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Freedom of speech is an important right enshrined in the constitution. However, the freedom should be exercised with caution. For instance, it is wrong to spread false claims about an individual, a state officer or an organization without enough facts. Such an offence may attract defamation charges. Defamation is the communication of false information that gives an individual, a business, a group, or a nation bad image. In most cases, individuals and organizations that feel defamed may press for a tort of defamation. A tort of defamation refers to a legal action brought against an individual or an organization accused of making false claims which damage the reputation of another person or organization. In the recent years, technological advancements, specifically the use of internet and other related digital technologies, have introduced challenges in addressing and analyzing the tort of defamation.

Defamation comes in two forms: it can either be a libel or slander. A libel means that the damaging claims are made in writing, while, on the other hand, slander means that the damaging claims are made verbally. In the United States, defamation is considered a civil case; the action is considered a breach of civil responsibility. However, other countries (like Denmark and Italy) make defamation a criminal act. Broadly speaking, technological advancements have increased the avenues for exercising freedom of speech. However, the same advancements have made it easy for people to make false claims without verification, and these occurrences continue to increase day by day.

With the use of internet, for example, it is easy to make wild claims about an individual, or an organization without confirming whether the information is

true or not. The fact the internet allows the use of anonymous screen names makes it easy for anyone with malice to spread damaging information about other people or organizations. The anonymity of the user makes it hard for the plaintiff to prove libel. Some internet sites allow forum members to use pseudonyms without submitting their real details, and this makes the internet susceptible to anonymous posting. The use of pseudonyms makes it difficult for the would-be plaintiffs to know the real person(s) to sue.

In some cases, even when a plaintiff goes ahead to sue the online defendant, the defendant may claim that revealing his/her true identity for the purposes of the suit is not necessary, and infringes on their right to free speech as stipulated under the First Amendment. According to Stiles, this complicates the efforts by some companies to reveal the internet users who visit their websites. For instance, internet services providers such as Yahoo have policies to enable them to reveal the true identities of their users when requested by a court to do so or when involved in a suit. In such circumstances, the court may protect the anonymity of the user or require the user's identity to be revealed for easy administration of the law suit. However, as discussed earlier, the internet speaker (or publisher) may claim that anonymous speech is protected under the First Amendment. Therefore, revealing the identity of internet users amounts to suppression of speech, and can even result into the user's harassment by partisan groups even before the libel is successful. Nonetheless, today's plaintiff with a defamation complaint has a mountain to climb when it comes to proving the defamation claim.

First of all, the plaintiff has to prove the existence of defamatory statements

(either published or spoken), and identify himself/herself. Secondly, the plaintiff has to prove that the statements made by the respondent are false. Thirdly, the plaintiff has to prove that the content of the statements made are injurious in one way or another. In most cases, whether a public officer or a private individual, the plaintiff has to prove an element of malice for the defamation to prevail. Nevertheless, it is only few plaintiffs who have the guts to sue anonymous defendants.

The anonymity of the users makes it impractical to trace them. This makes it easy for people to defame individuals and companies, and hide under the anonymous screen name - unless a court orders the identity of the user to be revealed. Other plaintiffs worry that the costs incurred in determining the identity of the user are far above what could have been spent when the identity of the user is known. In some cases, the plaintiff would not have to bother if the identity of the user is known. Above all, it is difficult for the plaintiff to prove an element of fault if the speaker or publisher of the malicious information is unknown. The case used in the following paragraphs highlights the challenges taking up an internet tort defamation case.

According to Wilson, in a case involving Ampex -the plaintiff-, the Contra Costa County Superior Court asked the plaintiff to prove that that the statement was libelous before the speaker could be identified. Earlier on, the plaintiff had asked the court to reveal the identity an online who posted anonymous messages disparaging the company together with its senior management. The plaintiff, Ampex, insisted that the speaker's identity should be made revealed before proceeding with the case.

In this case, it was hard for the plaintiff to prove the libel before identifying

the defendant. Although the plaintiff had followed the steps of proving a libel discussed earlier, it was a daunting task to prove an element of fault without knowing who the actual author of the defamatory messages. Proving the existence of malice requires determination of the publisher's state of mind at the time of publication to determine the falsity of the statement. Therefore, without knowing the defendant, it is difficult to prove the defendant's state of mind during the period of publication. Under the same circumstances, it would also be hard to prove that the author acted in a negligent manner. Consequently, it was hard for the plaintiff to prove that the tort of defamation occurred.

In the recent past, the numbers of libel suits involving anonymous statements made by online users have cropped up in the country. Over the same period, the tort of defamation has become a well-established area of law. However, the advent of internet and other digital technologies has complicated it. The fact that internet users can be anonymous makes it difficult for plaintiffs to trace them and prove intent of malice. As long as the burden of proof remains on the part of the plaintiff, it will always be a stumbling block for the plaintiff to prove the libel without knowing the identity of the defendant.

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