

## Defamation on Cyber Space: A Comparative Legal Analysis Between Bangladesh And Malaysia

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**Abstract:** Digital security is one of the burning issues in today's internet based on global society. Expanded IT infrastructure has ascended to tremendous odds of breach in social media platforms. Nevertheless, being a relatively new member of digital security arena, digitalization is going on in Bangladesh for most recent couple of years at an appreciable rate retaining its own demand and appeal. However, certain intrinsic vulnerabilities inter alia cyber defamation in such digital arena tend to consistently threaten to the reputation of an individual throughout the globe while Bangladesh and Malaysia are not exception to this brunt. Hence forth, the aim of this paper is to analyze the present scenario of online defamation through an empirical research approach in both countries. To this context, this study travels over the plethora of legislations available in both territories evaluating the robustness of existing digital security strategy of Bangladesh in parallelism with Malaysia. In terms of such dissection, this paper critically assesses Bangladesh's system and explores that this scheme is lingering behind to a large extent from the contemporary practices in overall digital security readiness. Hence, to eradicate such technological misdemeanor, this paper sets forth certain recommendations including initiating a separate procedural law especially focusing the enforcement mechanism of Bangladesh and thus making cyber world a better place.

**Keywords:** Cyber; Defamation; Digital Security; Speech; Social Media.

**Introduction:** The phenomenal explosion of the electronic technology and the advent of numerous kinds of internet based publications such as electronic mails (e-mails), chat groups, web logs (blogs), Facebook, Twitter etc. has created a revolution and facilitated the way information is published and communicated [1]. Today, we are living in the era where internet and social media have turned into a common meeting space around the globe heralding viable platform for promoting globalization.

Intrudingly, in terms of both access and reach, the internet with its invasiveness and pervasiveness has so invaded in our day to day lives that it is difficult to imagine a day without being interconnected in these social media [2]. However, with the seamless ease of use of these social media, misuse and potential perils of these sites by unscrupulous individuals is now also becoming a common scenario in the cyber world. One of which is to defame or injure the reputation of the other in social media platforms in the name of freedom of speech. Though cyber space is an imaginary space as well as may seem new province, succinctly puts in relation to cyber activities, the increase use of social media has made it difficult. Especially, when it comes to balancing the right of one's freedom of speech and other's reputation unfairly attacked [3]. Unlike the traditional form, social media has the ability to build a false sense of intimacy by making the users mistakenly believe that any comment made in the heat of the moment will remain anonymous while the reality is comments on these sites can be posted instantly and go viral to the public at large.

At present both Bangladesh and Malaysia have experienced a rise in the use of social media platforms. For instance, as of March 2020, approximately 2.07 billion users are actively using Facebook around the globe [4] of which Malaysia has 25.76 million representing 77.5% of its entire population [5] and Bangladesh has 37.91 million that accounted for 22.2% of its entire population [6]. Along with blessing and increased number of Internet user, these countries are also beset with the curse of technology. That is crime committed in online platforms have never stopped and never will, rather it's increasing exponentially. However, the ambit of this paper is limited and

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exclusively addresses the peculiar phenomenon of ‘publication’ that is defamation committed using this social media platform in both countries. Facebook, as of February 2018, through an initiative of adding content reviewers, found around 7500 user accounts who are engaged in deliberate disruption [7].

As it is shown from the statistics that, Malaysian legislation relating to cyber security is strategically strong that Bangladesh, hence Malaysia was chosen to carry out this comparative study. Because, despite having increased number of internet users, yet, when it comes to digital literacy people of Bangladesh lacks behind. Also majority of them are unaware of privacy settings as because they perceive Facebook as a platform used only to express what they feel.

**Research Objectives:** As a comparative study between Bangladesh and Malaysia, the key objective of this study is to explore how social networking websites are being misused in committing crimes especially defamation on cyber space in both countries. Although legal instruments available in both countries recognize certain activities occurred in online as offences, however, there still remains certain substantive as well as procedural loopholes in those laws. To this extent, this paper attempts to ascertain the effectiveness of the existing legal framework of both countries through identifying certain issues and challenges and to remove any type of such legal hurdles, this paper at its concluding remark, attempts to provide recommendations suitable for both countries.

**Methodology:** This comparative study was conducted through exploring analytical approach of Bangladesh and Malaysia. The comparison between both countries was based on both primary and secondary level data. The legislative frameworks especially relating to offensive and defamatory speech in social media platforms in both countries as well as various case studies were analyzed as a primary source of information. Again, newspaper reports, journal articles and in-house research reports of aid agencies constitute main authoritative source of information for this study.

### **Conceptual Definitions:**

#### **Defamation in the Conventional Sense**

Literally, defamation is regarded as the act of communicating false statements (whether orally or written) about a person that injure the reputation of that person in the eye of a third person.

A statement or comment is regarded as defamatory if it intends to injure the reputation of another that causes the community at large to deter from associating or dealing with the person so defamed [8].

Defamation, that is originated in the tortious term, was defined in the case *Concord Press (Nig.) Ltd. v. Asaolu* [9] as,

*‘An imputation against a person which if published, is calculated to lower the nobility of that concerning person in the estimation of ordinary and right thinking member of the society generally and expose him to shunned, hatred, avoided ridicule or contempt.’*

In Common Law legal system, defamation which refers to the unjust undermining of a person’s reputation is broken down into libel and slander.

Libel means publication of a defamatory statement expressed in some permanent form which includes writing, printing, pictures, statue, waxwork, effigy etc. Slander, by contrast, is constituted if the attempt to injure the reputation is caused orally or by gestures or in some other transient form [10]. In simple terms, defamation can occur either orally or in written form. If it is orally then it is in temporary form and considered as slander. Again, the words are written or published then it is permanent form and considered as libel.

In *Monson v. Tussands Ltd.* [11] the distinction between two was explained thus, Libels are generally defamatory statement published in permanent form be it writing or printing, but this is not necessary in all circumstances, that is the placing of a wax image of the claimant in the chamber of horrors at Madame Tussaud’s wax work exhibition was deemed to amount to libel.

**Defamation in Cyber Space:** *Cyberspace* is a concept that refers to the virtual computer world describing a widespread interconnected digital technology. Generally, offensive statement refers to any statements that can lead

to an offence. However, in regard to social media, offensive statements include defamation, hate speech, statement making against the State or authority or any religion or belief [12].

In that regard, cyber defamation means publication of defamatory and untrue materials or statement against another person on a website or sending emails by using computer or internet, including in message boards, personal websites, social media, blogs, chat rooms, bulletin boards, social networking sites, or other published articles. In other words, “any act, deed, word, gesture in cyberspace designed to harm a person’s reputation on the internet amounts to defamation.”[13] Though, cyber defamation may be a neoteric concept but the conventional definition of the term defamation is applicable to the cyber defamation because it includes injury to the reputation of an individual through a new and a virtual medium.

In *Thornton v Telegraph Media Group* [14] held that the concept of defamation itself required “a tendency or likelihood” for a statement not just to negatively affect reputation but to “substantially” do so [15].

**Defamation under Statute of Bangladesh:** With the aim of combating cybercrime in Bangladesh including defamation in cyber environment, the past vital cyber legislations are the Information & Communication Technology (ICT) Act, 2006 and the Digital Security Act, 2018. Though Constitution of Bangladesh through Article 39(1) guarantees freedom of thought and conscience of every citizen, the same Article through sub-section(2) protects such freedom of speech and expression by envisaging eight reasonable restriction one of which is defamation and incitement to an offence.

Again, false statement causing injury to an individual’s reputation may be vilifying under the existing criminal laws[41]. For instance as per section 499 of the Penal Code 1860, whoever makes or publishes any imputation by words, either spoken or intended to be read, or by signs or by visible representations concerning any individual tending to injure the reputation of such individual is said to defame that person and such commission is constituted as an offence of defamation [16].

Also, under, section 57 of the ICT Act, any deliberate publication or transmission or causing to publish or transmit in the social media or any other electronic device which is untrue and obscene as well as prejudice the image of the State or person or causes to hurt or may hurt religious belief or instigate against any person or organization was regarded as a criminal offence

### **Governing Legal regime in Bangladesh and Malaysia**

**Legal Framework in Bangladesh:** The Information & Communication Technology (ICT) Act, 2006, that amended in 2013, empowered the law-enforcing agencies to arrest the offenders and seize, confiscate or otherwise dispose the properties involved in cybercrimes under a special tribunal known as the Cyber Tribunal.

Later in September of 2018, the government of Bangladesh enacted the Digital Security Act with the aim of curbing cybercrime and ensuring digital security, by creating a wide range of cybercrime offences covering the drawbacks of controversial section 57 of the ICT Act 2006 and providing punishment for propaganda or campaign against the Liberation War, the Father of the Nation, cyber terrorism, posting offensive content and defamation, amongst others. However, all the issues tackled under Section 57 from the previous act still engraved in the Digital Security Act merely been redistributed in an elaborated manner among several sections of the new law.

For instance, as per the Act’s Section 17, any individual resorting digital media platform to intimidate people or cause damage to the state, he or she will be imprisoned for up to 14 years or Tk 1 crore fine or both. Also, the provision of section 25 criminalizes the individual whoever uses a website or digital media to intimidate anyone with jail time of three years or Tk. 3 lakh fine. Again, Section 28 of the new act describes if any person hurts religious sentiment of any individual as defined by the Penal Code, he or she will be punished with 10 years imprisonment or Tk. 20 lakh fine or both. Lastly, the provision of Section 29 provides if any individual publishes information having the intention to defame someone, he or she will face three years in jail or Tk. 5 lakh fine or both [17].

**Legal Framework in Malaysia:** In Malaysia, the prime legislation that was enacted to combat cybercrimes is known as the Computer Crimes Act, 1997 (CCA) which was modeled from the UK’s Computer Misuse Act, 1990. Though this Act was enacted with a view to ensure protection against misuse of computers, however it does not deal with the offences relating injuring reputation that is offensive statements made in social media platforms including

cyber defamation. Henceforth, with the purpose of converging traditional communications as well as to regulate the offences made through defamatory statement using online platforms, a regulatory regime known as the Malaysian Communication and Multimedia Act 1998, (herein after called CMA) is enacted.

In CMA 1998, the principal provisions that prohibit illegal content are provided under sections 211 and 233 where both sections prescribed the limit impose upon the service provider as well as the usage of any network facilities indicating the existence of the liability of the internet service provider [18].

The provision of prohibition of posting offensive content in the online platform is laid down in the section 211 of the CMA 1998. According to this section, whoever, be it the content applications service provider, or other person with the intention to annoy, abuse or harass any person, using a content applications service, provides any material which is false, obscene, menacing or offensive, shall be said to commit an offence and be convicted for imprisonment for a term not exceeding one year or be levied fine not exceeding RM 50,000 or to both. Furthermore, a further fine of RM 1000 for every day shall be imposed to that convicted person, if he/she continues to commit same offence.

Additionally, under section 233 of the CMA 1998 whoever uses network facilities or network service in an inappropriate manners is said to commit an offence and for doing so will be punished with same punishment as mentioned for offence under section 211, namely,

1. With the intention to annoy, abuse, threaten or harass another person at any number or electronic address, to make or solicit and initiate the transmission of any comment, suggestion, request or other communication that is obscene, false, or offensive in character; or
2. Having the same intention abovementioned, to initiate a communication using any applications service, whether repeatedly or otherwise with or without disclosing his identity; or
3. Provide obscene communication to any individual for commercial purpose or any other activity described in section.

Also, under section 499-502 of the Malaysian Penal Code criminalizes speech that infringes 'public tranquility'[19] as well as defamation is treated as an offence of which punishment is imprisonment for a term which may extend to two years or with fine or with both.

However, the following four elements are required to establish the prima facie case of defamation [20]:

- i) that the statement was made by the defendant;
- ii) that statement was circulated among public other than the individual so defamed;
- iii) that the statement was untrue and made with the intention to injure of the plaintiff; and
- iv) that the statement so published was unprivileged.

### **Brief Case Analysis**

**Malaysian Scenario:** Generally, in the law of defamation, an individual is held responsible for the defamatory words published by himself to others. However, whilst with the proliferation of social media as Facebook, Twitter, Instagram have become integral part of our lives, complex questions emerge whether an individual is liable for articulations made by third parties.

In a pilot case of Malaysia, *GS Realty SdnBhd vs. Lee Kong Seng Case* [21] the plaintiff GS Realty SdnBhd sued the defendant Lee Kong Seng in a defamation case for his defamatory statements posted in certain Facebook public forums and on his own Facebook page against the plaintiff. Along with that, the defendant was also sued for the defamatory third party comments posted below his Facebook postings. The plaintiff was a member of a golf club and urged that the defendants had seen the notice alleged to be defamatory but had not removed it even upon the receipt of a legal demand and evidence showed that Lee Kong Seng knew about those defamatory third party comments as well as participated in the comment sections by exchange of messages with the third parties. After having a thorough consideration, the Court by majority ruled that Lee Kong Seng was liable for publication of the third party comments that amounted to defamation against GS Realty [22].

Even in another *Murray v Wishart case* [23] where Murrays published allegedly defamatory comments against Wishart by creating a Facebook page as well as used Twitter to publicize that Facebook page was held liable for third party comments.



In *Mohd. Khaidir Ahmad v. Mohd Iqbal Zainal Abidin* [24] the defendant was held liable for defaming plaintiff, an Assistant District Officer of Temerloh on his Facebook page by a post that had an uploaded photograph of the Plaintiff, his son and car together with defamatory statements stating he had abused his powers and was corrupt.

In *Datuk May PhngCho Mai Sum & 2 Ors vs. Tan Pei Pei*, [25] The Malaysian High Court granted RM 80,000 as general damages to the plaintiff against the Defendant for publishing defamatory statements in an email to at least four recipients. Though defendant attempted to prove that the e-mail was sent only to four individuals, yet the court held that it does not change the fact that such publication in the internet via email is deemed to be widely circulated among the public.

In *Mohamed Hafiz Mohamed Nordin v. Eric Paulsen and Another Appeal* [26] a suit of defamation against the defendant was brought that aroused from an article that went viral on social media published on the internet via the web portal *www.ismaweb.net*. The Court of Appeal finding the impugned statement defamatory granted damages of RM 100,000 to the plaintiff against the defendant for adversely affecting and tainting the plaintiff's reputation as his statement circulated to incite hatred and anger amongst the multi-religious groups and ethnicity in Malaysia [27].

**Bangladesh Scenario:** In October 2016, a synchronized violence was triggered on Hindus by a Facebook status from the account named 'Rasraj Das' for 'hurting religious sentiments of Muslims'. Rasraj was held responsible for disintegrating Islam through his post on the social media [28]. However, it was later exposed that a political leader Mr. Faruk Mia, framed Rasaraj Das by opening a fake account on his name and posted a picture of Kaba juxtaposed with Hindu deity Lord Shiva [29].

Monirul Islam, a rubber plantation worker in Srimongol was accused of 'liking' and sharing a post on Facebook that defamed the country's prime minister including some cartoons of her criticizing the ongoing visit to India and thus harms the image of Bangladesh. For such allegations, he was arrested on April 23, 2017 under section 57 of the ICT Act claiming that he was a 'betrayal to the country' [30].

Since the new legislation 'Digital Security Act' passed at the Bangladesh parliament in October 2018, approximately 400 cases has been filed within 11 months due to increasing ferocity by hitting 'like,'share' & 'comment' buttons on Facebook [31].

For example, within the first year of the enactment of the Act, a case was lodged against Anwar Hossain Choudhury, an Assistant Professor of Sociology department at Chittagong University on May 17, 2018, for observations he made in an article published in a US journal titled 'Religious Politics and Communal Harmony in Bangladesh: A Recent Impasse'. He was alleged to make derogatory comments regarding Liberation War and Bangabandhu Sheikh Mujibur Rahman as he described the Liberation War of 1971 as the communal clash between Hindus and Muslims [32].

In 2019, the number of cases under this law has surged initiating some 113 cases and accusing a total of 208 people of different professions including teachers, journalists, writers, cartoonists etc [33]. Out of this, according to statistics from Human Rights Forum Bangladesh as many as 41 people were charged between April 1 and May due to 'mere expression of opinion'

For example, a journalist named Hedayet Hossain Mollah, local correspondent of the Dhaka Tribune along with Rashidul Islam, staff reporter of the daily Manab Zamin was arrested under the said act for publishing "false" information on the number of votes regarding an election held [34].

Later on, another publisher and editor of an online media portal, Shahin Rahman was arrested, for allegedly spreading defamatory information on social media platform and posting slanderous remarks on Facebook [35]. In the year 2020, after the pandemic outbreak, the controversial Digital Security Act has been further spotlighted with 67 new cases filed under it among whom 114 were arrested immediately [36].

For instance, Kazi Zahidur Rahman, Assistant Professor of the Department of Computer Science and Engineering of Rajshahi University was arrested on June 17, 2020 criticizing Awami League's deceased presidium member as well as former health minister Mohammed Nasim. He was charged under Sections 25, 29 and 31 of the Digital Security Act, 2018 for allegedly making derogatory remarks against Nasim in two of Facebook posts on social media he shared respectively on June 1 and 2, 2020 [37].

Earlier to this incident, on June 14, 2020 Sirajum Munira, a lecturer of Begum Rokeya University in Rangpur In her post, she misspelled the name of the former home minister and deleted the post immediately and also begged

apology in two more comments for the first one. Yet, she was arrested pertaining to a case initiated under the same law for making ‘defamatory’ comments on social media against Mohammed Nasim who died on June 12, 2020 [38].

### **Comparative Analysis of the Existing Laws of Bangladesh and Malaysia**

#### **Dissection of Existing Laws of Bangladesh and Malaysia**

**Malaysian Legislation:** In Malaysia section 112 and section 223 of the CMA 1998 which are used to make bloggers liable, is silent on the part of the liability of Internet Service Provider (“ISP”) for cyber defamation as it doesn’t discriminate between online and offline world. This Act creates a confusion what legislation should be applied in cyber defamation cases and hence the liability of online intermediaries is still uncertain in Malaysia. People still prefers pertaining Defamation Act 1957 rather than the Communications and Multimedia Act 1998 as the former directly liable the person making offensive, illegal, offensive or objectionable content in the social media platforms [39].

However, such sections imperatively connote the liability of internet service provider by adopting the term

‘...who permitting a network service....’

Similar to what has been inserted in the section 114A of the Evidence Act, 1950 Malaysia that states

‘...who in any manner facilitates to...’

which also implies the liability of internet service provider unlike legislations of Bangladesh which is completely silent on this issue.

Again, the application of this Act is still vague as because in most of the cases, the aggrieved one only sues the individual who posted the defamatory and offensive words and not the internet service providers who actually provide access to the subscribers to that server where such offensive content is shared.

**Legislations in Bangladesh:** On the other hand, in comparison to earlier times, Bangladesh has gone far more ahead in combating cybercrime by enacting anti-cybercrimes legislations. Though ICT Act 2006 has given us various amenities by dealing vital issues with security as well as providing concerned authority the power to penalize cyber-criminals. However, certain provision of this Act, specifically the most controversial section 57 was repealed by the Digital Security Act 2018 for the earlier being supporting enactment that looks for to undue constraint on freedom to utilize digital communications technologies. Unfortunately, the new enacted Digital Security Act, 2018 contained more problematic provisions engraining excessive limitations on digitalized substance in the arena of cyber space. In fact, circumstances stated that inadequate execution of these statutes was one of the root causes behind increasing number of cybercrimes in Bangladesh.

Section 28 of the DSA Act, 2018 entitled the concerned authority to impose penalty up to five years in prison for speech that ‘injures religious values or sentiments.’ Again, section 29 of the DSA Act, criminalizes a wide range of legitimate expression containing several speech offences, including criminal defamation, or the sending of ‘offensive’ information or defamation of religions. Furthermore, it provides *carte blanche* to the government to make rules by authorizing any law enforcing agency to conduct warrantless searches and seizures if that lawful authority has sufficient reason to believe that ‘any offense under the Act’ has been or is being committed. Unlike much abused section 57 of the old legislation ICT Act, both section 28 and 29 of the Digital Security Act 2018, needs intent [40] for a crime to constitute, still it fails to comply with international norms that requires growing recognition for defamation to be considered as civil matter and not as a crime punishable with imprisonment.

Under section 8 of the DSA Act 2018, the very intrusive power to block or remove are granted with a subsection 8(4), that provides determination of other relevant matters by the Rules for the fulfilment of the objective of this section. However, in the primary legislation no guidelines were set out that follows the procedure to exercise this enormously wide power. For example, section 8(1) provides the key implementing body for the legislation, created by section 5 of the Digital Security Act, namely, Director General of the Digital Security Agency, the authority to request the Bangladesh Telecommunication Regulatory Commission (BTRC) to block or remove any information or data that ‘poses a risk to digital security’. Similarly, to protect the information infrastructure, a National Computer Emergency Response Team established under section 9 is authorized to take necessary steps as they deem fit, if digital security is at risk. Unfortunately, in all these cases, the definitions set forth are vague and overboard and a minimum threshold is needed.

Again, Section 198 of Code of Criminal Procedure 1898 which stipulates that defamatory cases can be filed by only an aggrieved person. However, it is often observed that defamation cases are filed by members of political organizations in case anyone criticizes their political leader, which is totally unacceptable as because they themselves are not the aggrieved persons and court refuses to take cognizance on absence of locus standi in such offences clearly mentioning the term 'person aggrieved' and avoiding the term 'person defamed.' In case, a third party wants to file a defamation suit on behalf of other, prior leave of the court shall have to be taken.

Furthermore, violation is seemed to occur in the provision of Code of Criminal Procedure 1898 which is introduced in an amendment passed by the National Parliament on February 2, 2011 that clearly indicated, in case of defamation charges police has to issue summons first instead of arrest warrant.

The case of Barrister Mainul Hasan can be referred in this regard. He was arrested without police issuing summon to him in a defamation case filed against him in Rangpur for slandering female journalist Masuda Bhatti on television by calling her 'characterless' and hurling other abusive words [41].

**Free Speech versus Right to Reputation- Bangladesh and Malaysia:** The notion of freedom of expression that can be understood from two approaches 'equality of human being' and 'interest of political liberty', means one's right to say, write or do including communication of ideas in order to express what they feel without restriction of anyone else. In mostly, the notion, meanings, connotations as well as uses of the words and phrases right to freedom of speech, freedom of expression, right to communication etc. are intertwined and synonymous. However, the international instrument on Human Rights titled as Universal Declaration of Human Rights 1948 emphasize on the word expression instead of speech as because the term extends to having views, publishing articles, posting or commenting on social media through internet or any other electronic media [42]. Such idea of freedom of speech that is identified as absolute human rights under various international instruments, has been granted as fundamental rights by many countries. Accordingly, Article 19 of The Universal Declaration of Human Rights, 1948 as well as Article 19 and 20 of the International Covenant on Civil Political Rights (ICCPR) which sets out the right to freedom of expression as a fundamental right connotes that the right to freedom of opinion and expression includes freedom to hold opinions without interference and to impart information and ideas through any means regardless for frontiers. Further it has been enshrined under Article 13 of the American Convention on Human Rights which was signed by many countries in the year of 1969, that every individual has the right to freedom of thought and expression either orally or in written form including freedom to seek, receive and impart information and ideas of all kinds.

However, since the study concerned with the scope of freedom of speech in respect of not injuring the reputation of others, limiting the former in favor of later is a delicate balancing issue, as such the right to reputation is also as important as freedom of speech is. Though the international instrument, Universal Declaration on Human Rights, provides the right to freedom of speech, interestingly, the same instrument restricts enjoyment of such right absolutely, for the benefit of mankind including morality, public order and the general welfare in a democratic society. Again, Article- 49 of the International Covenant on Civil and Political Rights (ICCPR) also makes restriction in giving free speech by stipulating four grounds one of which is the rights or reputations of others.

In Bangladesh, such freedom of speech is ensured by Article 39 of the Constitution of the Peoples' Republic of Bangladesh as vital fundamental rights subject to reasonable restriction imposed by law. Similarly, Federal Constitution of Malaysia that guarantees such right of freedom under Article 10(1), the same article in its following sub provision reserves the right to impose restrictions in observing freedom of speech, expression especially on the ground of defamation.

As stated above, though freedom of speech and expression is guaranteed as a conditional human right by the national jurisdictions of both countries however, such right cannot be exercised to violate the rights of other by hurting their esteem [43].

**Legislative Stance:** Relatively both the countries have various legislations to combat cybercrime. In Bangladesh, the scope of defamatory statements that covers the terms "prejudice to the image of the State", and 'hate speech' or, 'speech that may religious sentiment or hurt religious belief' are dealt under the DSA 2018, through various sections, whereas in Malaysia such provisions are dealt under separate regulation namely, the Sedition Act 1948. Under this Act, it being immaterial to prove whether seditious statement is true or false, whoever founds guilty of

sedition is punished with the imprisonment to three years in jail, or to fine RM 5,000, or both. However, despite in either territory, there is no specific 'blasphemy law', yet legislative stance of both jurisdictions are quite positive as they both tend to curb blasphemy as well as insult to any religion through the provisions set out in Penal Code which both Bangladesh and Malaysia adopted. Furthermore, to tackle the issues regarding criminal defamation, special laws are made by both territories that prevail over the ordinary one. Still, these legislative stances including the special ones are not loopholes free.

Unless there is an enforcement mechanism, a legislation is considered as dead letter no matter how good that is. Bangladesh and Malaysia both being common law countries, follow English rule as persuasive authority [44]. Though both territories adopted law of tort from English law yet there seems difference in their application. For instance, by virtue of sections 3 & 5 of Civil Law Act 1956, Malaysia applies English law in its territory and handles most of the cases relating misuse of social media or namely improper use of Facebook to defame others under tort law, whereas, in Bangladesh such cases are invoked as criminal offences as principles of tort law are not well established in this country and its application is very rare [45]. Unlike Bangladesh the cases brought before Malaysian courts are sorted out through binding precedents decided by higher judiciary either way of appeal or by any lawful application.

**Recommendations:** The aim of this paper was to evaluate the robustness of existing digital security strategy of Bangladesh in parallelism with Malaysia through focusing on legal aspects of internet governance available in these countries. In terms of such correlative analysis, this paper critically assesses Bangladesh's system and explores that this scheme is lingering behind to a large extent from the contemporary practices in overall digital security readiness. Hence, as the final part of the exploration, to improve the resilience of their cyberspace this paper accommodates certain harmonized recommendations that may be taken into consideration:

1. Social networking sites especially Facebook, Twitter, Instagram etc. requires to be stricter on moderating user identity and activities and to that extent various suitable level of identity verification steps can be taken to identify fake and inactive users and close their accounts. That is certain restriction should be imposed on the use of such social networking sites through regulation to avoid 'online anonymity'.
2. Both the countries requires a stable, reliable and resilient ICT and for that it needs to redefine the words 'critical infrastructures' in the strategy.
3. Uprising online defamation trend in both countries demands prompt attention for creation of robust and workable cyber security strategy in order to keep the social media platforms free from any potential injury to reputation of another or public at large.
4. Recently Artificial Intelligence based program has been launched by Facebook in order to predict and prevent suicide. Certain similar detection system can be used over Facebook and other social networks by defensive forces of respective country to prevent violence occurred from offensive statements in the social media platforms.
5. The Communications and Multimedia Act 1998 in Malaysia as well as certain provisions in existing legislations of Bangladesh needs to be revised and amended by inserting provisions clearly stating the extent of liability of Internet Service Provider for the publication of defamatory statement which is still absent even after repealing section 57 of the ICT Act into Digital Security Act 2018. As because internet service provider is known as door to access in the internet and can set filters as well as help agencies to identify the users misusing the internet as a watchdog.
6. As per the respective the National Cyber Security Strategy, both countries need to possess a special strategy to tackle offensive statements occur in the online platforms. This strategy could be complied with code of computer ethics as well as inclusion of ICT educational and training programs for self-training and raising cyber awareness among the digital natives and to keep the cyber space away from potential threat of being impugned from neoteric threat vectors e.g. smart phones, cloud computing etc.
7. Some policies should be enacted including guidelines for online communications promoting safety measures for users as to exchange, deliver, blog, or share information in social media platforms having responsible and fair exercise of his right to freedom of opinion but not injuring the other's right to reputations.



8. Along with the national laws regulating cybercrimes including cyber defamation to increase international collaboration and combat cyber warfare in the future, certain international conventions should be enacted. Alternatively, an international body may be introduced by General Assembly of United Nation in the form of resolution as online defamation is a matter of global concern for the globe.

9. In both countries, the legislations or statutes that are available have many drawbacks and are not comprehensive itself to restrain the misuse of social media. Hence, to address such several pitfalls that has led to recent explosion of online activity, a new law should be regulated to curtail the misuse of social media. Such suggested Act can be introduced as 'the Safety of Social Media and Misuse Restraint Act' which will be purely a remedial legislation for users. However, along with the enactment of this new law, proper execution and application of such Act should be ensures for the proper contribution to the curtailment of the abuse of social media.

10. Again, enacting various legislation is not the only tool to solve the problems arising in the cyber arena. Apart from law, alternatively, certain distributed security strategy or holistic approach can be adopted. That is under this model, agencies, users and especially internet service providers merged with laws and law enforcement agencies plays an important role in combating cyber-crimes including cyber defamation.

**Conclusion:** Though defamation is an offence under both civil and criminal provisions as well as according to existing Penal Code 1860 and Code of Criminal Procedure (CrPC) 1898, however, the punishments are not as stringent as in the new Digital Security Act. Again, the provisions of both section 499 of the Penal Code 1860 and civil liability that authorizes any individual to file a petition in the civil court and to sue for damages for libel and slander in order to protect his/her reputation, such provision inadequate in its definition and explanation. As the concluding remarks, this paper observes the fact that Bangladesh, which processing its way towards a developed country, however, in regard to the defamation suits, too little has been to upgrade it and hence, instead of going back to 'bygone era', a befitting defamation law has now become a matter of exigent demand. To recapitulate, it can be said that, in Bangladesh, law of defamation is seriously misused.

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