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**ON**

**Thesis on Defamation in Social Media**

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## **DECLARATION**

I, MD Habibur Rahman, bearing Student Id: 2017-3-66-027, hereby solemnly declare and affirm that I have done this research work and that the entire or limited portion of this research paper has not been submitted or published by any journal or any newspaper or any article. I have entirely created this Dissertation paper. The materials used for this research work has been acknowledged duly, and a list of references and footnote has also been provided.

## **ABSTRACT**

The generation and dissemination of current events in our society are altering in this modern age of the internet and other social networks. A new process has evolved: the rapid conversion of conventional print media into the online media. On the one side, the internet has liberalized news creation and distribution, but it has also become a potential source for misleading information. Facebook, Instagram, YouTube, and Twitter are becoming strong sites for distributing information and media, given the growing usage of smartphones. New forms of online interaction, including Skype, Whats App, Messenger, LINE, among many others, have exacerbated the matter of social media defamation. This paper tries to check whether the laws of Bangladesh are capable to bring justice against this beyond the border of Bangladesh. The paper argues that Bangladesh's Government enacted laws that empowered the government to control the effect social media defamation in Bangladesh but such laws are more reactive in nature rather than being proactive. As a result, the laws are not sufficient to mitigate damages and negative social aspects of social media defamation.

## **LIST OF ABBREVIATIONS**

AI: Artificial Intelligence

AD: Appellate Division

Art. : Article

DLR: Dhaka Law Reports

HCD: High Court Division

SC: Supreme Court

Vs.: Versus

DSA: Digital Security Act

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# **Thesis on Defamation in Social Media**

## **Chapter 1**

### **Introduction**

#### **1.1 Introduction**

The concept of defamation in social media is evolving in Bangladesh. Recently the trend of social media defamation is increasing. A new era of law is establishing by remedy or compensation against this kind of defamation. The concept of compensating the victims is developing and a number of cases of similar kinds have appeared before the court. The legal compensation of the victims whose rights has been infringed by the accused is coming in front of eyes with the help of legal system. Proper judgment and remedy is now just a matter of time with the help of proper knowledge and enforcement of law.

#### **1.2 Research Questions**

This research will try to find out the following questions:

1. Whether the social platforms are becoming active zone for defamation in Bangladesh.
2. Whether there are adequate laws to prevent defamation in Bangladesh?
3. What precautions should be taken into consideration in the method of prevention of defamation?

#### **1.3 Methodology**

The Research is mostly based on a qualitative review of available data, with original sources such as legislation and case law being used. In order to establish the present state of social media defamation in Bangladesh, the existing law and cases relevant to it will be critically examined. The study's analysis relies on secondary data sources. Secondary data was gathered through analyzing the content of numerous Cases, scholarly publications, books, and documents on the issue. These documents were quite useful. It reviews the history and current state of the judiciary by analyzing a wide range of sources, including tort law, public records, media reports and secondary literature.



## **1.4 Limitation**

This is a large research subject. If there was no time constraint, this critical evaluation of this issue could be able to produce a better result. Due to the newness of the topic and the small number of solved cases, I was unable to collect sufficient resources related to Bangladesh perspective to conduct my research. In Bangladesh, there aren't enough resources for study and there aren't many recent case laws on these concerns. A key constraint is a shortage of materials on the subject.

## **1.5 Literature review**

Defamation in social media is currently a concerning issue in Bangladesh, and the victims of such heinous act face miscarriage of justice. Different scholars and writers have expressed their concerns regarding defamation and illegal detention and giving damages to victims of such acts. For example, G.S.PANDE, in his book 'Law of Torts,' pointed out the definition, elements, and some factors of defamation. But it does not discuss compensation mechanisms for the victims. There it should me more dedicated portion for defamatory activities of social media. If we go through the IPC there we can see there is local conception of their own laws like section 499 don't make any distinction between spoken and written statement. This makes a scope of confusion there. From "Tort law in Bangladesh" by Sakif Alam finds out how social media defamation violates the provisions of the constitution and emphasized that there is no codified law that addresses accurate compensation for the victims. Also Compensation for the Victims of defamation, pointed out why the state should compensate the victims. However, this has failed to assert the claiming process of compensation. It is clear that literature tries to find out that how defamation in social media causes mischarge of justice and compensation could mitigate suffers of the victims. However, this literature did not find suitable solution just because there are less practice in our subcontinent.

## Chapter 2

### Relationship between social media and defamation

#### 2.1 Introduction

Artificial Intelligence is the theory and development of computers which institute the human intelligence and senses; such as visual perception, speech recognition, decision-making and translation between languages. The idiom "Artificial Intelligence" had formerly been used to describe machines that mimic and display "human" cognitive skills that are analogous with the human mind; such as "learning" and "problem solving". Artificial intelligence is the visualization of human intelligence processes by machines; especially computer systems<sup>1</sup>.

#### 2.2 Purpose of social media with (AI)

We know that artificial intelligence is a support system to serve this social media. Many platforms like Tik-Tok, Snap chat, Facebook, Instagram, Twitter, LinkedIn all this are performing based on artificial intelligence. And this artificial intelligence is not a useless thing social media marketers are using it and getting huge results

How? :- This artificial intelligence is used to get benefit of social media.it helps marketers understand and apply this artificial intelligence for getting more revenue and reduce cost of Companies. So we can say that artificial intelligence is playing a very important role for adding value in social media. It could be for enhancement for much more smooth engagement in every kind of social media company. So by this idea we say that the main purpose of artificial intelligence are,

- (a) Accelerate revenue- as this system can only be learned from data it can find its goal by itself. As this process looks so much tough but with help of this artificial intelligence it is so much useful and easy.

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<sup>1</sup> B.J. Copeland, 'artificial intelligence' <<https://www.britannica.com/technology/artificial-intelligence/Methods-and-goals-in-AI>> accessed 17 sept 2022

- (b) Reduce costs- for this section artificial intelligence is used to reduce task cost and make it more efficient by its power of automated. All this matters are about the main purpose of serving social media<sup>2</sup>.

### **2.3 Materials & Methods as support system**

If we think about the materials and method system of this ground then, we can say that there are so many ways to do that. We can focus on the platforms at first here. There are too many platforms in this sector and also there are bindings to follow. If we take for example then we can say that Facebook, Instagram then all this platforms follow those several bindings. In this sector we can see so many type of defamation also. And all this have to follow the laws too. This restrictions needs to be followed and also the state regulations. Now about materials we need to see the platform requirements at first. That what is the purpose of it and what it wants to serve the society. Then AI follows its own process to fulfill that.

After that the matter of methods comes, maintaining the matter of materials its turn for methods. In this section the methods are followed. It means the rules which must follow to confirm that matter. Basically the system use to follow that. So materials and methods are the most basic parts to support the whole AI system.

### **2.4 Effects of artificial intelligence regarding defamation**

Defamation is the action of damaging the good reputation of someone or slander or libel. Defamation can be caused through artificial intelligence. There are so many advantage and disadvantages of artificial intelligence and if it's occurred for defamation it can be harmful for one's reputation<sup>3</sup>. Artificial Intelligence can decreases the thinking power of human being. Artificial intelligence use cases including facial recognition and predictive analytics could

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<sup>2</sup> Priyanka Kumari, 'Role of Artificial Intelligence (AI) in marketing' (2021)<[https://www.researchgate.net/publication/354200837\\_Role\\_of\\_Artificial\\_Intelligence\\_AI\\_in\\_Marketing](https://www.researchgate.net/publication/354200837_Role_of_Artificial_Intelligence_AI_in_Marketing)> accessed 16 sept 2022

<sup>3</sup> Nikita duggal, 'Advantages and Disadvantages of Artificial Intelligence' <<https://www.simplilearn.com/advantages-and-disadvantages-of-artificial-intelligence-article>> accessed 16 sept 2022

adversely impact protected classes in areas such as loan rejection, criminal justice and racial bias, leading to unfair outcomes for certain people and artificial intelligence can make people emotionless. Defamation is the action of damaging the good reputation of someone or slander or libel. Defamation can be caused through artificial intelligence. There are so many disadvantages of artificial intelligence and if it's occurred for defamation it can be harmful for one's reputation. Artificial Intelligence can decrease the thinking power of human being. Artificial intelligence use cases including facial recognition and predictive analytics could adversely impact protected classes in areas such as loan rejection, criminal justice and racial bias, leading to unfair outcomes for certain people and artificial intelligence can make people emotionless. In defamation matters; harm to another's reputation is what defamation claims strive to restore. It refers to a person's standing or how a person is observed in society. Defamation is a false statement which conferred as a fact that causes injury or damage to the character of the person it is about. Perhaps the most common negative result of a defamatory statement is harm to your professional reputation; if you're a local businessperson and someone makes a false statement about you to others which indicating that you did something dishonest that might cause your customers to take their business elsewhere and it can happen through artificial intelligence.

## **2.5 Conclusion**

Artificial Intelligence is one of the best revolution in the world of technology<sup>4</sup>. The ideal characteristic of Artificial Intelligence is its ability to vindicate and take actions that have the best chance of achieving a specific goal. Artificial intelligence is based on the principle that human intelligence can be defined in a way that a machine can easily imitate it and execute tasks from the simple one to the most complex one. Nowadays there are numerous and real world applications of AI system. AI allows to upgrade organization's decisions, core business processes and both the speed and accuracy of strategic decision-making processes. Artificial intelligence is the ability of machines to replicate or enhance human intellect, such as reasoning and learning from experience. Now Artificial intelligence applied to many other products and services though in previous it only has been used in computer programs for years. Now it's shaping the future of humanity across

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4 Darrell M. West and John R. Allen, "How artificial intelligence is transforming the world"

(2018)<<https://www.brookings.edu/research/how-artificial-intelligence-is-transforming-the-world/?amp>> accessed 15 sept 2022

nearly every industry. It is already the main driver of emerging technologies like big data, robotics and it will continue to act as a technological innovator for the foreseeable future. The biggest advantages of Artificial Intelligence is that, it can reduce errors and capable to upgrade accuracy and precision. Artificial Intelligence enables the execution of this kind of hard task without that much cost. AI operates 24x7 hours without interruption or breaks and has no downtime. AI drop down the time taken to perform a task. The implementation for artificial intelligence are endless. The technology can be applied in to many different sectors and industries. AI is being tried out and used in the healthcare industry for dosing drugs and distribute different treatments attuned to specific patients and for aiding in surgical procedures in the operating room. In financial institutions, AI techniques can be used to identify which transactions are likely to be fraudulent or adopt fast and accurate credit scoring, automate manually intense data management tasks. It is used to detect and flag activity in banking and finance such as unusual debit card usage and large account deposit which helps bank's fraud department. Applications for Artificial Intelligence are also being used to help streamline and make trading easier by making supply, demand, and pricing of securities easier to estimate. AI has huge market potential, which can be deployed across industries also. Artificial Intelligence is used to make predictions in terms of weather and financial forecasting to streamline production processes and to cut down on various forms of redundant cognitive labor such as tax accounting or editing. AI is also used to play games, operate autonomous vehicles, process language and many more.

## Chapter 3

### Reasons & Impacts of social media defamation on individuals and business.

#### 3.1 Introduction

The tort of defamation consists of publication of a false and defamatory statement concerning the plaintiff without any lawful justification.<sup>5</sup> In general if we think about defamation then we can get that if any action damages someone's good reputation then it is called defamation. And as we know that a person's reputation is his property. And in some cases it is more valuable or important than, any other property. *Dixon vs Holden* (1869) clear this definition more clearly<sup>6</sup>.

And this is not only civil but also criminal wrong. Based on English Law we can have two types of it like Libel, which means permanent form of representation and another one is Slander which is not in permanent form for example it could be a gesture or spoken word. Now to establish, the defamation it must fulfill some criteria like the words must be false and defamatory and the plaintiff must be referred with all these things the words must be published.

#### 3.2 Current situation of Defamation in Social Media

If we think about the current situation of social media then this is totally unstable now a days. There are so many types of social media platform like Facebook, Twitter, Instagram and so many more. All these platforms used for a simple motto that is to serve the public a social communication system. And sometimes people are using it to harm others reputation. So many people are facing many types of problems about it. But in simple view we can say that if we scroll any social media platform then most contents are not useful in real life. There we have so many type of content creator we can see there. But many of them are not giving the proper message to the mass people. And sometimes they targeting a number of people to make online defamation. As this platform is open and anyone can join for this reason this is quite impossible to guard everyone, all the time. So this is a problematic situation for social media. This era of social media is not stable in perspective of content creation. Nowadays we face so many trolls, fake news, rumors, pranks, including unethical social media violation. There are so many so called influencers, actually they

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<sup>5</sup> G.S. PANDE, Law of Torts( 4<sup>th</sup> edn2016)271

<sup>6</sup> *Dixon vs Holden* |1869| MCAD

are making people influence in bad ways. Toxic people are all around in our social media platforms. Though there are so many steps are taking but ratio of it is not that much high. For example Human Heads for the Padma Bridge- In 2019<sup>7</sup>. The Padma river bridge would need one hundred thousand heads of human children; this rumor was just a fake news which made panicked the whole country. This type of statement is so much defamatory against any state.

### **3.3 Increased Risk of damaging reputation of individuals & business**

We can see Negative statements about person or companies almost each and every day in social media sites and mostly on Twitter and Facebook. When they are false statements of fact, they can be considered defamation in some circumstances<sup>8</sup>. We can see that most of the social media defamation are becomes libel just because those statements are written. By following the Comments sections on blogs or websites we find so many feature including personal attacks as well. Not only in person to person, sometimes news portals are making news publications without monitoring that specific matter closely. Artificial intelligence screening systems sometimes cannot catch all this instances of defamation. Just like the command of that particular system is programed in a separate code system which is set to trigger upon finding certain words which may not include on that system.

Now if we want to talk about the business sectors defamation in social media then we can see so many problems here. Just like companies which are in competitive situation then they try to insult there opponent in many ways. And in this era of internet several times they push others in social media platforms. In business market it is all about connections and goodwill. And this is a very narrow work to use social media here. Ones try to destroy another parties reputations in many platforms as this use to break the goodwill. Now in the end of this part we can say that for defaming a person or business reputation the most vital way is to use social media. As without maintaining AI social media cannot do much, this is huge gape to cover up the lacking points.

### **3.4 Rumor and Fake News on Social Media**

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<sup>7</sup> Senior correspondent, bdnews24 <<https://bdnews24.com/bangladesh/bangladesh-arrests-eight-over-human-heads-blood-for-padma-bridge-rumours>> accessed 16 sept 2022

<sup>8</sup> United Benefit Guarantee Co. Ltd v Thakorlal AIR|1936|

Sometimes people use to watch some news in social media and share it without judging that matter properly. And by doing this without any knowledge they are sharing a fake news and most of the time it gets viral. Sometimes people use to twist topics with extra false evidence. And those false news are enough to spoil someone's reputation or business. Just like Facebook has been an effective tool for those who are attempting to promote hatred. And if anyone post something it takes a huge promotion from twisted news lover. Also we become so happy to frequently exchange emotions without getting the factual information. Most of the time this type of fake rumor affects our daily lives. As for example on October 20 2019, thousands of Muslims gathered in the town of Borhanuddin in the Bohla region to protest against disrespectful Facebook statement about Islam's Prophet Muhammad ﷺ, posted by a Hindu man; four people were killed in clashes between protestors and police. According to police, the account was hacked, and the hackers were provoking a conflict between the different sides<sup>9</sup>. So we can see that with this type of unethical fake news some people use to not only defamation against any individual or business but also a whole nation country or a clan. Apart from politics, social media information is utilized for commercial promotion, news and healthcare, and an interested group takes advantage of this and spreads disinformation. And each and everywhere we face different type of social media defamations. And this face news is a huge threat to the social media defamation section.

### **3.5 Conclusion**

One main problem in any sector is unawareness. In maximum time it happens from the plaintiff side. And for this reason many type of victims comes from this side. For this unawares other type of crimes also happens like, Cybercrime. Cyber trap Harassment, Cyber bullying, Cybercrime, Using a computer to advance unlawful activities including fraud, the trafficking of child pornography and stolen goods, identity theft, and privacy violations is referred to as computer crime. The importance of cybercrime, particularly through the Internet, has increased as computers have become essential for business, entertainment, and government. Now another Important thing is that that some people even don't know that there are some rules and regulations in online world. Also they don't know that if anyone do any kind of defamation in online then we have something to do. Even legal step also can be taken against this. So with online awareness also legal steps

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<sup>9</sup> The Daily Star <<https://www.thedailystar.net/frontpage/clash-in-bhola-4-killed-100-injured-1816540>> accessed 16 sept 2022



awareness is also so much important. At last this is an important message for all users that there are so many type of scamps in internet and after all of this there is a threat of defamation or financial condition so unawareness can be a huge risk and causes this type of crimes also defamation is social media. And by those type of unaware behaviors causes so much harm.

## **Chapter 4**

### **Laws on Prevention and protection from the social media defamation**

#### **4.1 Introduction**

We know that in our country we have a common law-based legal system. Defamation is a matter whom we count it as civil wrong in English law also practice it under tort law. In Bangladesh, Digital security act, 2018, contains so many speech offenses which includes criminal defamation, defamation of religions. One could be liable criminally for the task of defamation. The law about its criminal liability is under Sections 499 and 500 of The Penal Code. When any imputation is done about any person that, doing or knowing, or having reason to believe that it could harm reputation of that person then it will be defamation, no exception about dead person also. Because law also includes reputation of that dead person, and that person's family or other near relative's feelings. Again, it can be happen against a company/organization or a group of persons. Section 500 states that, for this crime it could be a punished with simple imprisonment for a term which may maximum two years, or with fine, or with both. About civil wrong, if no defenses apply for the defendant, the court may ask the claimant damages or injunction. Here Laws are the shield to protect reputation, there no need to suffer any kind of harm of our reputation. If we are defamed anyway then we can take legal actions. Because, legal root is always open there.

#### **4.2 Prevention of Defamation**

We know that defamation is defamation even it happens in social media platform but there is no change, just the medium or platform is different. Actually the reality is that we cannot stop this matter of defamation in our society but we can take preventive measures against this.

There is always a danger that someone will sue us for defamation if we say something that might reflect poorly on them. It makes no difference how conscious we are. No matter how cautious we are, things still happen. Someone could file a lawsuit against us for retaliation, to hurt our finances, or because they believe they should protect their reputation. The twelve golden principles for reducing the likelihood of being sued for libel are by the way always preferable to headache

1. Be aware of what we are saying -We become responsible in defamation lawsuits for both what we explicitly say and what the general public would infer from it. Even if we properly paraphrase someone else's defamatory comment, we might still be held accountable for posting it. Any abusive remarks that we write that harm someone's reputation must be pointed out.
2. Control the meaning-In a defamation, the issue of what the words mean arises in the beginning. Don't depend on luck about this. Plaintiffs frequently use ambiguity to their advantage, arguing that the public will interpret it in a defamatory way. So we should make an effort to make our message clear and avoid ambiguity.
3. Only say what you can prove-The most crucial defense in a defamation case is typically truth. In this challenge it will consider what evidence one might present in court and how strong it is. Just like are there any references? Are they trustworthy? Do they possess firsthand experience? Are they enough to provide proof? And many more.
4. Pick the right "tier" of meaning-A lot of defamatory statements include an accusation or allegation of some kind. Depending on how ambiguously an accusation is made, the courts make distinctions between several "tiers" of allegations.
5. Say what you don't know-It is extremely difficult for a plaintiff to claim that readers will take more away from their writing than that if they are honest with their audience about what they don't know and what they aren't asserting.
6. Use the language of opinion-This is so much useful to use this type of words like "I believe," "he believes," "she thinks," or "they assert." Because this clear the matter and safe us from copyright acquisition. So we must be sure to specify whether we are expressing or republishing our point of view.
7. We should make sure the opinion is based on true facts-Before giving any statement we must judge this either it is true or false.
8. Put them together-Documents must be put together just to prove any allegation.
9. Take particular care with allegations of criminality and allegations about what's going on in someone's mind-It is especially important to have solid proof when accusing someone of a crime or another offense, such as lying. Since it might be challenging to establish someone's mental state,

it is preferable to discuss the person's behavior in general as opposed to outright accusing them of lying.

10. Take advantage of privilege defenses-You are immune from defamation if you report on those events in good faith and with fairness and accuracy, even if individuals are slamming each other during them. Learn how to follow these guidelines. You should also be aware that you have a little more freedom to criticize politicians as long as you're having an honest debate about politics and acting responsibly.

11. Act ethically-This serves as your strongest defense against a lawsuit in many respects. You are less crime if you behave morally. The individuals you defame are less likely to sue you if you do that. You're more likely to have a defense if they do file a lawsuit. Even if you have no defense, the judge and jury will probably be sympathetic, and the damages will probably be less.

12. Bear in mind who you're dealing with-Suing is significantly more likely to happen to certain persons than others. People with the means to take action and whose reputation is crucial to their livelihood. Also, exercise extreme caution when writing about journalists and cops. And of course, attorneys.<sup>10</sup>

### **4.3 Negligence of people in social media**

Sometimes we see that people don't have any idea about what they are doing on social media. Writing their comments on another people's reputation. People should have a clear idea about other people's rights and their own rights also on social media platforms. People doing random defamation in social media they don't have any knowledge about this also. They don't know how to protect themselves from social media defamation. They don't know the appropriate use of social media. It's become a day to day lifestyle which they practice with their friends, colleagues and other people that doesn't make any sense to destroy other person's reputation. So the main

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<sup>10</sup>Steven prince, INFORMS BLOG<[www.inform.org/2013/11/26/](http://www.inform.org/2013/11/26/) <https://inform.org/2013/11/26/index.html>> accessed 16 sept 2022

difference here is that they don't know the appropriate law which can protect themselves from other person's reputation. So we can say that ignoring the laws are the main negligence.

#### **4.4 Necessary Steps to solve problems of online Defamation through Law**

We know that there are many types of crime in the online world. Now we need to discuss how we can solve this matter. To solve this type of problems we need to follow legal procedures. Here we can follow six step preconditions to solve this matter.

1. Do Nothing: sometimes it is better to do nothing when it is very much clear that opposite party just lose his status. Sometimes it could be intentional or might be unintentional. But this is not mandatory here. Also this is a safe option to composite another parties loose of social defamation.
2. Collect Evidence: Evidence is always a very important part of any case. For proving any topic in the court it is so much important to destroy any opponent side.<sup>11</sup> So for the part of trial collecting evidence is kind of mandatory. For this reason online defamatory documents must be collected.
3. Get a Lawyer: in every sector there are some expert people. As for fight in the court or getting knowledge about the situation, we should get an advisor or higher, a lawyer. To get in the safe zone or holding a stronger position definitely a lawyer can help it out.
4. Send a Cease and Desist Letter: A lawyer can provide is the drafting of a cease and desist letter. This is a simple letter document sent to a company or individual for demanding the compensation. So that they can understand and decide if they ignore the demand, they must go to the court. Though, the damage is already done, still sending a cease and desist letter is a good early step of it.
5. Publish Your Own Statement: with the help of law anyone can find justice. So this is so much important to be careful when dealing with others. Because if any wrong done by me then they also can seek for remedy.

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<sup>11</sup> The Evidence Act, 1872

6. Sue for Defamation: this is probably the last step to take. After that rest of the matter will be discussed in to the court. If any kind of defamation happens then no need to be shut up. Because everyone has the right to established his right.<sup>12</sup>

After that we can see that in some cases defendant from this type of situations trying to play victim role on that situation we can force the matter of innuendo. Prima facie innocent will be the most powerful weapon for the defendant there.<sup>13</sup> On that case plaintiff should follow procedure of burden of proof to purify that statement either was on innuendo or not.<sup>14</sup>

But in this case of this system some cases do not fit that easy then we need to solve that on other way. For example when words will use immorally against a women or girl then it can take help of Slander of Women Act, 1891<sup>15</sup>. To be mentioned that, Section 198 of CrPC says that only an aggrieved person can file a defamation case. In a case of defamation. An amendment to the CrPC, passed by the National Parliament on February 2, 2011, introduced a provision for issuing summons instead of an arrest warrant in case of defamation charges.<sup>16</sup>

#### **4.5 Conclusion**

As we know where there is a right there is a remedy. Though in our country tort law practice is not that much appreciated. To stop or decrease this crime we should established this kind of practice. Law of Tort<sup>17</sup> is an underrated portion in our court practice. We know that, tort is a civil wrong. It happens where there is a breach of general duty fixed by civil law. Breach of tort takes place when the defendant face any injury or loss to the claimant by breaking a relevant obligation imposed by the general law, where the damage committed by the following party which allows the plaintiff to claim money for the damage caused, and it is compensated by money. So by this following action people can manage this defamatory matters.

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<sup>12</sup>Peter Callaghan, page freezer <<https://blog.pagefreezer.com/6-steps-protecting-yourself-social-media-defamation>> accessed 16 sept 2022

<sup>13</sup> Jacobs v Achmaltz|1890|62 L.T.120

<sup>14</sup> The Evidence Act 1872, s 101

<sup>15</sup> Slander of Women Act, 1891

<sup>16</sup> The Code of Criminal Procedure, 1898

<sup>17</sup> By Jural Acuity, Bangladesh Law <<https://juralacuity.com>> accessed 16 sept 2022

## **Chapter 5**

### **Are the applicable laws adequate to support and prevent the online defamation?**

#### **5.1 Introduction**

As we know there are two types of defamation one is libel which is written defamation, and another one is slander which is verbal defamation. When a defamatory statement is made online or using social media that involves the written word that is considered libel<sup>18</sup>. So the main thing is that if any kinds of defamation happens in internet world then it is online defamation. And all other matters happening in social media includes here. In our daily life we face different types of fake and defamatory statement in our social media platforms, all this matters are include in online social media. Though in Indian law get both as the same and the reason is based on their penal code both libel and slander are same also the same.<sup>19</sup>

#### **5.2 Punishment system must be stronger**

We know there are punishment system against defamation in social media. Our Punishment system must be stronger in this sector. As we know that in our society, our thinking tendency are so much influenced based on this punishment system. We know there are several bindings based on this crime just like we can take steps according Section 499 of the Penal Code of Bangladesh<sup>20</sup>, 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 to defame that person. As Bangladesh use preventive theory in punishment system, now it is kind of a golden

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<sup>18</sup>David Goguen, J.D, nolo< <https://www.nolo.com/legal-encyclopedia/social-media-online-defamation.html>> accessed 16 sept 2022

<sup>19</sup> The Indian Penal Code 1860

<sup>20</sup> The Penal Code 1860, s 499

rule to run the system here. People do not get matters serious if the punishment is not high then they think that it is not that much major crime. Mass people don't think about the morality or ethics or even think about the future impact of this. Though there are several punishment system we need strong Implementation over this. No other theory going to work if the punishment system is not tight. In perspectives of Bangladesh we cannot get accurate potential without strict policy. Though we have laws against this like, section 499, of our Penal Code. Section 500, of the Penal Code. This section provides for punishment. If any person become liable under section 499 then he will face punishment of imprisonment of two years or fine or both. After that, Section 469, of the Penal Code says that, this section deals with the forgery, it says that in this if anyone creates false document or fake account by which it harms the reputation of a person<sup>21</sup>. Then the punishment of this can extend up to 3 years and fine. For example, case of Hafizur Rahman Rana of April 23, 2012 about death threat to Prime Minister on Facebook<sup>22</sup>. On September 20, 2012 the charges were framed and decided to try him in absentia as he did not appear in the court. On 27th June 2013, Dhaka Metropolitan Sessions Judge sentenced the accused in his absence to five years under section 57 of ICTA 2006 for publishing defamatory information in electronic form, and to two years under section 506 of the Penal Code for criminal intimidation<sup>23</sup>. This is a historic verdict as it is the first ever judgment under the ICTA 2006. We need to be focused about the stronger punishment system

### **5.3 Public Awareness to stop Defamation in social media**

In this platform awareness is too much required. Many people don't know the concept of it also. To increase the awareness at first, we need to upgrade the educational system to enhance the capacity of knowledge about it. We can take various types of precautions to increase awareness about this. Just like, we can have different types of campaign programs regarding this. It could be on schools, colleges and Universities about increase awareness of people about social media uses. Even we can have so many types of awareness programs like we can motivate different type of

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<sup>21</sup> The Penal Code 1860, s 500,469

<sup>22</sup> Md Sanaul Islam Tipu, dhakatribune, Death threat to PM  
< <https://archive.dhakatribune.com/uncategorized/2013/06/27/death-threat-to-pm-buet-teacher-gets-7-year-jail>>  
accessed 16 sept 2022

<sup>23</sup> The Penal Code 1860, s 506



NGOs and also government organizations whom are working about it. We should target the mass people area at first. Before committing any kind of crime based on this, Police or other law enforcement organizations can make awareness program about this or campaign about this. Also government can take necessary steps about this sector. Like home ministry can produce a gadget about this to make mass people aware about social media. Parents and teacher must aware children about this from the very beginning of their little ages. And many more ways to improve this steps. We should take it in mind that if we become able to do this awareness in our local mass people then we will become more successful.

## **5.4 Lacking of Laws**

Based on all this laws regarding this we can see that there are so many space to improve. And in previous there was a huge gape but now we have technology based law in our state. We have ICT Act, 2006, Digital security Act, 2018<sup>24</sup> and many more applicability in our legal system. If we think in perspective of our jurisprudence we can see that whenever our mass people thinking about this kind of laws that, the harder the applicability is the perfect the maintainability is. Just like in previous it was a common crime to through acid. Acid Control Act 2002 and Acid Crime Prevention Acts 2002<sup>25</sup>. As we can see that in previous there was not that much bindings on that. It was counted like a minor crime with a huge loss. But day by day it was increasing just like this defamation. Now if we compare it with the laws then we can see that the lack of law here is that space. As like acid control Act we need to take protection about this defamation. The cycle should control from the minor side first. We can have prevention about this to maintain it from the simple and minor areas first and as this law is not enough to control the situation we can have stronger upgrade of it. We could have tribunal of it as like we saw in previous about acid crime prevention Act or we can take as an example of Nari O Shishu Nirjaton Damon ain 2000<sup>26</sup>. As like the rate is going down because of the tribunal of this upgrade, we also need this type of laws in this sector of social defamation which can improve the social standings. As we know that there are other crimes

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<sup>24</sup> Digital Security Act, 2018 Information and Communication Technology Act, 2006

<sup>25</sup> Acid Control Act 2002 and Acid Crime Prevention Acts 2002

<sup>26</sup> নারী ও শিশু নির্যাতন দমন আইন, ২০০০

taking help of this social media as it has less rules. So to minimize other crime rate we need strong and effective laws regarding defamation in social media.

In a case, accused posted a defamatory statement with threat against the Prime Minister of Bangladesh in his Facebook profile. He was charged under section 57 of the DSA for committing defamation<sup>27</sup>. Then the HCD sentenced him to six months in jail for that following defamation of the prime minister. It was not possible to implement such punishment offender lives outside of the country, the court directed the foreign secretary to bring that accused. In his Facebook Page, the accused made a defamatory comment and threat against the prime minister of Bangladesh. He was accused with defamation in violation of ICT Act section 57<sup>28</sup>.

On 8 October 2013 another allegation was made against Mr. Wahiduzzaman for posting defamatory statement in Facebook against the son and sister of Prime Minister made on August 22 in the same year. He was arrested and is still in jail, and the charge against him was framed under ICTA for making defamatory statement. In all of the stated cases brought before the court under ICTA 2006, defamatory comments were made against political figures of ruling party. From these incidents, there is a chance of realization that law enforcement agencies might be influenced as political bias could be involved in the proceedings. Four anti-Islamist bloggers and Facebook users have been arrested in different areas in the capital on suspicion of making derogatory comments about Islam. On 09-09-2013, the Dhaka Metropolitan Sessions Judge's Court has charged four in two cases under sections 57(1) & 57(2) of the ICTA for inflammatory write-ups and hurting religious sentiments in online platforms (for hurting religious sentiments). However, the proceedings of the two cases were challenged in the High Court Division, and on February 16, 2014 the court ruled a stay of proceedings for three months. This is the first time any accused has been charged under the ICTA after it was amended. If their guilt is proved, they could be awarded between seven and fourteen years in prison or to fine up to BDT 10 million or both, under the amended provisions

## **5.5 Conclusion**

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<sup>27</sup> Digital Security Act 2018, s 57

<sup>28</sup> Information and Communication Technology Act 2006

This is very much clear here that we have so many laws regarding this burning question. But at first, when we think about any types of prevention of any crime, we want to get the accurate remedy against that. For that reason every area demands separate action. And the focus area of this following chapter is solid and accurate judgment system. And the main motto is to established fair judicial enforcement against this social media defamation.

## **Chapter 6**

### **Findings, Recommendations and Concluding Remarks**

#### **6.1 Findings**

In this area there are a huge space of doing different crime. If we don't get serious about this matter. We can see the part only defamation in social media. There are some bindings and laws

against this. But people are not that much aware about this. There are so many crimes regarding this platform. But people don't know how to handle this matter just because of ignorance of law.

## **6.2 Recommendations**

Here are some recommendations regarding defamation in social media:

- (a) We need to fulfill the lack of laws.
- (b) We need mass people education about this.
- (c) We must establish a strong punishment system.
- (d) Government should take proper steps.
- (e) We need a dedicated Act regarding this matter.
- (f) We need to know the proper use of social media.
- (g) We need to aware mass people about this ground.
- (h) Social media platforms need to be more under observation.
- (i) Unnecessary features must be banned cause of protect own reputation.

## **6.3 Concluding Remarks**

In every sector of life there will be present of visible invisible risk factors, here same as for the digital technologies. In the fast forwarding data transmission world all data are not being protected though it is not possible but some data must be separate on the point of personal space. International communities are trying to build some rules and regulation by talking experience from the earlier laws. It was the right time to make a module of personal privacy and how it can be beneficial to the citizen of this digital world. Digital problems should consider in digital way. We need to defend this in established way. As this matter is so much new in this step firstly we need to be careful in social media life.

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