



The use of social media and the liability for defamation

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Abstract

The soaring adoption and use of Information and Communications, Technology has given birth to a New media called the social media. social media are platforms for electronic communication which enable users create online communities to share information, ideas, personal messages, and other contents. Being computer-based technology, it facilitates the sharing of ideas, thoughts, and information through the building of virtual networks and communities. Social media platforms have presented unparalleled opportunities for individuals, organizations and governments across the globe to network in order to enhance career opportunities. However, with all the attendant benefits and gains of the use of the social media comes huge responsibility of balancing the exercise of the right to freedom of expression through the use of Social Media on the one hand and the protection of the reputation of individual and organization from defamation; and the prevention of acquirement of criminal liabilities. Employing the doctrinal research methodology, this work ex-rayed social media, defamation; civil and criminal liabilities that may result from the use of social media platforms. It found that, the absence of comprehensive legislation governing the use of the internet and/or social media and the availability of the social media platforms for little or no cost, coupled with the absence of facts checking mechanism, amongst others, have greatly encouraged and increased the publication and republication of defamatory and other liability-carrying statements on the social media. It recommended inter alia, the enactment of a comprehensive legislation that will govern the use of the social media and; public enlightenment by the appropriate authorities.

Keywords: Social/New Media, Defamation, Defamatory Statement, Publication, Criminal Defamation, Cybercrimes.

Introduction

The rapid increase in the use of Information and Communication Technology and the Internet in the 21st century has lunched the global village into a new era of communication called Social/New media. This new means of communication and interaction has offered the society unprecedented opportunity for connecting people together that can create, store, and share information without restrictions.

Social media platforms have presented unparalleled opportunities for individuals, organisations and governments across the globe to network career opportunities, find people across the globe with like-minded interests, and share their thoughts, feelings, insights, and emotions, and it is exploited as part of corporate strategy for productivity and financial benefits.

However, with all the attendant benefits and gains of the use of the social media comes huge challenge of striking a balance between the exercise and enjoyment of the right to freedom of expression and press through the use of Social media on the one hand, and the sanctity of individual and organization's reputation which the law of defamation seeks to protect; an indiscretion or imbalanced by the social media user may result in civil or criminal liability such as libel, possible violations of right to privacy, public incitement, undermining of national security and economy, espionage, sabotage and cybercrimes.

The right to freedom of expression and the press is a fundamental human right recognised universally and well established in our jurisprudence. Freedom of expression is the cornerstone of every democracy; it enables political, social and economic development. The free flow of idea and

information guaranteed by the freedom of expression guarantees knowledge dissemination, innovation, accountability and transparency in governance. Section 39 of the 1999 Constitution (as amended) provides thus:

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, established and operate any medium for the dissemination of information ideas and opinion.

In the case of Solomon Okedara v. Attorney General of the Federation ^[1] the Court of Appeal held that:

The provisions of section 39 of the Constitution are clear and unambiguous to the effect that it guarantees that every citizen of this country shall be entitled to freedom of expression which was extended to include the freedom to hold opinion and pass information without interference. This freedom presupposes free flow of opinion and ideas essential to sustain the collective life of the citizenry.

However, the courts have also held on several occasions that the right to freedom of expression is not absolute ^[2]. That a person has a right to freedom of expression does not mean that he has a licence to ruin the hard earned reputation of other persons or breach criminal laws such as the Cybercrimes Act, Penal Code etc. So anyone who crosses the rubicon of decent written or verbal expression could be liable for defamation.

Defamation is the publication of a statement which exposes a person or entity to hatred, ridicule, contempt or causes people to shun or avoid him or which causes injury to reputation or economic lost to the person or entity.

Defamatory publications on the social media platforms are as defamatory as in the conventional media, if not more defamatory due to the ease and speed of republication. A statement, comment or remark that is defamatory would not cease to be defamatory simply because it was made or published on social media neither can it be excused on grounds of right to freedom of expression.

Social/new media

According to Merriam Webster Dictionary, ^[3] social media are forms of electronic communication (such as websites for social networking and micro-blogging) through which users create online communities to share information, ideas, personal messages and other content (such as videos). Social media are interactive technologies that allow the creation or sharing/exchange of information, ideas, career interests, and other forms of expression via virtual communities and networks. ^[4] Social media is a computer-based technology that facilitates the sharing of ideas, thoughts, and information through the building of virtual networks and communities.

Some of the top social media platforms in the world are: ^[5] Facebook with over 2.74 billion active users; YouTube with 2.291 billion active users; WhatsApp with 2.0 billion active users; Facebook messenger with 1.3 billion active users; Instagram with 1.221 billion active users; Weixin/We-Chat with 1.213 billion active users; TikTok with 689 million active users; QQ with 617 million active users; Douyin with 600 million active users; Sina Weibo with 511 million Active users; Telegram with 500 Million Active User; Snapchat with 498 Million Active Users; Kuaishou with 481 million Active Users; Pinterest with 442 million active users; and Reddit with 430 million active users.

By design, social media is Internet-based and gives users quick electronic communication of content. Users engage with social media via a computer, tablet, or smart phones via web-based software or applications. ^[6]

Social/new media outlets differ in variety of ways from the traditional media of print magazines and Newspapers, TV and radio broadcasting. These differences are visible in terms of identification of authorship, quality, outreach, frequency, usability, immediacy, permanence, professionalism and regulation. Additionally, social media outlets operate in a dialog transmission system, i.e., many sources to many receivers, while traditional media outlets operate under a mono-logic transmission model (i.e., one source to many receivers). For instance, a newspaper is delivered to many subscribers and a radio station broadcasts the same programs to an entire city. Social media typically features user-generated content and personalized profiles. The power of social media is the ability to connect and share information with anyone in any part of the world, or with many people simultaneously.

Social media may take the form of a variety of technology-enabled activities. These activities include photo sharing, blogging, social gaming, social networks, video sharing, business networks, virtual worlds, reviews, and much more. Even governments and politicians utilize social media to engage with their constituents and voters ^[7].

For individuals, social media is used to keep in touch with friends and extended families. Individuals and organizations use various social media platforms/applications to network career opportunities, find people across the globe with like-

minded interests, and share their thoughts, feelings, insights, and information. Those who engage in these activities are part of a virtual social network.

Some of the advantages of utilizing the new/social media platforms are that the user can easily reach large audiences with little or no cost, have a direct connection with audience, create and share personal contents, get instant feedback, have access to paid and free advertising service, drive traffic to self as well as, create viral contents, etc.

In view of the nature of social media platforms such as Facebook, Instagram, WhatsApp etc., which enable massive audience, anyone posting any statement or remark to a platform must appreciate that there is some degree of dissemination at least and possibly, widespread dissemination may follow. This is particularly true in the case of persons with no privacy settings in place and who have hundreds and thousands of “friends” and/or followers.

Defamation and defamatory statement

Defamation is concerned with injury to reputation of an individual or entity resulting from words written or spoken by others. Defamation is the act of harming the reputation of another by making false statement about him to a third person ^[8]. It 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 the person. In *Sun Publishing Ltd. & Ors v. Dumba* ^[9]defamation was held to mean any imputation which tends to lower a person in the estimation of right thinking men or cause him to be shunned or avoided or ridicule or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.

A defamatory statement is a statement which tends: (a) to lower the claimant in the estimation of right-thinking members of society generally, or (b) to expose him to hatred, contempt or ridicule, or (c) to cause other persons to shun or avoid him, or (d) to discredit him in his office, trade or profession, or (e) to injure his financial credit ^[10]

Words are not defamatory however much they may damage a man in the eyes of a section of the community, unless they also amount to disparagement of the reputation in the eyes of right-thinking men generally. ^[11]The words complained of must tend to injure the claimant’s reputation in the eyes of right-thinking members of the society generally and not merely in the minds of a ‘particular section of the public’. To write or say of a man something that will disparage him in the eyes of a particular section of the community but will not affect his reputation in the eyes of the average right-thinking man, is not actionable under the law of defamation ^[12].

In *Byrne v. Dean*, ^[13] the plaintiff and the defendants were both members of a golf club. The plaintiff alleged that the defendant defamed him by putting up a notice in the club to the effect that the plaintiff had made a report to the police about certain illegal gaming machines kept on the club premises. It was held that the defendant’s statement could not be defamatory since, although the other members of the club might think less well of the plaintiff in consequence of it, right thinking members of the public would approve rather than disapprove of a person who reported offence to the police.

In ascertaining a right thinking member of the society, the court will rule out on the one hand, persons who are so lax or cynical that they will think none the worse of a man

whatever was imputed to him, and on the other hand those who are censorious as to regard even trivial accusations (if they were true) as lowering another's reputation, or who are so hasty to infer the worse meaning from any ambiguous statement. The ordinary citizen is neither unusually suspicious nor unusually naive and does not always interpret the meaning of the word as would a lawyer for he is not inhibited by the knowledge of the rules of construction. ^[14]

For a person to complaint of injury to his reputation, he must have a good reputation for which the law of defamation protects. Where a person has no good reputation, the law of defamation will have nothing to protect as it will amount to putting nothing on something and expecting it to stand which the law abhors, *ex nihilo nihil fit* ^[15]. A person cannot recover damages for injury to reputation he does not have. For example, an ex-convict cannot succeed in a defamation suit for being called a criminal or ex-convict. ^[16] Defamation could be classified as libel or slander and/or civil or criminal.

1. Libel and Slander

Defamatory statements are categorized as libel or slander. The distinction between libel and slander lies in their forms and remedies. ^[17]

1.1 Libel: This is defamation in permanent form, mostly in written or printed form. It is a defamatory statement expressed in a fixed medium, especially writing but could also be a picture, sign or electronic broadcast. ^[18] The Court of Appeal in *Sun Publishing Ltd. & Ors v. Dumba* ^[19] defined Libel as a statement reduced into writing by one about the other, which statement has been published to a third party and has the effect or tendency of lowering the addressee in the eyes of right-thinking members of the society generally. It is any publication in print, writing, picture or signs that injures the reputation of somebody ^[20]. Permanence is the distinguishing character of Libel. Defamation is also permanent if it is contained in painting, cartoon, photograph, film ^[21] or video or audio record. Libellous statements are those defamatory words that are recorded with some degree of permanence for instance, recording words on tape, statements made by email or online bulletin boards etc. ^[22] In libel, the defamatory statement remains in a permanent form long time after publication, except they are withdrawn, expunged, or destroyed by the defendant, or at the order of court. ^[23]

In considering the words in a libellous publication, it is the broad and general impression conveyed by the publication complained of that must be considered, not the meaning of each word under analysis taken out of context. ^[24]

1.2 Slander: This is defamation in transient form, most often through the medium of spoken words or gesture. Slander is a defamatory statement or assertion expressed in transient form, especially speech. The Court of Appeal in *BBS Engineering Services Ltd. & Ors v. Fidelity Bank* defined slander as a defamatory statement made or conveyed by spoken words, sounds, look and gestures. It is sometimes said that libel is address to the eye, while slander is addressed to the ear. ^[25]

Slander, as a general rule, is not actionable per se, that is, the claimant has to prove injury caused to him by the defamatory words to be entitled to reliefs sought. However, there are exemptions to the general rule. There are certain instances where slander is actionable per se. These are:

1. Allegation or imputation of crime ^[26].
2. Allegation or imputation of contagious disease.
3. Allegation of unchastity of a woman or girl ^[27].
4. Allegation of unfitness of a person in his calling, profession or trade ^[28].

Any slander containing any of the above allegations, if published without justification, is actionable per se. Here, it operates as if it is libel. In *Agoaka v. Ejofor* ^[29] where the defendant falsely accused the plaintiff at a village gathering of having stolen his coco-yams, Aniagolu J., citing with approval the observation of Bowen J ^[30], held that the Plaintiff was entitled to recover general damages for slander. In *Bloodworth v. Gray* ^[31] the court held that an allegation that the plaintiff has venereal disease was actionable per se.

2. Ingredients/Elements of defamation

For a claimant to succeed in an action for defamation there are certain ingredients that he must prove. They are as follows.

- That the word complained of are defamatory;
- That the words referred to the claimant;
- That the words were published to at least one third party; and
- That the words were false.

In *BBS Engineering Services Ltd. & Ors v. Fidelity Bank* ^[32] the Court of Appeal held to wit:

To succeed in an action for defamation, which is actionable per se, the person must conjunctively prove: (i) Publication of the offending words; (ii) that the offending words refer to him; (iii) that the offending words are defamatory of him; (iv) that the offending words were published to a third party; (v) that they are false or lack accuracy; and (vi) that there are no justifiable legal grounds for the publication of the defamatory words. ^[33]

The above elements are coterminous and must be established by the plaintiff by credible evidence conjunctively to succeed in a defamation suit.

Once the claimant is able to prove the above elements in a libel suit, he will be entitled to remedies. In the case of *Okoroji v. Onwenu* ^[34] it was held by the Court of Appeal to wit:

Defamation/libel is actionable per se and once there is credible evidence and the court is satisfied as in the case of the Appellant, that the defamation was established or proved as required by law, it can find for the claimant and award damages, as appropriate. There is no need to prove actual damages in monetary or material terms by the claimant before an award of damages is made by the court. The damages are presumed by law to have flowed naturally and automatically from the proved defamation/libel of the claimant.

However, in an action for slander, the claimant will, in addition to establishing the above elements, prove that he suffered actual damage to be entitled to damages ^[35]. This is because libel is actionable per se while slander is generally not actionable per se.

3. Remedies available to a claimant in a defamation suit

The remedies available to claimants in defamation suit include:

a. Damages; b. Injunction; c. Retraction; d. Apology, etc. The remedy to be granted to the plaintiff depends on the circumstances of a particular case. It could be one or a combination of two or more remedies as the merit of each case demands and as sought by the plaintiff, as it is trite law that a court must not grant to a party a relief not sought.^[36]

4. Defences available to the defendant in a defamation suit

The defendant in a defamation action has certain defences to put up in his defence to the claimant's claim. In the case of *Bekee v. Bekee*^[37], Court of Appeal held to wit:

...anyone who is sued for defamation can raise any of the following defences- That the alleged wrong doer was not the publisher of the statement; that the statement did not refer to the alleged victim; that the statement's meaning was not defamatory; That the Statement was true; that the statement was fair comment on a matter of public interest; that the statement was made in the heat of an argument.

Some of these defences are:

a. Justification: This entails that the defendant establish that the publication made by him is a fact and true. That is, to justify his publication. It is a total defence to action for libel or slander that the words complained of were true in substance.

b. Fair Comment: It is a defence that the words complained of are fair comment on a matter of public interest. This defence is available to all who comment fairly on all matters which may be said to be of legitimate public concern. This defence is intended to preserve the fundamental right to freedom of expression. It has to be based on fact truly stated and comment honestly made.^[38]

c. Absolute Privilege: This is a complete defence, however false or defamatory the statement may be and however malicious it may have been made. It arises in privileged circumstances, such as proceedings in the legislative house or in court of law where public policy demands that persons should be able to speak or write with absolute freedom, without fear of liability for defamation.

d. Qualified Privilege: This defence is akin to absolute privilege. However, qualified privilege is wider, and it is available to the general members of the public in situations which it is in the interest of the public that people should state what they honestly believe to be true without liability for defamation. The main difference between qualified privilege and absolute privilege is that qualified privilege will be defeated if the plaintiff proves that the defendant's publication was actuated by malice.^[39]

e. Unintentional and Innocent dissemination: This defence is available to those persons who are not authors, printers, or publishers of the libellous publication but who disseminate same without knowledge that they contain libellous articles. Examples are, book sellers, newspaper sellers, libraries, museums etc.

Defamation on social media

Most social media networkers post and or share contents on their various platforms without paying attention to the veracity or otherwise and the defamatory elements of such

contents. Defamation on social media occurs where a defamatory statement, comment or remark is published on any social media platform by a social media user. Where a defamatory publication is made on the social media the damage done can be huge.^[40] This much is seen the British Columbia case^[41] which shows that social media defamation can lead to serious harm to an individual's reputation resulting in the award of substantial damages against the defendant.

While most of the defamatory statements, comments and remarks published on the social media are written words and therefore easily considered as libel, some arguments or difficulties have arisen in classifying publication of spoken words in audio and video. In the first instance, audios and videos would seem to be slander given that they are spoken words. However, a review of their permanent and fixed nature of publication shows that they are libellous;^[42] and not slander. This, therefore, by implication, means that all social media defamatory publications are libellous.

The conventional law of libel discussed above apply to publication on the social media to the very last dot. The right of the defendant-social-media-user to raise any or a combination of the various defences discussed above is preserved. In the same vein, remedies available to a claimant in the traditional defamation case such as damages and injunction are also available to a claimant defamed on social media. Other remedies include removal/clarification, apology, and undertaking/promise not to repeat.

Once the plaintiff who was defamed on social media is able to prove all the ingredients of defamation as required by law he would be entitled to damages as he would be if the defamation was not done via the social media.

In *Pritchard v. Van Nes*^[43], the plaintiff, a schoolteacher, and the defendant lived next to each other. Tensions had been brewing between the two for several years. Because of this, the defendant posted numerous comments about the plaintiff to her Facebook page – comments which her Facebook “friends” piggybacked off with remarks of their own. In total, these comments suggested the plaintiff was a paedophile. One of the defendant's Facebook friends copied the defendant's initial post and forwarded it to the principal of the school where the plaintiff worked.

Mr. Pritchard was expressly referred to by the defendant and her Facebook friends as a “pedo”, “creeper”, “nutter”, “freak”, “scumbag”, “peeper” and a “douchebag”. Unsurprisingly, this resulted in serious harm to the plaintiff's reputation.

At trial, the court noted that anyone posting to Facebook would understand some degree of distribution, possibly widespread could follow, particularly so in this case, where the defendant had no privacy settings in place. The court found the defendant liable for the republication of her comments on Facebook. The court also found the defendant responsible for the third-party comments which spawned from her initial posts.

Given the seriousness of the allegations, which were unfounded, the court awarded the plaintiff \$50,000 in general damages to compensate him for the harm he suffered to his reputation. To denounce the defendant's thoughtless conduct, the court also awarded the plaintiff \$15,000 in punitive damages.

1. Republication and Liability for Republication of Defamatory Social Media Statements

Republication occurs where the person to whom the words were originally published communicates them to someone else. The general rule is that a person is responsible only for his or her own defamatory publications, and not for their repetition by others. There is no liability for a republication by a third person that the defendant neither authorized nor intended to be made.

There is no liability upon the original publisher of the libel when the repetition is the voluntary act of a free agent, over whom the original publisher had no control and for whose acts he is not responsible.

However, there are several exceptions to this rule. The defendant may intend or authorize another to publish a defamatory communication on his or her behalf. Secondly, a defendant may publish it to someone who is under some moral, legal or social duty to repeat information to another person. Thirdly, a defendant may be liable if the repetition was the natural and probable result of his or her publication. These rules apply only where the information repeated is the same or substantially the same so that the sum and substance of the original charge remains. Once the requirements have been satisfied, the plaintiff is entitled to recover damages from the defendant both for the original publication and for the republication by the person onto whom it was initially published.^[44]

In *Pritchard v. Van Nes*^[45] where the defendant in a defamatory publication on Facebook had no privacy settings and had over 2000 friends, the court held that the defendant must be taken to have implicitly authorized the republication of her posts. It found that “there is evidence from which widespread dissemination of the defamation through republication may be inferred.”^[46]

2. Liability for Criminal defamation and Cybercrimes while using Social Media

Defamation is also a crime, and the state can initiate criminal proceedings against the defendant to secure his conviction. Both Penal Code and Criminal Code define defamation as a crime and prescribe sanctions for it. Section 391(1) of the Penal Code defines defamation thus, “whoever by words spoken or written or by sign or representation makes or publishes any imputation concerning any person intending or knowing or having reasons to know that such imputation will harm the reputation of such person, is said to defame that person”. While section 373 of the Criminal Code defines defamatory matter as matter likely to injure reputation of any person by exposing him to hatred, contempt or ridicule; or likely to damage any person in his profession or trade by injury to his reputation. Under the Penal Code the sanction for criminal defamation upon conviction is a term of imprisonment which may extend to 2 years or fine or both.^[47] Under the Criminal code it is 2 years imprisonment.^[48]

Cybercrime is a crime committed in the cyberspace or in the realm of computers and internet. The Cambridge online dictionary defines cybercrime as a crime or illegal activity that is done using the internet.^[49] The Cybercrimes Act^[50] did not define the term Cybercrime but it prescribed many cybercrimes and their sanctions. These offences include computer related forgery^[51], computer related fraud^[52], cyber terrorism^[53], child pornography^[54], cyber stalking^[55], cybersquatting^[56] etc.

Social Media users also stand the risk of incurring liability for criminal defamation and Cybercrimes in the course of utilizing social media tools. See some of the latest reported cases on this subject below.

In the *Wala v. FGN*,^[57] the Appellant posted on his Facebook page inter alia, thus:

For 3 years now, Alhaji Abdulahi Muktar, Chairman NAHCON used Jaize to extort equivalent sum of ₦35,000 to ₦45,000 from all 78,000 Pilgrims under the guise of Hadaya (Sacrificial Ram) on the arrangement that all the rams’ meat will be processed and frozen to be delivered to IDP camp in Nigeria. Ever since then, no single ram was slaughtered in Makkah under this arrangement, no meat was moved to any IDP camp no money returned to any pilgrim.

The Court of Appeal held to wit:

It is clear from Exhibit D that defamatory words were published on Facebook where the Appellant has over 4000 contacts and many people have seen and commented on the Facebook post. If a statement is defamatory the publisher is deemed to know that it will harm the reputation of the person defamed.

The Court held further

I find the Appellant guilty of the second and third counts which relate to public incitement and defamation of character.

I hereby sentence the Appellant to-

1. 2 years imprisonment for the offence of public incitement under section 114 of the Penal Code which attracts a sentence of 3 years imprisonment or fine or both.
2. 18 months for the offence of criminal defamation of Character under section 391 and punishable under section 392 of the Penal Code which attracts 2 years imprisonment or both.

In *Julius v. FRN*,^[58] the Appellant posted on his Facebook platform ‘Nasarawa Mirror (@mirror 1996)’ thus: Al-Makura camps herdsmen to decimate voting population, wins senate seat.’

The Court of Appeal affirmed the conviction of the Appellant in count no. 3 of the charge for disseminating unverified information in his Facebook platform ‘Nasarawa Mirror (@mirror 1996)’ with the intent that the unsuspecting public would believe and act on same as if it was authentic or genuine. He was sentenced to a term of 3 years imprisonment or an option of N7, 000,000 fine as provided in section 13 of the Cybercrimes (Prohibition, Prevention etc) Act, 2015.

The Court of Appeal stated thus

The Appellant received the statement/information above which he shared on his platform for a socio-political group known as ‘Solid Youth Frontier. Irrespective of the source or input, the Appellant ought to have verified the authenticity or otherwise of an allegation as weighty as the foregoing, before publicizing same in his Facebook platform.... Because he failed to make the necessary verification of the inputted data, it follows that the Appellant disseminated same trusting and intending that his followers in Nasarawa Mirror Facebook Platform in particular and the unsuspecting public in general would believe and act on the information as if it was authentic or

genuine. The Appellant thereby committed the offence as charged.

Exacerbation of publication of defamatory statements on social media

With the aggressive rise in social networks, social media platforms, content aggregation sites and online commentary, the risk of defamatory content and false statements reaching a broad audience has increased tremendously in recent times. One of the ills birthed alongside social media is the opportunity it presents its users to publish statements, comments or remarks without scrutiny and verification from other persons or bodies. Social media sites are designed to encourage and incentivize the sharing of information without any fact checking or regulation. This liberty has led to the exacerbation of publication of defamatory contents in the public space.

Most often, social media users lack the ability or knowledge to juxtapose their right to freedom of expression with the need not to injure the reputations of other persons and the risk of incurring criminal liabilities. They don't know the limit to which their right to free speech goes and so due to certain convenience factors ^[59] they publish whatever they like which often are defamatory and sometimes result in criminal liabilities.

Given the nature of computer inter-connectedness, which is the basis for social media operation, publication on the social media platforms can spread like wildfire within a short period of time and caused havoc on reputations of individuals and entities. The ability of a defamatory publication to gain wide audience with speed within a couple of hours or days need not be over emphasized. In the case of *Pritchard v. Van Nes* ^[60] where the defendant published a defamatory statement about his neighbour on her Facebook page, same birthed numerous defamatory comments and remarks and was shared by the defendant's friends within a couple of days. In fact, one of the defendant's friends wrote a mail of the content of the defendant's publication to the plaintiff's boss with the aim of making the plaintiff to lose his job as a teacher.

In certain instances, the posts on social media are even anonymous or pseudo-anonymous which call for great concern. If a post is an anonymous one, the person who share ^[61] or comment on such post may be liable for such sharing or comment. *Julius v. FRN* ^[62] it was in evidence that the Defendant/Appellant received the information he posted from another platform, he was convicted for sharing unverified information which turned out to be false.

Where the content posted on any social media platform is defamatory but without the identity of the poster, the victim or person affected by its defamatory elements can request the intermediaries or host (such as Facebook, Twitter, Instagram etc.) to takedown the offending content. A court order can also be obtained mandating the disclosure of the identity of the author of the post by the host platform.

In the case of *Tamiz v. Google Inc* ^[63] the court held Google Inc could be liable as publisher at common law in relation to its Blogger's platform. In that case, the plaintiff, Mr. Tamiz had initiated libel suit in the High Court against Google Inc and Google UK Ltd after Google had failed to promptly remove a defamatory statement concerning him posted anonymously on a blogger called 'London Muslim.' The action was dismissed on the grounds inter alia, that Google

was not a publisher at common law for the purpose of defamation, whether before or after notification of a complaint; that the period of publication between actual notification of complaint by the plaintiff to Google Inc (18 July) and take down (14 August) was too short that any potential liability that arose was so trivial as to justify the maintenance of the proceedings. On appeal it was held that Google Inc could be liable as publisher at common law in relation to its Blogger platform and not exempted as held by the trial high court.

In the Indian case of *Swami Ramdev & Anr v. Facebook Inc. & Ors* ^[64], the high court of Delhi granted an Injunction mandating the defendants to remove all defamatory contents posted against the plaintiff. This order was to operate without territorial limitation as the court stated that, if the content is uploaded from India or such content is located in India on a computer resource, then the court in India should have international jurisdiction to pass worldwide injunctions.

In the case of *Kalandin Charan Lenka v. State of Odisha* ^[65] where the petition was stalked online, created a fake Facebook account in the name of the victim and additionally sent obscene messages, the High Court of Orisa, India held that the said act of the accused falls within the offence of cyber defamation and the accused is liable for his offence of defamation.

1. Factors Responsible for the Exacerbation of Publication of Defamatory Statement on Social Media

The high rate at which defamatory statements, comments and remarks are being spread, shared, published and republished on various social media is accounted for by certain factors. These factors include:

1. The Absence of a comprehensive legislation governing the use of the internet in general and social media in particular: Although there are legislations and subsidiary legislations on cybercrimes and data protection, there is no comprehensive law regulating the use of the internet and social media.

2. Readily availability of social media platforms: The proliferation of social media Applications has made the platform readily available to global citizens who have access to computer and internet. Every person who has access to any enabling computer device and the internet has a variety of social media platforms available to him to elect from.

3. Low (or no) cost of publication on social media platforms: Publication on social media cost little or nothing. While publication in the mainstream media may run into millions of naira, that of social media may cost as little as having a smart phone with little or no internet data. For instance, with as low as 1 megabit of internet data, a social media user, at the comfort of his house may publish a defamatory statement that can cause huge economic lost to a multi million-naira business whose reputation has been built over decades. Currently on Facebook, there is what is called "free mode" which enables users to have limited access to make and share posts, make comments, and view friends' posts. The implication here is that a defamatory post capable of running down hard earned reputation of individuals and businesses can actually be published by a

Facebook user who has no single bite of internet data. This is huge.

The possibility of Anonymous publications: Anonymous publication connotes publication without revealing the identity of the person making the publication. The mechanism which enables anonymous publication in the social media platforms has greatly encouraged the posting/publication of defamatory statements, audios and videos. Since it is possible for the defamed not to trace the publisher of a defamatory post done anonymously, the defamer may go on with his act leaving the defamed only to the option of making a take-down request to the host/owner/operator of the particular platform. The possibility of making an anonymous post on the social media is an incentive to make defamatory post without corresponding legal responsibility and liabilities.

5. Hacking technology: Hacking in relation to social media account can be said to be an act of gaining unauthorised access to and use of a person's social media account by another. A situation where a person can hack into someone's account and make publication without the account owner's permission encourage irresponsible publications including libellous posts.

6. Total absence of fact checking or regulation unlike the conventional media: Unlike the conventional media that has regulatory bodies and professional associations with ethics and codes of conduct, the new media has none. It is a free-for-all. The publisher of a social media statement, audio or video is the maker, editor, verifier, facts finder and regulator of what he publishes on his account. This has aided and encouraged the publication and republication injurious posts in social media.

7. Inability of social media users to ascertain the limit of their right to post and comment freely (freedom of expression) on social media: It is popularly said that where one's right ends there another's begins. The right to freedom of express does not extend to the right to defame others' reputations. The right of other persons to be entitled to their dignity and reputation is the limit to which one can exercise his right to free speech. The inability of many social media users to ascertain this limit has made them to keep making defamatory posts in their accounts on the account of free speech.

8. Ignorance of the law of defamation and its application to social media publication: This is another fertilizing factor for the surge in publication of defamatory statements on the social media. Many people are ignorance of the law of defamation although ignorance of the law is no excuse^[66]. Again, those who have average knowledge of the law of defamation do not know or think that it is very much application to social media publications.

Information which Social Media Users Should Know as they Exercise Their Right to Freedom of Expression via the Social Media Platforms

1. Individuals should be conscious that personal communications made via social media are subject to the laws and regulations that govern individual

accountability across general and traditional forms of communications.

2. Individuals should know that defamatory statements do not cease to be defamatory simply because they are posted on the social media platforms.
3. Social media users should know that they are responsible for every statement, comment or information posted or published on their social media platforms.
4. Persons who post defamatory statements on their social media pages/platforms should know that they may be liable for republication by third parties.
5. Individuals exploiting the internet and the new media should also know that their exploits may land them in criminal liability for criminal defamation, cybercrimes etc.
6. The internet and social media users should know that their posts are capable of undermining the national security and economy of the country and can contribute to the speed with which the society is losing its moral values.

It is instructive to note that Nigeria suspended twitters operation on the 4th of June 2021, The government accused the micro blogging site of allowing its platform to be used for achievements that are capable of undermining Nigeria's cooperate existence. As expedient as the government action might have seemed, government ought to have noted that access to free and open internet is essentially a human right in a modern society

Recommendation

Recommended measures and or advice to social media users and owners/operators of social media platforms

1. A deep thought ought to be given before pushing out any content. This applies to individual content/messages and when circulating other people's contents. A critical review of contents before posting or sharing will help avoid publication and republication of defamatory and other liability carrying contents. It is important to note that Status Updates in social media platforms such as Facebook and WhatsApp can be seen by many other followers, and published content may be difficult to retract, and it circulates very rapidly, easily available for others to see and use elsewhere indiscriminately.
2. Individuals should choose network contacts or friends wisely in consultation with ethical guidelines of his or her professional body or workplace or personal standard. Before sending 'friend request' 'liking' or 'following' others (or deciding whether to accept any friend request, permitting others to 'like' or 'follow' you), the person should consider whether he or she can be associated with that particular person, brand or organisation, and their views and values. Consideration for any potential consequences or repercussions that could arise from such association should be carefully thought through.
3. Social media users should monitor the publish and share content areas of their platform regularly, to check if the public can have access to it, to avoid malicious posts to appear on personal account. Any content that others publish on one's platform/page or a tagged

- publication that can be considered inappropriate should be deleted or untagged immediately.
4. It is important that social media platform users exercise caution to keep personal account secured and check personal privacy settings. They should be aware of the security and privacy settings on personal Social Media accounts, and regularly review these settings to maintain personal security, privacy and safety. Adoption of strong passwords and the use of multi-factor authentication is recommended. Avoid sharing of password or PIN with anyone including family or friends.^[67]
 5. As creators or sharers of contents, or commentators, social media users should always make sure that any information about a person or organization is truthful and would not be considered as injurious to reputation of the subject of the information or content.
 6. Social media platforms owners/operators should provide such mechanism/technology to monitor the content posted on their platforms.
 7. If social media platform owners/operators want to be free from liability for contents published by users of their platforms, they should make express and conspicuous provision in their terms and condition that users are solely responsible for whatever they publish on their pages, profile, status or space (whatever name called) and they do so at their peril.
 8. Owners/operators of social media Apps should ensure effective complaint mechanism and quick response system. This will enable prompt review of take-down demands thereby avoiding liability for defamation.

Recommendation for Legislative, Executive and Judicial Interventions

We recommend to wit –

1. Appropriate government Ministries, Departments and Agencies; and Non-Governmental Organizations (NGOs) should carry out public enlightenment on the populace on the use and negative effects of the abuse of Social Media to individuals, entities, and; national security and economy.
2. Given that Social Media is a product of Information Communication Technology which is fast growing, the Legislators should constantly review our laws and amend or enact new laws to keep pace with technological advancement. Specifically, there is a need for the National Assembly to legislate on the use of Internet and online and social media defamation. We therefore recommend that the National and/or State Assembly should enact a comprehensive legislation that will govern the use of the internet, online and social media defamation.
3. We also recommend that our Courts should display judicial activism in this area of law as we have started seeing in few cases, some of which have been cited in this work. By so doing our jurisprudence would be enriched like those of U.S., India and Canada.

Conclusion

In this 21st century, the global village is characterised by sophisticated computers and internet services coupled with numerous social media Apps and platforms. This has made it easier and convenient for social media users to publish any information on their various social media platforms

with no facts checking or regulation. These social media networkers post and or share contents on their various platforms without paying attention to the contents and the implication of such contents. This has escalated the rate of publication of falsehood and defamatory statements; and has increased the risk of incurring criminal liabilities.

A post on the social media, if defamatory, the damage done to reputation can be unimaginably huge. It could also birth liabilities for criminal defamation, Cybercrimes, and other crimes under the Penal and Criminal Codes. It is therefore very important that posters, commentators, consumers, sharers, and potential victims of social media statements, comments and remarks exercise due care as they are responsible for their publications and are at risk of incurring civil or criminal liability or both.

The traditional law of libel applies to defamation on the social media, therefore, where a social media user publish defamatory statement which indeed defamed the subject of the publication (individual or entity) such person shall be liable in defamation.

Are you a victim of social media defamation? Have you been or being accused of social media defamation? Are you standing trial for criminal defamation, cybercrimes or any other crimes as a result of the use of your social media platform? Consult your lawyer, justice awaits your case.

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