 of ICT Act.
- e) Execution of power by police should be under watch.

IX. CONCLUSION

Although being an independent country the application of democracy exists but it cannot always fulfill the demand of whole nation. Considering the urge of operation on freedom of expression should be the first priority of any government and it cannot be throttled by the people on self motive. Media, press, civil society plays a vital role in democracy and that should not be curtailed through the embezzlement of law.

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