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# Analysing Online Reviews in the Light of Defamation

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## ABSTRACT

*This paper deals with the domains of online reviews and defamation. It initially talks about the evolution of jurisprudence on defamation and about jurisprudence as a tort in Indian law. It then proceeds to discuss about the judicial approach to civil defamation through several case laws. This fundamental differentiation was perceived necessary since defamation is both a crime and a tort in Indian law, and this paper restricts itself to analysing it as a tort, but nevertheless acknowledges the statutes recognizing defamation as a crime as well. The paper then proceeds to discuss about the conflict between free speech and defamation, which subsequently becomes an important factor when analysing online reviews in the light of defamation. The paper proceeds to highlight the importance of online reviews, and the influential factor they play in decision making of the consumers and then proceeds to discuss the problem of fake reviews on the touchstone of the Consumer Protection Act. The paper then proceeds to analyse the online reviews in the light of defamation by posing questions related to the extent of ingenuity and analysing recent judgements and Governmental framework intended to reduce the impact of the same. The paper crystallizes this analysis by presenting a case study of Hassel v Bird, an American Judgement involving the publication of defamatory reviews online and finally proceeds to conclude.*

**Keywords:** Defamation, Online, Fake reviews, Freedom of speech.

## I. INTRODUCTION

The jurisprudence on the right to free speech has significantly evolved since the advent of 21<sup>st</sup> Century. While right to free speech is a constitutionally guaranteed right, it is not an absolute one and is subjected to reasonable restrictions imposed under Article 19(2) of the Constitution<sup>3</sup> and various other statutes, including Section 499 of the Indian Penal Code<sup>4</sup> that brings defamation under the umbrella of restrictions to free speech and expression. The idea behind such a legislation is to ensure that a person, while expressing their thoughts, does not cause

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<sup>3</sup> India Const. art. 19, cl. 2.

<sup>4</sup> Indian Penal Code, No. 45 of 1860, § 499 (India)

injury to the character or reputation of another person.<sup>5</sup> Defamation in India has been dealt with both by criminal law and the law of torts. While criminal law deals mostly with slander (oral defamation), the law of torts lays more emphasis on libel (written definition).<sup>6</sup>

The law of defamation has gained significance owing to the growth of social media and online platforms which provide a forum for free exchange of thoughts. While it enhanced free speech and potentially increased the number of interactions and communications to a larger audience, the application of reasonable restrictions became difficult, owing to the large number of users and technical difficulties associated with the same. However, the reasonable restrictions have been indoctrinated into the online world by compliance with the social media apps and third-party platforms.

The conflict between right to free speech and defamation has proliferated in the domain of online reviews, where fundamental differentiation between reviews that provide genuine dissent of an organisation's products or services and reviews that are manifestly false or automated, has become increasingly difficult. While defamation exclusively deals with negative reviews intended to cause harm to an organisation, positive misrepresentation has been dealt with by the Consumer Protection Act. This paper will initially focus on the jurisprudence on defamation and proceed to explain the problem of fake reviews and how they go beyond defamation, forming an integral part of the law of torts. Subsequently, this paper will analyse online reviews in the light of defamation and the legislations enacted to curb reviews that are fake. Finally, this paper will analyse the case of *Hassell v Bird*,<sup>7</sup> an American case regarding the publication of false reviews on Yelp, a third-party review platform.

## II. DISSECTING DEFAMATION: AN IN-DEPTH STUDY OF ITS MANIFESTATION IN THE ONLINE WORLD

*“Defamation means injury or damage to the reputation of an individual by making or publishing some false and malicious statement about them.”<sup>8</sup> The term defamation has been derived from the Latin word ‘diffamare’ which means circulating or spreading information about an individual which could harm the reputation of the person.<sup>9</sup>*

In Black's Law Dictionary defamation is defined as: *“defamation means offence of injuring a*

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<sup>5</sup> Shivi, Defamation Laws and Judicial Intervention: A Critical Study, ILI Law Review (2016).

<sup>6</sup> *Id*

<sup>7</sup> *Hassell v Bird*, 247 Cal.App.4th 1336

<sup>8</sup> Saptadip Nandi Chowdhury, Defamation, Pen Acclaims (2021), available at <http://www.penacclaims.com/wp-content/uploads/2021/12/Saptadip-Nandi-Chowdhury.pdf> (last visited 2024)

<sup>9</sup> *IBID*.

*person's character, fame, or reputation by false and malicious statements.”<sup>10</sup>*

Salmond defined defamation as: “*Defamation is the publication of a false and defamatory statement concerning another person without lawful justification*”.<sup>11</sup>

According to Winfield defamation can be termed as: “*Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of the society, generally or, which tends to make them shun or avoid that person.*”<sup>12</sup>

Therefore, it is easy to define defamation as the act of damaging someone's reputation by discrediting the object of a statement by publishing false statements without a basis in law. The harm not only impacts the victim but also everyone who is so close to them that the reputation of the man filing the injury claim is immediately impacted by the harm the victim experiences. Generally speaking, defamation demands that the dissemination occur without the harmed party's consent. Publications should be construed in accordance with custom and the environment in which they are issued. In India, defamation is a civil as well as a criminal offense; however, for the sake of this study, we will only be analysing it as a civil offense.

#### **(A) An Examination of Defamation as a Tort under Indian Jurisprudence:**

Defamation is a civil wrong under the law of torts. Before the enactment of criminal law, only law of torts was there in India which was not codified. Law of torts was based on the concept of sociality which provides that every person has some rights which should be respected by others and if other person infringes those rights, he should be punished. Right to reputation is an inherent personal right of every person and a man's reputation is his property perhaps more valuable than the property.<sup>13</sup> Hence, wherever there is an injury to the reputation of a person, he may institute civil proceeding for the damages. There are two types of civil defamation: these are libel and slander; this distinction is not present in criminal law.

In English law defamation has been divided in two categories: libel and slander. A libel is the publication of a false and defamatory matter, by a third person, in a permanent format without any lawful justification for example writing, printing, effigy etc whereas a slander is the publication of a false and defamatory matter, by a third person, in a transient format without any legal justification, for example spoken words or gestures.<sup>14</sup>

The elements of defamation as a civil wrong are as follows.

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<sup>10</sup> Replevin, Black's Law Dictionary (10th ed. 2014)

<sup>11</sup> John Salmond, Jurisprudence 170 (Glanville L. Williams ed., 10th ed. 1947).

<sup>12</sup> W. V. H. Rogers, Winfield and Jolowicz on Tort (15th ed. 1998)

<sup>13</sup> Rakesh Kumar, Judicial Aspect of Defamation Laws in India, IJCRT, at 97 (2024)

<sup>14</sup> Supra note 3

1. A statement is required.
2. The assertion ought to be disparaging
3. It must mention the victim in the statement.
4. It is necessary for the message to have been disseminated or published.<sup>15</sup>

Simply put, in *BRK Murthy Vs State of AP[Andhra Pradesh]*, it has been held that “in brief, the essentials of defamation are, first, the words must be defamatory. Second, they must refer to the aggrieved party and THIRD, they must be maliciously “published”.<sup>16</sup>

### **(B) Judicial approach regarding Civil Defamation:**

The defendant filed a legal lawsuit against Manjulata in *D. P. Chaudhary v. Manjulata*,<sup>17</sup> seeking damages for defamation. In the present instance, a local daily released an article claiming that the respondent fled with a boy while pretending to be in night classes. Respondent, who was a B.A. student, was seventeen years old. It was discovered that the claim was untrue. The trial court's ruling was maintained by the high court, and the respondent was granted compensation by the court.

It is important to be noted that the intent to defame (in torts) is not necessary. In the case of *Morrison vs Ritchie & Co. (1902)*<sup>18</sup> the defendants had published a statement by mistake that the plaintiff has given birth to twins whereas the plaintiff was married two months back. Even though the defendants were ignorant of this fact, they were held liable.

Also, in the case of *Parvati vs Mannar (1884)*<sup>19</sup> the court held that the mere hasty expression spoken in anger or vulgar abuse to which no hearer would attribute any set purpose to injure the character would not be actionable.

In the defamation case *Mahendra Ram vs. Harnandan Prasad*<sup>20</sup>, Mahendra Ram filed a lawsuit against Harnandan Prasad seeking damages. The defendant was accused by the plaintiff of sending a defamatory notification in Urdu. The defendant was found accountable by the court because he knew that the plaintiff was not literate in Urdu and that someone else would read the notice. This case emphasizes how crucial knowledge and purpose are in defamation proceedings.

This is how civil defamation has evolved through judicial precedents to cover wider aspects of

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<sup>15</sup> “Essentials of Defamation: A Comprehensive Guide,” Testbook.com, last updated on Jul 31, 2023.

<sup>16</sup> B.R.K. Murthy v. State of A.P., 2012 SCC OnLine AP 463.

<sup>17</sup> D.P. Choudhary v. Manju Lata, AIR 1997 Raj 170 (India).

<sup>18</sup> Morrison v. Ritchie and Co., [1902] SLR 39\_432 (Scot.).

<sup>19</sup> Parvathi v. Mannar, Second Appeal 77 of 1884, High Court of Judicature at Madras (India).

<sup>20</sup> Mahender Ram v. Harnandan Prasad, AIR 1958 Pat 445 (India).

harm to the reputation of the aggrieved party.

### **(C) Examining the Intersection of Free Speech and Defamation: A Legal Perspective:**

In this topic we will argue about only about how online defamation does not violate the right to free speech as given in Article 19(1)(a) of the Indian Constitution.<sup>21</sup> One of the most important aspects of a democratic democracy is the fundamental right to freedom of speech and expression, which enables people to actively and completely engage in the social and political life of their country. Thanks to freedom of expression, people can express their political opinions and beliefs. The prosperity of the economy and society follow eventually. Because of this, freedom of expression provides a framework for striking a just balance between social change and peace. Defamation has always acted as a limit on both the freedom of speech as well as the freedom of the press. There is no such thing as a false opinion or idea – however, there can be a false fact, and these are not protected under the Article 19.<sup>22</sup>

*R. Rajagopal v. State of Tamil Nadu*<sup>23</sup> concerns the legitimacy of civil defamation. The Indian Supreme Court cited a significant ruling by the US Supreme Court in *New York Times v. Sullivan*<sup>24</sup>, holding that a government employee on duty is only entitled to damages if the truth argument is untrue and there is a wilful disregard for the truth. In this decision, the court considered the connection between free speech and civil defamation. The court determined that because Article 19(1) of the Constitution overly emphasized no-fault liability, it imposed an unjustified limitation on common law defamation. Also, the article 19(2)<sup>25</sup> imposes reasonable restrictions on free speech and it also contains defamation as one of its restrictions.

Therefore, freedom of speech can be restricted on online space for the purpose of protecting reputation of person or corporation. Hence, the corporation can file defamation case against fake reviews done on online space against it.

### **(D) Legal Analysis of Defamation Claims Against Corporations:**

This topic aims to analyse how online defamation happens against corporations and how they can seek legal remedies from those who defame them. Let's begin by talking about whether or not companies can file lawsuits for defamation. Anybody, including corporations, can be the target of defamation crimes committed by people, organizations, or media outlets. Similar to natural persons, corporations are legal entities with rights and obligations. Defamatory words

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<sup>21</sup> India Const. art. 19, cl. 1 (a).

<sup>22</sup> Supra note 3.

<sup>23</sup> *R. Rajagopal v. State of Tamil Nadu*, 1994 SCC (6) 632.

<sup>24</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

<sup>25</sup> India Const. art. 19, cl. 2.

can harm a corporation's reputation.<sup>26</sup> Let us now examine a few case laws that permit corporations to file a defamation lawsuit and seek damages.:

In the case of *Union Benefit Guarantee Company v. Thakarlal Thakor*, plaintiff sued the defendant for libel in a defamation action. The corporation asserted that the defendant's malicious and misleading remarks damaged its business and reputation. The Bombay High Court found in the company's favor, holding that defamatory statements that have a detrimental effect on a business's trade and operations are actionable even in the absence of specific damage evidence.<sup>27</sup>

Edelweiss, an Indian firm, filed a USD 100 million defamation suit against Moody's Corporation for misreporting its financials in a report. Edelweiss claimed that Moody's report, which stated the firm had zero cash and cash equivalents, was incorrect and maliciously intended to damage its reputation and cause panic among shareholders. Edelweiss contested the report, stating its liquidity position was 17% of total assets as of September 2019 and 22% as of December 2019. The case is currently sub judice.<sup>28</sup> Though the case is sub judice, it shows us that the corporation can file a suit for defamation and seek damages.

In 2020, Binance, a major digital asset exchange, sued Forbes Media for defamation. Binance claimed that Forbes falsely reported that it had a corporate structure designed to deceive regulators and was involved in money laundering activities. Binance asserted that these statements were false and defamatory.<sup>29</sup>

In conclusion, corporations can engage in and are vulnerable to defamation in the same ways that individuals are. Delinquent remarks can have a serious negative effect on a company's reputation, impacting both its financial situation and operational capabilities. Corporations can and do pursue legal remedies for defamation, as evidenced by the examples of Binance, Edelweiss, and Union Benefit Guarantee Company. These incidents show how crucial truthful reporting is and how broadcasting misleading and negative information about companies can have unfavourable effects. In the event of defamation, corporations have legal recourse to safeguard their reputation, as stipulated by the law.

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<sup>26</sup> Gary KY Chan, Corporate Defamation: Reputation, Rights and Remedies, 33 Legal Studies 264 (2013), <https://www.cambridge.org/core/journals/legal-studies/article/abs/corporate-defamation-reputation-rights-and-remedies>

<sup>27</sup> *Union Benefit Guarantee Co. Ltd. v. Thakorlal P. Thakor*, (1935) 37 Bom LR 1033.

<sup>28</sup> Economic Times, Edelweiss sues Moody's for defamation (Jul. 15, 2020), <https://economictimes.indiatimes.com/markets/stocks/news/edelweiss-sues-moodys-for-defamation/articleshow/76970860.cms?from=mdr>.

<sup>29</sup> Nikhilesh De & Zack Seward, Binance Drops Defamation Lawsuit Against Forbes Over 'Tai Chi' Document, CoinDesk (Feb. 8, 2021), <https://www.coindesk.com/markets/2021/02/08/binance-drops-defamation-lawsuit-against-forbes-over-tai-chi-document/>.

**(E) Unmasking the Impact of Fake Reviews: An Exploration into Online Defamation:**

*The potential effect of defamation law on discourse over the Internet has attracted considerable comment, in part because a high proportion of the small number of lawsuits arising out of Internet communications have involved defamation claims.*<sup>30</sup>

Cyber defamation is a novel idea in which defamation is carried out via a new media, or perhaps more accurately, a virtual medium. However, the definition of traditional defamation also applies to cyber defamation. Defamation is also known as online defamation.<sup>31</sup> The judiciary has played a vital role in protecting the right to reputation and freedom of speech of the people, as well as the constitutional validity of defamation laws.<sup>32</sup>

Online or computer-based defamation involves publishing offensive content to damage someone's reputation. If someone publishes something on a website that damages someone's reputation or sends another individual an email that contains defamatory content also if someone reviews about certain product and that review is false and defamatory, then this would be considered online or cyber-slander. The well-being of a community is not the only thing that cyber defamation affects. The country's economy is also impacted by this kind of defamation, depending on the victim who is the target of the published statement as well as the information that is released.

Online defamation can cause injury to a victim's reputation and dignity because the statements are visible to anybody using online services. Due to author loss and statement duplication, the author who publishes the statement may not always have authority over it. Authority to put his message online. Even if the statement is quickly changed or removed after it is published, it is still possible that someone may have copied or mirrored it and made it publicly available, which makes it challenging to remove. Even after being taken down from the primary or original source by the actual author, information that is mirrored may still be accessible to the public.

In the first case of cyber or online defamation i.e. *SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra*,<sup>33</sup> the defendant Jogesh Kwatra being an employ of the plaintiff company started sending derogatory, defamatory, obscene, vulgar, filthy, and abusive emails to his employers as also to different subsidiaries of the said company all over the world with the aim to defame the

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<sup>30</sup> Douglas W. Vick, Linda Macpherson and Sarah Cooper, *The Modern Law Review*, Jan. 1999, Vol. 62, No. 1 (Jan., 1999), pp. 58-78, Wiley on behalf of the Modern Law Review Stable at <https://www.jstor.org/stable/1097074> (last visited 2024).

<sup>31</sup> Ankit Valdaya, *Legal Consequences of online Defamation in India*, NLIU (2014), (last visited 2024).

<sup>32</sup> Rakesh Kumar, *Judicial Aspect of Defamation Laws in India*, IJCRT2301508 *Int'l J. Creative Res. Thoughts* e97 (2024)

<sup>33</sup> *SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra*, Original Suit No. 1279 of 2001, New Suit No. 65/14, Delhi District Court (Feb. 12, 2014)



company and its Managing Director Mr. R K Malhotra . The emails sent by the defendant were allegedly clearly profane, abusive, threatening, demeaning, and defamatory, according to the plaintiffs' contention. Counsel went on to say that the purpose of sending the emails was to damage the well-known of the plaintiffs worldwide and in India. He further argued that the plaintiffs' legal rights had been violated by the defendant's actions in sending the emails. In conclusion, the Delhi High Court issued a restraining order against the defendant, prohibiting them from sending any derogatory, defamatory, or abusive emails to the plaintiffs or their global subsidiaries.<sup>34</sup> The court also barred the defendant from publishing or transmitting any such offensive content in the physical world or cyberspace. This ruling aimed to protect the plaintiffs from further harm.

The prevalence of bogus reviews causing online defamation is a serious worry in today's digital world. The intention behind posting these fictitious evaluations is frequently to harm the reputations of businesses and adversely impact their earnings and sales. A few locations where these reviews might surface are blogs, social media, e-commerce platforms, and review websites. Once published, these false evaluations have the ability to harm the impacted parties in the long run, eroding customer confidence and perhaps resulting in financial losses.

To sum up, in the digital age, online defamation presents a serious problem that affects both people and companies. The spread of bogus reviews makes matters worse by deceiving customers and tarnishing reputations. The legal struggles pertaining to online defamation and fraudulent reviews are highlighted by case law, such as the seminal ruling in *Hassel v. Bird*.<sup>35</sup> Since courts acknowledge the harm caused by false remarks made online, victims have access to civil remedies. But in order to properly handle these issues, legal frameworks must constantly adapt due to the dynamic nature of internet communication. The convergence of fraudulent reviews and online defamation underscores the significance of upholding transparency and reliability in digital interactions, as well as integrity and accountability.

### III. CONFRONTING THE CHALLENGE OF FAKE REVIEWS

The growth of the internet in the early 21<sup>st</sup> century, as seen in the previous section, has provided an ameliorated platform wherein people express their opinions and access social commentary. However, when the users of such platforms provide their opinion regarding a product, the same needs to be validated. The definition of review applicable in this particular context, is basically an opinion regarding a product or a service, written by consumers who have purchased that

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<sup>34</sup> Supra note 33

<sup>35</sup> *Hassell v. Bird*, 247 Cal.App.4th 1336 (Cal. 2018).

product or availed that service, which allows other people to gather the experience of the consumers who have tried and tested such products.<sup>36</sup>

Problem arises when there is an element of disingenuity present in such opinions. This paper will restrict its scope to discussions regarding reviews published online, owing to their significant dominance over other forms of reviews. The conflict between right to free speech and defamation is a very interesting factor which plays out significantly in the domain of online reviews. The extent of expressing dissent about a product or a service, where ingenuity is a very subjective factor, continues to remain unclarified, and can only be answered on a case-to case basis. But this section does not limit its scope to analysing online reviews within the scope of defamation, which will be exclusively dealt with in the subsequent sections. It needs to be emphasized that companies can also exploit fake review mechanisms to positively portray their own company. This section will also explore the use of false review to mislead consumers on the touchstone of the Consumer Protection Act, 2019

Section 2(9) of the Consumer Protection Act, 2019<sup>37</sup> acknowledges and protects the right of a customer to be informed about the quality, quantity and potency of goods and services availed by them. Online reviews are one such mechanism through which customers seek clarity about the products and services they consume, but the extent of ingenuity of these reviews is a highly debatable subject matter.

Over the course of years, online reviews have become increasingly relevant and customers have placed a major reliance on these reviews for decision-making purposes.<sup>38</sup> This highlights the importance of online reviews and the need to protect the ingenuity of the same. Online reviews also play a major role in shaping up the emotional aspects of consumer behavior, with a positive review leading to an increase in trust and confidence in a product, and negative reviews leading to a decline in the same.<sup>39</sup> However, a significant portion of reviews published online are automated or manifestly untrue.<sup>40</sup> Such fake reviews could potentially have drastic impact on an organization's business.

A lot of companies are aware of this reliance being placed on reviews and its influence over consumer decisions, and have resorted to using disingenuous methods to exploit the same.

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<sup>36</sup> Huifen Wang & Yang Wang, *A Review of Online Product Reviews*, Journal of Service Science and Management (2020).

<sup>37</sup> Consumer Protection Act, No. 35 of 2019, § 2(9) (India).

<sup>38</sup> Mo, Zan & Li, Yan-Fei & Fan, Peng, *Effect of Online Reviews on Consumer Purchase Behaviour*. Journal of Service Science and Management (2015)

<sup>39</sup> Chen T, Samaranayake P, Cen X, Qi M, Lan YC. *The Impact of Online Reviews on Consumers' Purchasing Decisions: Evidence From an Eye-Tracking Study*. Front Psychology(2022)

<sup>40</sup> Supra, Note 37

Publishing fake reviews online is one such manner of exploitation, and it could be construed as an unfair trade practice under Section 2(47) of the Consumer Protection Act, 2019.<sup>41</sup>

Studies indicate that there has been a rampant increase in fake reviews, and online sellers resort to posting positive reviews for their own products and negative reviews against their competitor's products, done for both potential financial gains and to boost consumer engagement.<sup>42</sup> False reviews generally tend to obfuscate the perception of the consumer related to a particular product by misrepresenting certain qualitative aspects of that product or with regards to the durability in order to exploit the consumer's trust. While positively misrepresenting the qualitative aspects of a product by the organization itself through online reviews amounts to unfair trade practice, publishing negative reviews of competitor's products which are manifestly false does not just violate consumer rights but is actionable under defamation and tortious interference as well. The next section will further explore the domain of defamation and fake reviews exclusively.

There are different ways through which organizations tend to publish false reviews. The most effective way that organizations employ, is using content creators, writers and photographers to publish false reviews on social media platforms under the guise of internet celebrity.<sup>43</sup> However in recent times, organizations mostly tend to use automation and bots to write fake reviews. These reviews, despite being detectable by several detection algorithms, pose a severe problem nevertheless, as most customers would assume such reviews to be true and manual detection techniques are generally less effective and are very subjective in nature.<sup>44</sup>

There are multiple machine learning detection methods employed by companies to check if the reviews are manually written or automated, but they are less effective as most of the automated reviews have been humanized using artificial intelligence.<sup>45</sup>

As consumers rely on online reviews to make decision regarding purchase of products or availing services, it is very important to ensure that these reviews shared across online platforms are reliable. Despite companies like Amazon employing techniques such as using a verification badge to ensure the ingenuity of the reviewer, there still exists the scope for potentially misleading reviews being spread online that could deceptively promote or hamper the business

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<sup>41</sup> Consumer Protection Act, No. 35 of 2019, § 2(47) (India)

<sup>42</sup> Yuanyuan Wu & Eric W.T Ngai, *Fake Online Reviews: Literature Review, Synthesis, and Directions for Future Research*, PolyU International Research (2020).

<sup>43</sup> Chuhua Cao, *The Impact of Fake Reviews of Online Goods on Consumers*, 39 BCP Business & Management (2022).

<sup>44</sup> Lappas, Theodoros *Fake Reviews: The Malicious Perspective* (2012)

<sup>45</sup> R Mohawesh & R Ollington, *Fake Reviews Detection: A Survey*, 9 IEEE Access (2021).

of a company, which violates Section 2(47) of the Consumer Protection Act.<sup>46</sup>

While organizations employing fake reviewers with the intent of stymieing the growth of its competitors would amount to defamation, an organization using such the same deceptive to methods to promote its own products is still liable under the Consumer Protection Act. However, merely giving a negative review of a particular product without any disingenuity, will not amount to defamation, and is not actionable under torts law as it is *damnum sine injuria*. The next chapter will further provide a deeper analysis of fake reviews in the light of defamation.

#### IV. ANALYSING ONLINE REVIEWS IN THE LIGHT OF DEFAMATION

The use of online platforms to propagatate defamatory content is a serious concern, and fake online reviews adds another layer of concern, wherein the business conducted by an organisation is also hampered owing to the defamatory content posted by the users. This allows fake reviews to be tested on the touchstone of tortious interference as well. Tortious interference, as laid down in the old English case of *Greig v Insole*,<sup>47</sup> basically refers to interfering with trade and business of an organisation by unlawful means. By posting defamatory reviews, a user interferes with the ability of an organisation to conduct its business in a very fundamental manner, and such a restraint on their business indubitably allows the organisation to file a suit in this particular ground as well.

While the scope of this paper is fundamentally restricted to analysing online reviews in the light of defamation, it is nevertheless very important to acknowledge the wide array of grounds under which action could be brought against fake reviews. Defamation, as seen in the previous sections, could fundamentally be consolidated into the following elements: 1) There must exist a false statement. 2) Such a statement should attack the reputation of a person or an organisation, causing injury to their character.

The common law jurisprudence on defamation has been criticized by several constitutional scholars, who believe that it often acts as a tool for supressing criticisms and stymies the ability of citizens to express the truth, and is a weapon against the right to free speech guaranteed by the Constitution.<sup>48</sup> While the intent of the common law jurisprudence, which significantly evolved through several case laws, was only to introduce liability wherein the character of the plaintiff was impugned, it subsequently evolved to be used as a weapon against free speech as

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<sup>46</sup> Consumer Protection Act, No. 35 of 2019, § 2(47) (India).

<sup>47</sup> *Greig v. Insole*, [1978] 1 WLR 302

<sup>48</sup> SP Sathe, *Defamation and Public Advocacy*, 38 Economics and Political Weekly (2003).

well. The liability against defamation was crystallized through Section 500 of the Indian Penal Code,<sup>49</sup> and the extent of liability within the frameworks of this section is subjected to the discretion of the courts.

This conflict plays out very significantly in cases involving online reviews. The most important question prevailing is with regards to the extent of dissent shared against a particular product or service online, and whether a mere negative review can be brought under the scope of defamation. The Madras High Court, in the recent judgement of *VP Sarathi v S Kiruthiga*,<sup>50</sup> addressed this conflict in a prudent manner, and held that mere expression of criticism cannot be construed as defamation. The case revolved around a negative review posted by a user against a law firm, and whether an action brought under Section 500 of the IPC<sup>51</sup> is sustainable. The contention provided by the defendant was that it was a mere expression of her opinion from the service she received from the plaintiff's law firm, and the court concurred with this contention. It further acknowledged such a negative expression to exist within the framework of Article 19(1) of the Constitution.<sup>52</sup> The court, however held that an action could be brought if the review was fake or lacked any merit.

Another aspect which could vitiate the claim of defamation or any other action under torts in cases involving critical reviews is the principle of *damnum sine injuria*. The meaning of the maxim is that loss or detriment cannot be a ground of action unless it is the result of a species of wrongs of which the law takes cognizance of and therefore, in a suit for damages based on a tort the plaintiff cannot succeed merely on the ground of damage unless he can show that the it was caused by violation of his legal right.<sup>53</sup> So, if a critical review causes damage to an organisation's business, no action can lie, until that organisation can prove that such a review was fake or was written with a disingenuous intent.

The law regarding reviews that are manifestly fake is absolutely clear. If a review is fake and engages in postulating defamatory opinions, an action could be brought under Section 500 of the Indian Penal Code. The Department of Consumer Affairs has taken note of this escalating problem, and has posited a framework titled 'Online Consumer Reviews Principles and Requirements for their Collection Moderation and Publication' in November 2022 to combat and subsequently resolve the problem of fake reviews.<sup>54</sup>

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<sup>49</sup> Indian Penal Code, No. 45 of 1860, § 500 (India))

<sup>50</sup> *VP Sarathi v Kiruthiga*, CrI.Rc.No.445 of 2023

<sup>51</sup> Indian Penal Code, No. 45 of 1860, § 500 (India)

<sup>52</sup> India Const. art. 19, cl. 1

<sup>53</sup> *Dhanusao v Sitabai*, AIR [1948] Nag 698

<sup>54</sup> Jagmeet Singh, *India issues guidelines to curb fake reviews on e-commerce platforms*, TechCrunch (Nov. 21,

This framework stipulates several mechanisms to be followed by e-commerce platforms and other third-party platforms where reviews are being shared, to ensure that these platforms are not overrun with fake reviews. Primarily, these platforms are required to set up review administrators, which could be automated or manual, to restrict reviews which are manifestly fake.<sup>55</sup> The detection techniques could be done using machine learning algorithms discussed in the previous sections. Section 4.2.3.4<sup>56</sup> specifically deals with the use of defamatory language and factual correctness of a consumer's review. The framework also deals with several issues that accompany the publication of a review online, such as sharing personal information of an individual or a third party, or using it as a platform to market online scams and fraudulent activities.

The American and Australian jurisprudence in this particular matter is also worth mentioning, owing to the prevalence of cases related to fake reviews. The next section will specifically deal with the case of *Hassell v Bird*,<sup>57</sup> where the California Supreme Court ordered the defendant to remove the defamatory content posted through Yelp, an online review platform. In the Australian case of *Dean v Puleio*,<sup>58</sup> where the defendant was a patient who visited the plaintiff's clinic, and their relationship was terminated owing to the irregularity of the defendant. The defendant responded to this termination by posting critical reviews through Google, accusing the plaintiff of unprofessionalism and contended that the plaintiff was unable to cure the illness suffered by the defendant. The Victorian County Court, observed that the impact of these defamatory reviews could have been significant considering that the business of the plaintiff had dropped, and awarded damages of \$170,000.

Another interesting aspect that the Australian courts have implemented is the substitution of online platforms as content publishers when the identity of the original publisher remains anonymous.<sup>59</sup> This allows action to be taken against the e-commerce platforms and other third-party platforms by the virtue of them having provided indirect assistance to the publisher whose identity remains anonymous. A defense that could be used in such cases is that of innocent dissemination. In *Vizetelly v Mudie's Select Library*,<sup>60</sup> Lord Justice Romer observed that a

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2022), <https://techcrunch.com/2022/11/21/india-fake-reviews-ecommerce-guidelines/>.

<sup>55</sup> Section 6.9.4, Online Consumer Reviews Principles and Requirements for their Collection Moderation and Publication, Indian Standard, IS 19000:2022

<sup>56</sup> Section 4.2.3.4, Online Consumer Reviews Principles and Requirements for their Collection Moderation and Publication, Indian Standard, IS 19000:2022

<sup>57</sup> *Hassell v Bird*, 247 Cal.App.4th 1336

<sup>58</sup> *Dean v Puleio*, [2021] VCC 848.

<sup>59</sup> Adrian Anderson & Peter Divitcos, *Taking Action Against Fake, False and Defamatory Online Reviews*, Internet Law Bulletin (2021).

<sup>60</sup> *Vizetelly v. Mudie's Select Library, Limited.*, [1900] 2 Q.B. 170

library, where a book containing defamatory content was circulated, is exempt from liability under defamation as they were innocent of any content circulated through the book and that there was nothing in the work or the circumstances under which it came to them which ought to have led them to suppose that it contained defamatory work. This contention can be used by platforms to claim exemption from liability.

However, courts have still not addressed the possibility of subjective nature of the defamatory reviews being published online. A review is basically the experience of a consumer with respect to a product or a service. If any criticism is made with respect to certain aspects of that particular product which are ingenuous and not manifestly untrue, no action can lie as such cases would come under the bracket of *damnum sine injuria* and is protected under Article 19(1)<sup>61</sup> of the Constitution. However, if there is any ambiguity regarding the ingenuity of a particular review owing to its subjective nature, the method of determination of the existence of defamation is still a question left unanswered.

## V. CASE STUDY: HASSEL V. BIRD

This case study looks at the landmark *Hassell v. Bird*<sup>62</sup> case, which addressed the problem of internet defamation caused by fraudulent or fake reviews. The case sheds important light on the legal nuances of online defamation and the duties of online platforms to control content created by users.

### (A) Background:

In 2012, attorney Dawn Hassell represented Ava Bird in a personal injury claim for 25 days. Despite initiating 15 communications and contacting Bird's insurance provider twice, Bird did not respond. Due to this lack of communication, Hassell withdrew from the case. Then, in January 2013 (Bird's first Yelp review), Bird posted an intentionally fake review of Hassell's company under the pseudonym "Birdzeye B. Los Angeles, CA." She gave her interaction with Hassell a one-star rating and falsely stated that Hassell's company did not get in touch with the relevant insurance company and did not get in touch with either Bird or the insurance company.<sup>63</sup> Hassell contacted Bird after viewing these evaluations and asked her to take down the defamatory content from the website. Bird replied with an email, stating that she would not have her review removed and threatening to write more. This email was not answered by

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<sup>61</sup> India Const. art. 19, cl. 1

<sup>62</sup> *Hassell v Bird*, 247 Cal.App.4th 1336

<sup>63</sup> Heath, Erik; Olivier, Monique (December 2017). "Defamation On Yelp: An Appellate Case You Should Know About". *Plaintiff*. Retrieved October 12, 2018.

Hassell.

**(B) Litigation:**

Then, on April 17, 2013, Hassell sued Bird, stating that the reviews had damaged Hassell's reputation as a company and were defamatory.<sup>64</sup> In an update to her initial evaluation, Bird mentioned the lawsuit; nonetheless, she disregarded it and did not show up for court. After that, Hassell demanded that the court force Yelp and Bird to remove her reviews and filed a default judgment against Bird. The court made this decision after reading a lengthy briefing that demonstrated the content was malicious and untrue and after hearing testimony during the hearing during which Bird once more failed to show up. However, Yelp and Bird did not comply.

**(C) Judgement:**

Bird did not appear at the January 14, 2014, hearing in the *Hassell v. Bird* case, despite Bird's failure to reply to the lawsuit. As compensation for Bird, Hassell was given \$557,918.75 by the lower court. Bird's negative Yelp reviews about Hassell Law Group were ordered removed by the court, and she was also told to stop blogging about them. Within 7 days following the court's decision, Yelp.com was also mandated to take down Bird's reviews. This judgment was finalized on March 16, 2014. Yelp then appealed to the Supreme Court of California on May 23, 2014, to set aside the judgment. Yelp claimed it was an "aggrieved party," arguing that its right to due process was violated because Hassell had not sued/identified Yelp as a party defendant, that the CDA barred the lower court's order against Yelp, and that Bird's First Amendment rights were violated because Hassell had not adequately proved that Bird's comments were defamatory<sup>65</sup>

When the matter finally made it to the California Supreme Court, it overturned the trial court's order in a sharply divided 4-3 ruling, holding that Yelp's status as a publisher of user material came under Section 230 of the CDA and that it was not obligated to abide by the removal order. However, the part of the trial court's decision that ordered the reviewer to remove the defamatory review and pay a monetary judgement were left intact.

**(D) Implications:**

- **Individual Accountability:** Individuals who publish false, defamatory evaluations may be forced to take down the offending material as well as face legal repercussions. Just

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<sup>64</sup> Heath, Erik; Olivier, Monique (December 2017). "Defamation On Yelp: An Appellate Case You Should Know About". *Plaintiff*. Retrieved October 12, 2018.

<sup>65</sup> "Hassell v. Bird". Justia Law. Retrieved 2017-03-29.



like in the current case Bird was held liable for her defamatory statements.

- **Free Speech Rights:** Removal orders should not violate the Free Speech rights by being unduly broad; instead, they should be targeted to the defamatory content. This suggests that the initiative should take into account how to balance the preservation of free speech with the removal of defamatory content. Here only those statements of Bird are restricted by the court order that were defamatory not affecting his right to free speech.
- **Platform Responsibility:** Despite being typically immune from defamation actions, online platforms that carry these kinds of evaluations may be required to remove defamatory content. The court here too ordered Yelp, the platform hosting the review, to remove the defamatory content.

### **(E) Conclusion:**

In conclusion, the case demonstrates that those who publish reviews that are false or defamatory may face legal repercussions. It also highlights the importance of safeguarding the right to free speech and proposes that removal orders should only be applied to specific cases of defamatory content in order to strike a balance between the protection of free speech and the removal of defamatory content. In summary, this case study highlights the necessity for additional investigation and policy formulation to adequately tackle the problem of online defamation via fabricated reviews, while maintaining equilibrium between the entitlements and obligations of all stakeholders. It serves as a reminder that although the internet has made it possible for people to express themselves freely, it also calls for safeguards against potential abuse of that right.

## **VI. CONCLUSION**

The problem of fake reviews has proliferated in the last few years and the Government has acknowledged this issue and has enacted a framework to mitigate this problem. However, the issue was much broader than automation and manifestly false reviews, considering the fact that a consumer review is highly subjective in nature and its ingenuity is highly debatable. The conflict between right to free speech and defamation became very significant in cases involving online reviews. The exceptions to Section 499 of the IPC<sup>66</sup> and the principle of *damnum sine injuria* in torts law exempt liability in cases of truthful criticism. The Madras High Court, addressed this conflict diligently and held that a mere criticism of a service in the form of an online review cannot amount to defamation.<sup>67</sup>

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<sup>66</sup> Indian Penal Code, No. 45 of 1860, § 499 (India)

<sup>67</sup> VP Sarathi v Kiruthigha, CrI.Rc.No.445 of 2023

Companies generally exploit this platform by positively misrepresenting their own company through celebrity reviews and automation or engage in defaming their competitor's products by using the same techniques to impose false criticisms. While false criticisms that tend to defame their competitors' product also has an action under defamation and tortious interference, any positive misrepresentation of their own product through fake reviews would amount to unfair trade practice.

Online defamation can cause injury to a victim's reputation and dignity because the statements are visible to anybody using online services, and the magnitude of such an injury is enlarged due to the high volume of users accessing the information online, and any disingenuous review with the intent of defaming an organisation's products or service can cause severe harm to their business.

In conclusion, the evolution of jurisprudence in relation to defamation has been very significant and adoptive owing to the rapid evolution in the modes of communication and deliberation of content and the increased difficulties in applying the traditional legal principles to cater to the same. Cases including *Hassell v Bird*,<sup>68</sup> provide a more comprehensive understanding of the conflict between freedom to express thoughts online and defamation in cases involving reviews posted online and when exactly an action arises. However, the question of the extent of online reviews is still left to be answered on a case-to-case basis as it is very subjective in nature.

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<sup>68</sup> *Hassell v Bird*, 247 Cal.App.4th 1336.

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