

A CRITICAL APPRAISAL OF DEFAMATION LAW IN NIGERIA

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
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CERTIFICATION

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DEDICATION

This work is lovingly dedicated to Almighty God, for His endless grace and wisdom and to those who have been defamed for just no cause.

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TABLE OF STATUTES

International

- African Charter on Human and Peoples' Rights 1981
- Communications Decency Act 1996, 47 USC § 230
- Defamation Act 2013 (United Kingdom).
- International Covenant on Civil and Political Rights (ICCPR) 1966
- Universal Declaration of Human Rights 1948.

Nigeria

- Constitution of the Federal Republic of Nigeria 1999 (as amended).
- Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004.
- Cybercrimes (Prohibition, Prevention, etc.) Act 2015.
- International Covenant on Civil and Political Rights (ICCPR) 1966
- Penal Code Act, Laws of Northern Nigeria 1963.

TABLE OF CASES

- Sketch Publishing Co Ltd v Ajagbemokeferi (1989) 1 NWLR (Pt 100) 678.

LIST OF ABBREVIATIONS

CLO - Civil Liberties Organizations

CFRN - Constitution of the Federal Republic of Nigeria

ICCPR- International Covenant on Civil and Political Rights

EFCC - Economic and Financial Crime Commission

ECOWAS - Economic Community Of West African States

MRA - Media Rights Agenda

NBA - Nigerian Bar Association

NPC - Nigerian Press Council

SLAPP - Strategic Lawsuits Against Public Participation

SERAP – Socio-Economic Rights and Accountability Project

UNHRC- United Nations Human Rights Council

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ABSTRACT

This research examines the law of defamation in Nigeria, focusing on its causes, effects, and legal implications while comparing it with developments in the United Kingdom and the United States. The study evaluates the tensions between freedom of speech and reputation, the persistence of criminal defamation through instruments such as the Cybercrimes Act, and the emerging intersection with hate speech regulation. It identifies the inadequacies in Nigeria's defamation framework, particularly the overreach of criminal sanctions, and contrasts them with more speech-protective approaches in other jurisdictions. The research adopts doctrinal and comparative methodologies, relying on statutes, case law, and scholarly commentary. It finds that while defamation law in Nigeria provides essential protection for reputation, its continued criminalization undermines democratic values and freedom of expression. The study concludes by recommending comprehensive reform including the decriminalization of defamation, clearer cyber-regulation, and stronger civil remedies that balance reputation with free speech in the digital age.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

There is a common saying that goes thus; ' Reputation is like glass; once broken, it can never be the same again'.¹ Reputation remains a vital part of an individual's social and professional life, it is the intangible asset that reflects a person's character, credibility and honour.² However, in an era where information moves at lightning speed, the power of words has never been more profound. With the excuse of expressing one's rights in doing so abusing the term " freedom of speech", persons have trampled upon other's image and character without understanding the gravity of such statements especially through social media and digital platforms where within seconds reputations can be damaged by words that are false, reckless or malicious.³ The clamouring for legal intervention has given birth to the topic at hand 'Defamation'.

Defamation is the act of communicating false statements about a person that injures the reputation of that person.⁴ Under the Nigeria Interpretation Act, LFN, 1990, "person" also includes individuals and firms or corporations.⁵ Under the Criminal Code Act "It is any statement that is calculated to expose to hatred, cause avoidance, shunning, contempt, ridicule or conveying imputations that are injurious to a person's office, profession, trade or business".⁶ Defamation could either be in written form or verbal form. Where defamation

¹ William Hazlitt, Characteristics in the Manner of Rochefoucault's Maxims (1823).

² R. Post, The Social Foundation of Defamation Law (1986) 74 Cal.L.Rev.691

³ Ikechukwu Unegbe, Defamation as Tort and Crime in Nigeria - Legal Review (2019)

⁴ Black's Law Dictionary (11th edn, 2019) 567

⁵ Interpretation Act, Cap 123, Laws of the Federation of Nigeria 2004

⁶ Criminal Code Act, Section 373, Cap C38, LFN 2004.

is written it is referred to as 'Libel' and where it is spoken it is referred to as 'Slander'.⁷ The distinction between these two is crucial in legal battles, as Libel is often considered more damaging due to its permanent nature.⁸ The existence of defamation in law is to protect individuals, corporations and public figures from character assassination and reputation damage. In doing so, the law must not also forget to protect the right to freedom of expression, as guaranteed by Section 39 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

The rise in defamatory publications in newspapers, magazines, blogs, radio program and especially the wild social media, indicates the need to balance between the freedom to speak and express one's opinion with the duty not to destroy reputations.⁹ Additionally, with the uproar of political tension, cyberbullying and hate speech coupled with several defamatory statements are now cloaked as "opinion" or "criticism" raising legal issues. In the recent case of Toyin Abraham a Nollywood actress and public figure who supported the sitting administration during the period of campaign, the APC political party to be precise, was dragged, insulted, bullied, harrassed, humiliated and degraded on social media by opposing party supporters.¹⁰ This act damaged her personality at that time as an actress and even led to emotional and psychological distress where the actress had to constantly rebut damaging statements and pleaded for the cessation of this abuse. This is one amongst many on the issue of defamatory acts, though legal actions were not taken in this case which is in contrast with the famous case of an online bully one Okoye Blessing Nwakaego a popular Tiktoker, who engaged in cyberstalking activities against Eniola

⁷ Winfield & Jolowicz, Tort (18th edn, 2010) 405.

⁸ Dixon v Holden (1869) LR 7 Eq 488

⁹ O. Oko, Defamation Law and Freedom of Expression in Nigeria (1990) Afr J Int'l & Comp L.

¹⁰ Premium Times, ' Toyin Abraham recounts online bullying during election' (April 2023).

Badmus, a well-known personality. The online bully who was the accused in this case repeatedly targeted Badmus by posting offensive and defamatory content, spreading false information, and even threatening her through various social media platforms. Eniola Badmus rightly concerned of her safety took legal actions. The accused was punishable under the provisions of Section 27 of the Cybercrime (prohibition, prevention ETC) Act, 2015 and also provisions of Section 24(1)(b) (2) (a) (c) of the same Act. ¹¹ Where judgement was held per Justice Nicholas Oweibo after carefully examining the evidence and considering the gravity of the offense, delivered a judgement in favour of Eniola Badmus. The accused was found guilty of cyberstalking and was subsequently sentenced to 3 years in imprisonment or a fine of One hundred and fifty thousand naira though an allocutus was made seeking the court to temper justice with mercy because the convict was a first-time offender. The court's decision sends a strong signal that cyberstalking and online harrasment will not be tolerated, and those responsible will be held accountable for their actions. ¹²

This project seeks to examine the concept of defamation under Nigerian law, its various forms (libel and slander), the root causes of defamatory acts, the legal implications of defamation, while also analyzing the effectiveness of legal remedies. It will also examine how the law balances freedom of expression with the protection of individual reputation. As it is said " words are free. It is how you use them that may cost you".¹³

¹¹ Cybercrime (Prohibition, Prevention, etc.) Act 2015, ss 24-27

¹² Vanguard, 'Tik Toker jailed for defaming Eniola Badmus' (July 2023)

¹³ African proverb, cited in J. Mbiti, African Religions and philosophy (1969)

1.2. Statement of Problem

Since the beginning of human communication, individuals have always expressed opinions through speech and writing. However, in modern society, these expressions often extend beyond mere personal opinion and may involve unverified allegations or statements made without factual foundation. Such utterances or publications, whether intentional or careless, may harm the reputation, dignity, or professional standing of others.

In Nigeria today, the increasing use of social media, blogs, and digital platforms has amplified the problem of reckless statements and false publications. Many individuals, in exercising their freedom of expression, remain unaware of the legal boundaries that distinguish legitimate criticism from defamation. Consequently, people frequently make comments or share information capable of damaging another's reputation without appreciating the potential legal consequences.

The law, however, does not permit ignorance as a defence. The frequent cases of defamatory publications particularly highlight the need to examine the nature, causes, and legal implications of defamation within the Nigerian legal system. This study therefore seeks to analyze the extent to which existing laws protect reputation while safeguarding freedom of expression, and to determine whether the current legal framework is adequate in addressing modern challenges posed by digital communication and media practices.

1.3 Research Questions

The four research questions were raised to guide the study;

1. What constitutes defamation and its legal implications under Nigerian law?
2. What are the causes of defamatory acts and its legal implication in Nigeria?
3. To what extent does courts balance defamation laws and its legal implication to freedom of speech in Nigeria?
4. What are the legal consequences of defamation and its implication in Nigeria

1.4 Aims and Objectives of the Study

The purpose of this study is to find out defamation causes and its legal implication in Nigeria. Specifically, the objectives of this study is to determine:

1. What constitutes the defamation in Nigeria and its legal implication.
2. To examine the causes of defamation in Nigeria and its legal implication.
3. How courts balance defamation laws and its legal implication to freedom of speech in Nigeria.
4. The legal consequences of defamation and its legal implications.

1.5 Significance of the Study

It is hoped that, the study will provide the necessary information to non-legal experts on the extent of speech that may not amount to defamation. It will also provide legal guidance for victims of defamation and serve as a resource for future researchers. In a society where reputational damage often occurs without redress, this work highlights the necessity of legal remedies.

1.6 Scope and Limitation of the Study

This study will focus on defamation, its causes, consequences and legal implications under Nigerian law, with reference also to comparative perspectives.

1.7 Research Methodology

The design of the research will focus on a doctrinal (library-based) approach. Focusing on the primary and secondary sources of data.

Primary sources:

- The 1999 Constitution of the Federal Republic of Nigeria (as amended)
- The Criminal Code Act (Cap38, LFN 2004)
- The Penal Code Law (Act No.25 of 1960)
- The Cybercrime (Prohibition, Prevention, etc.) Act 2015.

Secondary sources:

Judicial decisions, textbooks, journal articles, and scholarly commentaries.

Comparative perspective from foreign jurisdictions are also drawn upon.

CHAPTER TWO

CONCEPTUAL THEORETICAL FRAMEWORKS AND LITERATURE REVIEW

This chapter will be discussed under the following sub-main titles

2.1 CONCEPTUAL CLARIFICATIONS

2.2 THEORETICAL AND HISTORICAL FOUNDATION

2.3 LITERATURE REVIEW

2.1 CONCEPTUAL FRAMEWORK

This sub-main title will be discussed under the following sub-sub- main titles

2.1.1 Definition of Defamation

2.1.2 Libel and Slander

2.1.3 Reputation

2.1.4 Freedom of Expression

2.1.5 Hate Speech

2.1.6 Causes of Defamation

2.1.7 Forms and Patterns of defamation

2.1.8 Effects of Defamation

2.1.9 Legal Implications of Defamation

2.2.1 Definition of Defamation

The word defamation is driven from the Latin word 'Diffamare' which means "Spreading evil report about someone".¹⁴ Thus, defamation is nothing but causing damage to reputation of another. As per Black's Law Dictionary, it is defined as "the act of injuring a person's

¹⁴. Oxford Latin Dictionary (OUP 1980) 562

character, fame, or reputation by false and malicious statements." ¹⁵ Put simply, this is when someone spreads false rumors about you and as a result hurts your reputation.

According to Salmond, it can be defined as "the wrong of defamation, lies in the publication of a false and defamatory statement about another person without lawful justification"¹⁶

Similarly, Underhill states that: " A statement becomes defamation if it is made about another without just cause or excuse, whereby he suffers injury to his reputation and not to his self-esteem".¹⁷

Famous authors Blackburn and George defined Defamation as "the tort of publishing a statement which tends to bring a person into hatred, contempt or ridicule or to lower his reputation in the eyes of right thinking members of society generally" ¹⁸

Winfield also observed that defamation is "a publication of statement which tends to lower a person in the estimation of right thinking members of society, generally, or which tends to make them shun and avoid that person".¹⁹

Park B., in *Parmiter v Coupland* defined it as "A publication, without justification or lawful excuse, which is calculated to injure the reputation of another, by exposing him to hatred, contempt or ridicule".²⁰

The Faulks Committee in England (1975) recommended a statutory definition: "Defamation shall consist of the publication to a third party of matter which in all the circumstances

¹⁵ . Black's Law Dictionary (11th edn, 2019) 567.

¹⁶ J.W. Salmond, *The Law of Torts* (12th edn, 1961) 184.

¹⁷ . A.T.H. Underhill, *The Law of Torts* (9th edn, 1946) 232.

¹⁸ . Blackburn & George, *The Law of Torts* (3rd edn, 1978) 312.

¹⁹ . P.H. Winfield, *Tort* (8th edn, 1967) 309.

²⁰ . *Parmiter v Coupland* (1840) 6 M&W 105, 151 ER 340

would be likely to affect a person adversely in the estimation of reasonable people generally"²¹

In a modern commentary, Asherry Magalia defines defamation as "the tort action whereby one person known as the defendant before the court of law, provides, publishes, states, transmits, distributes, disseminates, circulates, delivers, exhibit, exchanges, barter, prints, copy, sells or offers or making available in any way false, fake or wrong information towards another person known as the plaintiff before the court of law, by any means including in electronic devices whether are connected with the internet or not connected on the internet, which in the end such transmitted, published, and stated information caused damage, injury or harm to another person's reputation or character."²²

Defamation is, in essence, the act of publishing an untrue statement which negatively affects someone's reputation. Its reach is broad, covering acts as trivial as one classmate writing a joke on a scrap of paper and passing it to another, this is so because it can have long lasting effects on the defamed person's finances, opportunities and even emotional and physical wellbeing.²³ In Nigerian law, defamation is the act of communicating false statements about a person that result in damage to that person's reputation. In Section 373 of the Criminal Code Act, thus: "defamatory matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule , or likely to damage any person in his profession or trade by any injury to his reputation"²⁴. By contrast, Section 391 of the Penal Code Law defines it as: "whoever, by words either spoken or reproduced by

²¹ . UK Faulks Committee Report on Defamation (1975) Cmnd 5909.

²² . Asherry Magalia, 'Defamation, What a Term? The True Meaning of Defamation' (2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3105668> last accessed 27 Sept.2025

²³ . Eric Barendt, Freedom of Speech (2nd edn, OUP 2005) 148

²⁴ . Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, section 373

mechanical means or intended to be read by signs or by visible representations makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said to defame that person"²⁵

The distinction arises because Nigeria operates two different codes: the Criminal Code Act, applicable in the southern states, which codifies both state and federal offences in one document; and the Penal Code, applicable in the northern states, which exists in separate instruments. The Penal Code Law (covering state offences) and the Penal Code (Northern States) Federal Provisions Act No. 25 of 1960 (covering federal offences).²⁶ Both codes provide the statutory foundation for criminal liability in defamation across Nigeria.

2.1.2 Libel and Slander

Although ‘defamation’, ‘libel’ and ‘slander’ are often used in everyday parlance to mean the same thing, they have specific legal meanings. The foremost point to note is that libel and slander are simply two different types of defamation; defamation is the overarching tort, libel and slander are just two different ways of committing that tort.²⁷ The distinction between the two is slightly anachronistic, and most legal systems have done away with it. Nonetheless, it remains in place under the common law, and slightly different rules dictate when each is actionable.²⁸ Since they are different brands of defamation, they both remain privy to the general principles governing the tort of defamation. That is to say, defamation

²⁵ . Penal Code Law, Cap 89, Laws of Northern Nigeria 1963, section 391

²⁶ . Penal Code (Northern States) Federal Provisions Act No. 25 of 1960

²⁷ . P.H. Winfield & J.A.Jolowicz, Tort (18th edn, Sweet & Maxwell 2010) 405.

²⁸ . Eric Barendt, Freedom of Speech (2nd edn, OUP 2005) 152.

can be done in two ways either through speech or writing. The former is described as 'Slander' and the latter 'Libel'

Libel refers to defamatory statements expressed in a permanent form.²⁹ This includes writings (books, newspapers, letters), broadcasts (television or radio), cable television (per section 28 of the UK Cable and Broadcasting Act 1984), and theatrical productions (as per section 4(1) of the UK Theatres Act 1968).³⁰ Thus, Libel is representation made in some permanent form, it can be through writing, printing, picture, effigy or statue. In *Monson v Tussauds*, Lopes J. explained: "libels are generally in writing ...but this is not necessary; the defamatory matter may be conveyed in some other permanent form. For instance, a statue, caricature, effigy, chalk marks on a wall, signs or pictures may constitute a libel."³¹

Slander, by contrast, refers to non-permanent defamatory communication.³² In essence, it covers defamatory statements which are not included under libel. The key example is spoken word: an untrue statement whispered in the ear of the right person can be devastating to an individual, and so the law recognises this. Gestures or sign language may also constitute slander, as they are temporary means of communication.³³ Because of their transient nature, the law generally requires proof of "special damage" (a quantifiable monetary loss) to succeed in a slander claim.³⁴ Courts, however, have expanded this to include losses beyond money. For instance, in *Speight v Gosnay*, loss of a marriage

²⁹ . Ibid.

³⁰ . Defamation Act 1952 (UK), section 1; Cable and Broadcasting Act 1984 (UK), section 28; Theatres Act 1968 (UK), Section 4(1).

³¹ . *Monson v Tussauds Ltd* [1894] 1 QB 671 (CA).

³² . J.G.Fleming, *The Law of Torts* (9th edn, LBC 1998) 602.

³³ . *Youssouppoff v MGM Pictures Ltd* [1934] 50 TLR 581.

³⁴ . *Winfield & Jolowicz* (n 1) 410.

prospect was considered sufficient,³⁵ while in *Lynch v Knight*, loss of consortium was recognised.³⁶

There are two exceptions to this rule. Firstly, if it is imputed that the claimant has committed a criminal offence punishable by imprisonment (in the first instance, as opposed to as a repeat offence), In *Gray v Jones*, the defendant told the claimant: “You are a convicted person. I will not have you here.” The jury found that, the words the claimant used were in fact actionable without proof of special damage. This was not because the words caused the claimant to face criminal prosecution (he had arguably been through criminal proceedings already), but because such words could make other people exclude the claimant from society and could make him the subject of ridicule, hatred and contempt. The defendant's words could well have caused others to believe that the claimant was convicted of a criminal offence for which he should have been imprisoned instead of being with them, free.³⁷

The second exception arises when defamatory statements disparage a claimant in their trade, profession, or office. In *Foulger v Newcomb*, the claimant was a gamekeeper tasked with preserving foxes. A slanderous statement was made that he was poisoning them. The allegation directly undermined his professional role and was actionable without proof of special damage.³⁸ However, not every allegation linked to private life suffices. In *Jones v Jones*, an allegation of adultery against a schoolmaster was actionable as slander per se, since it was not sufficiently related to his professional calling.³⁹ By contrast, in the case of

³⁵. *Speight v Gosnay* (1891) 60 LJQB 231

³⁶. *Lynch v Knight* (1861) 9 HLC 777.

³⁷. *Gray v Jones* [1939] 1 ALL ER 798.

³⁸. *Foulger v Newcomb* (1867) LR 2 Ex 327.

³⁹. *Jones v Jones* [1961] 2 AC 481.

Thompson v Bridges, where a schoolmaster was slanderously accused of sleeping with a student. This was calculated to disparage the claimant in his profession, and so was actionable without special proof.⁴⁰

Thus, while libel is always actionable without proof of damage because of its permanence, slander generally requires proof of special damage, save for the exceptions of imputations of crime or statements underminig professional standing.

2.1.3 Reputation:

Article 12 of the Universal Declaration of Human Rights provides that : "No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."⁴¹

According to William Blackstone "Every man is entitled to have his reputation preserved inviolate."⁴² To him, reputation is an inseperable part of personal security, and damaging it unjustly is as much a violation of rights as an assault on the body. This view was reinforced in Dixon v Holden, where Vice Chancellor Malins likened reputation to property, holding that injury to reputation is actionable in the same manner as interference with property rights.⁴³The court stressed that one who makes statements that harm another's reputation does so "at his own risk", underscoring the law's recognition of reputation as a valuable interest worthy of protection. In summary, reputation is more valuable to individuals than material property. It is the legal interest protected by the law of

⁴⁰. Thompson v Bridges (1925) 273 SW 529

⁴¹. Universal Declaration of Human Rights 1948, art 12.

⁴². William Blackstone, Commentaries on the Laws of England (1765-69) Vol 3, 125

⁴³. Dixon v Holden (1869) LR 7 Eq 488 (VC Malins).

defamation, and without reputational harm, there is likely no actionable claim.⁴⁴ As the Nigerian Supreme Court has held, the essence of defamation lies in words that diminish the respect, regard, or confidence in which a person is held or that excite adverse, derogatory, or unpleasant feelings against them.⁴⁵

However, there have been some arguments that defamation law does not center solely on reputation. Khomotso Moshikaro, in his article 'Unjust Contempt as the Gist of Defamation Law: A Constitutional Court Review' (2022), contends that, while reputation may be part of the story, it provides an incomplete picture of the law's proper object in defamation claims.⁴⁶ Similarly, Fagan suggests that defamation is geared towards addressing instances where one has been disrespected and the truth concerning their conduct or character is obscured. It follows too that there are cases where one may be defamed without actually suffering an impairment of one's reputation.⁴⁷ This work however does not fully agree with Fagan's focus on "disrespect" as the gist of defamation but aligns with his assertion that reputation does not always dictate the structure of defamation claims. In my view, the essence of defamation law remains the protection of reputation, which serves both individual dignity and social cohesion. Without legal protection for reputation, the trust essential for personal and professional relationships could be eroded, giving way to suspicion, disrespect and social instability.

⁴⁴. R.Post, The Social Foundations of Defamation Law (1986) 74 Cal L Rev 691, 701.

⁴⁵. Sketch Publishing Co. Ltd v Ajagbemokeferi (1989) 1 NWLR (100) 678 (SC).

⁴⁶. Khomotso Moshikaro, 'Unjust Contempt as the Gist of Defamation Law: A Constitutional Court Review' (2022) (South African Journal of Human Rights).

⁴⁷. Anton Fagan, 'Rethinking Defamation' (2011) 128 South African LJ 659.

2.1.4 Freedom of Expression:

Freedom of Expression is a constitutional guarantee that allows individuals to express their opinions, ideas, and beliefs without undue interference or censorship by the State. In Nigeria, this right is enshrined in Section 39 (1) of the 1999 Constitution (as amended), which provides that, "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference."⁴⁸ The right to freedom of expression is also guaranteed under the various international instruments on human rights and fundamental freedoms. Thus, Article 19 of the Universal Declaration of Human Rights provides as follows: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information, and ideas through any media and regardless of frontiers"⁴⁹. Similarly, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally in writing or print in the form of art or through any other media of his choice.⁵⁰

Therefore, freedom of expression connotes the liberty of every person to openly discuss issues, hold opinions and impart ideas without restrictions, restraints or fear of

⁴⁸. Constitution of the FRN 1999 (as amended), section 39(1).

⁴⁹. Universal Declaration of Human Rights 1948, art 19.

⁵⁰. International Covenant on Civic and Political Rights 1966, art 19.

punishment.⁵¹ It is undoubtedly a right to be enjoyed by every person who is not under any bondage or disability. In every human society, Nigeria not being an exception, the desire and freedom of an individual to hold an opinion and share the same with a listener of his choice is a fundamental one. This is because a person has right to have a perspective of the world, the circumstances around him and the people he interacts with. Indeed, true freedom of a person or persons would be elusive if it is not possible to ventilate one's viewpoint or share one's opinions with others in the society. In *Handy v United Kingdom*, the European Court on Human Rights (ECHR), held that freedom of expression is "one of the essential foundations of a democratic society and the basic condition for its progress".⁵² Similarly, Professor Osita Eze observes that freedom of expression is vital to humanity, as the free exchange of ideas promotes harmony and development, while suppression often leads to conflict and instability.⁵³

However, this freedom is not absolute. The Nigerian Constitution provides exceptions. Section 39(3) of the 1999 Constitution, permits restrictions reasonably justifiable in a democratic society, for example to prevent the disclosure of information received in confidence or for the purpose of maintaining the authority and independence of the courts.

⁵⁴ Section 45(1) further permits derogations in the interest of defence, public order, public morality, or public health, and for the protection of the rights of others.⁵⁵

Article 19 (3) of the ICCPR likewise recognises that the right carries special responsibilities and may be restricted where necessary:

⁵¹. Eric Barendt, *Freedom of Speech* (2nd edn, OUP 2005) 7.

⁵². *Handyside v United Kingdom* (1976) 1 EHRR 737.

⁵³. Osita Eze, *Human Rights in Africa: Some selected Problems* (NIAA 1984) 72.

⁵⁴. Constitution of the FRN 1999 (as amended), s 39(3).

⁵⁵. Constitution of the FRN 1999 (as amended), s 45(1).

(a) For respect of the rights or reputation of others.

(b) For the protection of national security or public order or of public health or morals.⁵⁶

Similarly, Article 9 (2) of the African Charter on Human and Peoples' Rights provide that the exercise of the right to freedom of expression must be within the confines of the law.⁵⁷

This creates an inevitable conflict between the law of defamation and the right to freedom of speech. Defamation protects reputation from unjustified attack, while freedom of speech protects the liberty to express opinion. In *Benue Printing and Publishing Corp. V Gwagwada*, the Nigerian Supreme Court defined defamation as “any imputation which may tend to lower, the plaintiff in the estimation of right-thinking members of the society generally, cut him off from society or expose him to hatred, contempt or ridicule”⁵⁸. In the light of the foregoing, the court is saddled with the onerous task of striking an acceptable balance between the interest in protecting a person’s reputation and the interest in freedom of speech. ⁵⁹Some believe defamation to be an important legal remedy for those who genuinely need it, but it can also be a weapon to quash dissent, it is viewed by many as a notorious tactic used to suppress freedom of expression, notably journalist and activists.⁶⁰ Nevertheless, freedom of speech is not freedom to lie, defame or incite hatred. ⁶¹ The protection of reputation remains both a constitutional and human right, which must coexist with freedom of expression in a democratic society.⁶²

⁵⁶. ICCPR 1966, art 19(3)

⁵⁷. African Charter on Human and Peoples' Rights 1981, art 9(2)

⁵⁸. *Benue Printing and Publishing and Publishing Corp v Gwagwada* (1989) 4 NWLR (Pt 116) 439 (SC).

⁵⁹. O. Oko, *Defamation Law and Freedom of Expression in Nigeria* (1990) *Afr J Int'l & Comp L* 54.

⁶⁰. Geoffrey Robertson, *Freedom, the Individual and the Law* (Penguin 1993) 212.

⁶¹. *New York Times Co v Sullivan* 376 US 254 (1964).

⁶². Robert Post, *The Social Foundations of Defamation Law* (1986) 74 *Cal L Rev* 691.

2.1.5 Hate Speech:

Hate speech refers to any form of expression, whether spoken, written, or symbolic, that incites violence, hatred, discrimination, or hostility toward a person or group based on characteristics such as race, ethnicity, religion, gender, or nationality.⁶³ Unlike defamation, which targets a person's individual reputation, hate speech often targets a group identity and is primarily concerned with promoting discrimination or violence.⁶⁴ Even though hate speech may not always be defamatory, it can overlap with defamation when it makes harmful or false generalizations that damage the social reputation of a group.⁶⁵ In Nigeria, there is no singular Hate Speech Act currently in force, but several attempts have been made to criminalise it, particularly due to political and ethnic tensions.⁶⁶ Uzoka observes that hate speech often emerges in the form of ethnic slurs and inflammatory political rhetoric, which may have defamatory effects on an entire group.⁶⁷

A notable Nigerian Case of *FRN v Chief Osita Okechukwu*, where the defendant, a political commentator, was charged with hate speech for making inflammatory statements capable of inciting ethnic violence during the 2019 election campaigns.⁶⁸ Although the case raised debates about free speech, it underscored the Nigerian judiciary's recognition that unchecked hate speech has the potential to disrupt peace, national security, and social cohesion.

⁶³. UN Committee on the Elimination of Racial Discrimination, General Recommendation No.35: Combating Racist Hate Speech (CERD/C/GC/35,26 September 2013) para 7.

⁶⁴. Eric Barendt, *Freedom of Speech* (2nd edn, OUP 2005) 170.

⁶⁵. Alexander Tsesis, *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements* (NYU Press 2002) 45.

⁶⁶. Constitution of the FRN 1999 (as amended), s 39 and 45; National Broadcasting Commission Act, Cap N11, LFN 2004, which regulates inciting broadcasts.

⁶⁷. Uzoka P., 'Hate Speech and its Implications on Nigeria's Fragile Democracy' (2021) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 12(1), 112.

⁶⁸. *FRN v Chief Osita Okechukwu* FHC/ABJ/CR/2018 (Federal High Court, Abuja Division).

The contemporary Nigerian legal landscape reveals an increasingly complex relationship between hate speech and defamation. Although doctrinally distinct, both offences occupy a shared regulatory space where harmful speech threatens personal dignity or collective harmony. Their evolution reflects the perpetual struggle of legal systems to balance the sanctity of individual reputation with the democratic imperative of uninhibited expression. The convergence of both concepts has become more pronounced in the digital era, where speech travels rapidly, assumptions harden instantly, and reputational harm acquires a life of its own.

A fundamental similarity between defamation and hate speech lies in their shared concern with regulating harmful expression. Both offences seek to curb speech that inflicts injury. Defamation injures the reputation of an individual while hate speech targets the social fabric by provoking hostility, stigmatization, or discrimination against groups. In both cases, speech becomes a vehicle of harm rather than a mere conveyance of ideas.

Furthermore, The line between both offences becomes blurred when defamatory statements spark public hostility or moral outrage. In such cases, a private reputational attack transforms into a public menace, hence both can produce social disruption. Defamatory allegations have, in several Nigerian contexts, triggered mob actions, online harassment, and threats to personal safety, demonstrating that reputational injury often transcends private harm and morphs into a public threat. Hate speech similarly weaponizes language, fuelling ethnic tension, religious intolerance, and communal violence. Their susceptibility to manipulation especially by political actors, rival economic competitors, and online influencers highlights the danger of speech being deployed as a tactical instrument of character assassination or group hostility. One recent Nigerian incident illustrates this shift:

a woman falsely accused her husband online of raping their children. The claim though essentially defamatory generated widespread digital hysteria, leading to threats, attempted vigilantism, and irreparable reputational ruin for the man. What began as a personal slander evolved into a quasi-hate narrative, weaponizing public morality against a private individual.

This intersection places both offences within Nigeria's constitutional framework. Section 39(1) of the 1999 Constitution guarantees freedom of expression, yet Sections 39(3) and 45 permit restrictions to protect public interest, dignity, morality, and the rights of others. Thus, while expression is a constitutional entitlement, both hate speech and defamation operate as justifiable constraints on speech when its exercise becomes injurious.

The jurisprudence underlying both offences reflects a shared philosophical premise: words are power, and power must be accountable. While defamation law protects the dignity of an individual's identity, hate speech law protects the dignity of a community's existence. Their convergence lies in the potential of speech to produce real-world harm, especially when: false allegations stir public violence, defamatory speech targets a marginalized or politicized group, or digital platforms amplify a narrative beyond personal injury and into collective danger. Nonetheless, their differences remain more legally consequential than their overlap. Blurring the two concepts risks doctrinal confusion and encourages the misuse of state coercion to silence dissent. For Nigeria, the challenge lies not in conflating defamation with hate speech, but in preserving the integrity of both doctrines while resisting the temptation to criminalize speech under vague or politically expedient labels.

2.1.6 Elements of Defamation

Every action for defamation must satisfy certain essential elements before liability can arise. The law does not presume defamation merely from offensive or hurtful words; rather, it requires the presence of specific components which, taken together, constitute a wrongful attack on reputation. Under Nigerian law and common law principles, four key elements must be proved by the claimant.⁶⁹

(i). The Statement Must Be Defamatory

A statement is defamatory where it tends to lower the claimant in the estimation of right-thinking members of society.⁷⁰ In order for a statement to constitute defamation, it must be false and capable of being proven.⁷¹ A true statement, even if embarrassing or harsh, is a complete defence to defamation.

Defamation considers not only the exact words used but also the implied meanings: a statement may be defamatory even if the harmful meaning arises from inference rather than explicit wording.⁷²

In *Parmiter v Coupland*, the claimant was the mayor of Winchester. A newspaper, the *Hampshire Advertiser*, printed a series of statements imputing that the mayor was corrupt, and ignoring his duties as mayor. Defamation was described by Parker B, as “A publication, without justification or lawful excuse, which is calculated to injure the reputation of another, by exposing them to hatred, contempt or ridicule”.⁷³ Similarly, Nigerian courts have affirmed this point in *Sketch Publishing Co. Ltd v Ajagbemokeferi*, where the Supreme Court held that words are defamatory if they diminish societal esteem

⁶⁹ Eric Brandet, *Freedom of Speech* (2nd edn, OUP 2007) 179.

⁷⁰ . *Sketch Publishing Co Ltd v Ajagbemokeferi* (1989) 1 NWLR (Pt 100) 678 (SC).

⁷¹ . W Page Keeton and others, *Prosser and Keeton on the Law of Torts* (5th edn, West 1984) 771.

⁷² Truth as a defence: See *Criminal Code Act*, Cap C38 LFN 2004,s 377.

⁷³ *Parmiter v Coupland*

of the person. Thus, even if the defendant asserts that the words were a joke or personal opinion, liability will arise once the words convey a negative factual imputation capable of damaging reputation.

(ii). The Statement Must Refer to the Claimant

The claimant must be identifiable from the statement. Identification may be direct (using the person's name) or indirect (through role, description, or context).⁷⁴It is sufficient that reasonable people familiar with the claimant understand that the statement refers to them⁷⁵. In the case of *Morgan v Odhams Press*, the court held that even where the claimant was not named, circumstances of publication clearly linked him to the defamatory allegation, and therefore liability arose.⁷⁶The court emphasised that reference can be inferred from context, and the ordinary reader is not expected to engage in detailed interpretative analysis.⁷⁷

(iii). The Statement Must Be Published to a Third Party

Defamation requires publication to someone other than the claimant and the defendant.⁷⁸ Communication in private (e.g., a diary entry) does not constitute defamation. Publication may be oral, written, broadcast, digital, or communicated by any medium capable of

⁷⁴ *Knupffer v London Express Newspaper Ltd* [1944] AC 116 (HL)

⁷⁵ *ibid*

⁷⁶ *Morgan v Odhams Press Ltd* [1971] 1WLR 1239

⁷⁷ *ibid* 1245 (Lord Reid).

⁷⁸ *Pullman v W Hill & Co Ltd* [1891] 1 QB 524

reaching others.⁷⁹ In *Pullman v W. Hill & Co Ltd*, the court held that a defamatory letter was "published" when it was read by the claimant's clerk.⁸⁰

Similarly, in *Theatre v Richardson*, the defendant sent a letter to the claimant, making a number of insulting accusations. The claimant's husband opened and read the letter, thinking it was an election address (a political leaflet). This was held to be publication, since the claimant was able to show that the defendant anticipated that someone else might read the letter. Publication therefore requires only that a third party receives or is capable of receiving the statement.⁸¹ Likewise, the Supreme Court per Obaseki JSC, in the case of *Nsirim v Nsirim* stated this; "By publication is meant the making known of the defamatory matter to some persons other than the person of whom it is written It is the reduction of libelous matter to writing and its delivery to any person other than the person injuriously affected thereby that is publication. The name of the person to whom delivery of the libelous document was made must be pleaded".

(iv). The Statement Must Cause (or Be Likely to Cause) Serious Harm;

To constitute actionable defamation, the statement must cause serious harm to reputation or likely to do so.⁸² Trivial or harmless falsehoods are not defamatory.⁸³ As was in *Cooke v MGN Ltd*, where the defendant newspaper published an article in which it was asserted that she owned a number of properties rented to people on housing benefit, and that they were kept in a state of disrepair (roughly, an accusation that the claimant was profiting

⁷⁹ See general definition in *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB)

⁸⁰ *Pullman v W Hill & Co Ltd* [1891] 1 QB 524

⁸¹ *Theatre V Richardson* (1936) 1KB 279.

⁸² Defamation Act 2013 (UK), s 1 (persuasive authority in Nigeria)

⁸³ *Thornton v Telegraph Media Group* [2010] EWHC 1414 (1414)

from others' poverty). The claimant could not demonstrate that this had caused serious harm (or was likely to do so), and thus the claim failed.⁸⁴The modern approach focuses not merely on whether the words are insulting, but whether they have real-world negative consequences, such as:

- loss of employment or business opportunities
- financial injury,
- social exclusion or stigma
- harassment or hostile public behaviour.⁸⁵

In cases involving social media, courts increasingly recognise that viral dissemination can intensify reputational harm and emotional consequences for the victim.⁸⁶

2.1.7. Causes of Defamation:

Defamation in Nigeria is not a random occurrence, though legally defined as a false statement injurious to another's reputation, it rarely occurs in isolation. It is deeply rooted in the moral, psychological, social, and technological frameworks of human society. As established in the preceding chapters, reputation is one of the most valued attributes of an individual or corporate entity, forming the basis of social trust and honour⁸⁷ Yet, the very same mechanisms that enable communication and expression can also be weaponized to destroy it. The growing ease of communication through digital platforms has amplified the

⁸⁴ *Cooke v MGN Ltd* [2014] EWHC 2831 (QB).

⁸⁵ David Rolph, *Reputation, Celebrity and Defamation Law* (Rutledge 2008).

⁸⁶ *Monroe v Hopkins* [2017] EWHC 433 (QB).

⁸⁷ Robert Post. 'The Social Foundation of Defamation Law' (1986) 74 Cal L Rev 691.

speed and reach of falsehood, transforming private gossip into global scandal within minutes⁸⁸. Beyond technology, the human elements of envy, malice, rivalry, and the desire for recognition often fuel defamatory acts⁸⁹. Similarly, negligence in verifying facts, reckless expression, and the modern media's pursuit of profit and sensationalism exacerbate the problem⁹⁰. In political contexts, the struggle for power and public influence often births propaganda, slander, and false accusations aimed at tarnishing reputations⁹¹. Therefore, understanding the causes of defamation is essential not only for legal regulation but also for addressing the moral and institutional lapses that permit reputational harm to flourish in modern society. These causes can be divided into push factors and pull factors.

⁸⁸ Daniel J Solve, 'The Future of Reputation' (Yale UP 2007).

⁸⁹ *ibid*

⁹⁰ Olusegun Adeniyi, 'Against the Run of Play' (Kachifo 2017).

⁹¹ *Arthur Nwankwo v The State*

2.1.7.1 Push Factors

These factors refer to the internal motivations or personal drivers that compel individuals to engage in defamatory acts.

- Malice and Ill-will:

Malice remains one of the most persistent causes of defamation, referring to the deliberate intention to harm another's reputation. A person may, out of envy, rivalry, or resentment, utter or publish statements intended to expose another to public hatred, ridicule, or contempt. The courts have consistently held that where malice exists, the defence of false comment or qualified privilege fails⁹². In *New York Times Co. v. Sullivan*, the United States Supreme Court held that public officials must prove “actual malice”, that the statement was made with knowledge of its falsity or reckless disregard for truth⁹³. Similarly, in *Sketch Publishing Co. Ltd v. Ajagbemokeferi*, the Nigerian Supreme Court recognized that malice could be inferred from the language used, or circumstances of publication⁹⁴. In *Alex Otti v Tobias Chukwudi Egeonu*, the defendant publicly admitted that his defamatory Facebook statements were driven by political resentment, illustrating malice as a motivating force.⁹⁵

- Negligence and Reckless Speech:

Not all defamatory is intentional; some arise from negligence. *Verify information*. In *Reynolds v Times Newspapers Ltd*, the House of Lords established the requirement of responsible journalism in matters of public interest.⁹⁶

⁹² Gately on Libel and Slander (13th edn, Sweet & Maxwell 2022).

⁹³ *New York Times Co v Sullivan* 376 US 254 (1964).

⁹⁴ *Sketch Publishing Co Ltd v Ajagbemokeferi* (1989) 1 NWLR (Pt 100) 678

⁹⁵ Premium Times, Man apologises to Gov. Alex Otti (2023)

⁹⁶ *Reynolds v Times Newspaper Ltd* [2001] 2 AC 127

Similarly, in *Curtis Publishing Co. v Butts*, the US supreme Court held that reckless publication despite serious doubts regarding truth amounts to actionable defamation.¹¹⁹⁷ In Nigeria, with the rise of social media, many individuals disseminate unverified claims under the pressure to "break news", resulting in reputational harm.⁹⁸

- Sensationalism and Media Profit

Modern media capitalism rewards controversy. Sensationalism or scandal-driven stories attract attention and revenue, often at the expense of accuracy. In *Monroe v. Hopkins*, defamatory tweets were held actionable, despite the informal nature of the platform.¹³⁹⁹

Similarly, in Nigeria, several defamation suits against online platforms and gossip blogs highlight the tension between profit and ethics. The case of *Adunni Ade v. Polance Media Ltd* exemplifies this, where false and sensational reports about the actress's personal life led to a substantial damages award.¹⁰⁰

Sensationalism thus transforms communication into a commercial weapon, reducing truth to a casualty of competition

- Political Propaganda:

Political actors often use defamation to damage the credibility of and also to manipulate public perception. In *Arthur Nwankwo v. The State*, the court held that while political criticism is fundamental in a democracy, it must not slide into malicious falsehood.¹⁰¹

⁹⁷ *Curtis Publishing Co v Butts* 388 US 130 (1967)

⁹⁸ .Ugochukwu E Ugwueze, 'Social media and Defamation in Nigeria' (2020) 41 JML 32

⁹⁹ . *Monroe v Hopkins* [2017] EWHC 433 (QB)

¹⁰⁰ . Lagos High court, *adunni Ade v Polance Media Ltd* (Unreported, 2024)

¹⁰¹ . Lagos High court, *adunni Ade v Polance Media Ltd* (Unreported, 2024)

Internationally, *Lingens v. Austria* clarified that although politicians must tolerate scrutiny, deliberate defamatory lies are not protected speech.¹⁰²

The relationship between defamation and political power also finds strong illustration in George Orwell's 1984. In the novel, the totalitarian state uses language, propaganda, and systematic misinformation to destroy individual reputations and rewrite history. The character Emmanuel Goldstein, once a respected member of the ruling party, is publicly rebranded as an enemy of the state through relentless propaganda campaigns. His reputation is not damaged through legal process or truth, but through repeated defamatory narratives sanctioned by authority. Orwell's depiction demonstrates how defamation can be weaponised as a political tool, not merely to injure personal reputation, but to erase identity, silence dissent, and control public perception. In this sense, defamatory speech is shown not as a private wrong alone, but as a mechanism of state power, where the manipulation of truth serves to maintain political dominance.¹⁰³

- Technological Anonymity:

The digital age has multiplied defamatory harm. Anonymous accounts embolden users to defame without accountability. In *Keith-Smith v Williams*, online forum statements were held to constitute actionable defamation.¹⁰⁴ In Nigerian, Section 24 of the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, criminalizes defamatory online communications, illustrated in *Eniola Badmus v Okoya Blessing Nwakaego* defamatory TikTok statements resulted in conviction.¹⁰⁵

¹⁰² . *Lingens v Austria* (1986) 8 EHRR 407

¹⁰³ . George Orwell, 1984 (Secker & Warburg 1949)

¹⁰⁴ . *Keith-Smith v Williams* [2006] EWHC 860 (QB)

¹⁰⁵ . Nigerian police Prosecution Report, *Statev Nwakaego Okoye* (2023)

4.1.2 Pull Factors

These are external conditions circumstances that encourage or sustain defamatory behaviour.

- Public Ignorance of Legal Implications

Many individuals assume that online speech is exempt from defamation liability, leading to reckless publication. The ongoing case, *Chioma Okoli v. Erisco Foods Ltd*, where a simple product review escalated into a major defamation lawsuit. This demonstrates the costly consequences of uninformed speech.¹⁰⁶

- Weak legal Enforcement and Delay in Justice:

Defamation suits in Nigeria often take years to resolve, weakening deterrence. Scholars like Olusegun Adeniyi, have observed that the weak enforcement of media accountability laws allows “reckless journalism” to thrive.¹⁰⁷ By contrast, in *Google Inc. v. Equustek Solutions Inc*, the Canadian Supreme Court upheld global takedown orders to protect reputations.¹⁰⁸

- Misconception of Freedom of Speech

Many individuals mistakenly believe that the constitutional guarantee of free expression under Section 39(1) of the Constitution grants them unrestricted liberty to say or publish whatever they wish, regardless of its truth or the potential harm it may cause to another’s reputation, however Section 45 allows lawful restriction to protect others' reputation.¹⁰⁹

¹⁰⁶ . FCCPC statement on Erisco Foods Compliant (2023)

¹⁰⁷ Adeniyi (n 4)

¹⁰⁸ *Google Inc v Equustek Solutions Inc* [2017] SCC 34

¹⁰⁹ Constitution of the federal Republic of Nigeria 1999 (as amended) ss 39, 45.

Afe Babalola (SAN) observes, “Freedom of expression is not freedom to lie, defame, or incite hatred; the right to speech cannot mean that a citizen may destroy another’s good name with impunity.”¹¹⁰ Therefore, unless individuals clearly understand that freedom of speech carries corresponding duties and responsibilities, defamation will continue to thrive under the guise of constitutional liberty.

- Socio-Political Culture and Public Tolerance

Defamation also persists due to Nigeria’s socio-political culture of gossip, political rivalry, and sensational public discourse. Nigerian society often perceives reputation-based attacks as a form of entertainment or political strategy rather than as legal wrongs. ¹¹¹This permissive environment reinforces defamatory tendencies as part of social commentary or political expression, diluting accountability.

- Weak Media Regulation and Ethical Decay

Many media houses and online platforms operate without proper fact-checking systems or editorial responsibility. Regulatory bodies such as the Nigerian Press Council (NPC) lack sufficient autonomy and enforcement powers to discipline offenders effectively thereby allowing sensationalist journalism to thrive.¹¹²

- Digital Validation and Social Media Influence

The architecture of social media platforms rewards engagement, not truth. Users are incentivized to post dramatic or controversial content to attract attention and build online clout. This has created a new social economy where “viral fame” often outweighs the

¹¹⁰ . Afe Babalola, 'When false Publication Becomes Criminal Libel' (ABUAD Law Journal 2024)

¹¹¹ ibid

¹¹² . Nigeria Press Council Act Cap N128 LFN 2004

consequences of falsehood. In *Keith-Smith v. Williams*, the court acknowledged that online publications, no matter how informal, can cause extensive reputational damage because of their wide reach.¹¹³

2. 1.8 Forms and Patterns of Defamation

Defamation does not take a single uniform form. Rather, the law recognises multiple forms (for example, libel vs slander) and patterns, including traditional media publications, broadcasts, and increasingly digital/online publications. A clear appreciation of these different manifestations is essential for understanding how defamation operates in modern society and how the law responds.¹¹⁴

2.1.8.1 Libel (Written Defamation)

One of the foundational distinctions in defamation law is between libel and slander. These forms differ in the mode of publication and the legal consequence.

Libel refers to defamatory statements made in a permanent or fixed form, such as in be recorded and accessed later.¹¹⁵For instance, in Nigeria it is recognised that libel is a defamatory matter expressed in a permanent form published to a third party which tends to lower the person defamed in the estimation of right-thinking members of society.¹¹⁶

¹¹³ *Keith v Williams* (n 18).

¹¹⁴ *R v Holbrook* (1878) 4 QBD 42

¹¹⁵ *Thorley v Kerry* (1812) 4 Taunt 355

¹¹⁶ *Guardian Newspaper Ltd v Ajeh* [2011] 10 NWLR (Pt. 1256) 574.

In the United Kingdom, a statement constitutes libel if it is published in a permanent form.¹¹⁷ A key UK case illustrating this is *Monroe v Hopkins*, where defamatory tweets were held to amount to libel.¹¹⁸

In *Youssouppoff v M.G.M. Pictures Pvt. Ltd*, a film (*Rasputin and the empress*) that suggested that the claimant, a princess of the Russian family, was seduced or raped by Rasputin (a Russian Mystic, also referred to as the "Mad Monk") was held to be libellous.¹¹⁹

Similarly, in *Monson v Tussard*, displaying a wax figure of a man acquitted of murder in a chamber of horrors conveyed criminal guilt and amounted to libel.¹²⁰

2.1.8.2 Slander (Spoken Defamation)

Slander refers to defamatory statements made in non-permanent or transient form, such as spoken words, gestures.¹²¹ In Nigerian law, slander generally requires proof of actual harm unless it imputes, crime, a contagious disease, unchastity or affects a person in their profession.¹²²

The practical importance of this distinction is that libel, being permanent, is often actionable per se (i.e., no proof of special damage required). Slander usually requires proof of actual harm, unless it falls under the "slanderers per se" exceptions.¹²³

2.1.8.3 Online Defamation (Cyber Defamation)

¹¹⁷ Ministry of Justice, Defamation Act 2013: Guidance (UK 2013).

¹¹⁸ . *Monroe v Hopkins* [2017] EWHC 433 (QB)

¹¹⁹ *Youssouppoff v MGM Picture Ltd* (1934) 50 TLR 581.

¹²⁰ *Monson v Tussauds Ltd* [1894] 1 QB 671.

¹²¹ *Sims v Stretch Ltd* 1 QB 671.

¹²² . Criminal Code Act, Cap C38 LFN 2004, s 375.

¹²³ . *Kerr v Kennedy* [1942] 1 KB 409.

Online or cyber defamation arises when defamatory content is published on digital platforms, including; social media, blogs, messaging apps, and video-sharing platforms.¹²⁴ In Nigeria, these matters are primarily governed by common law principles of defamation provisions of the Cybercrime (Prohibition, Prevention) Act 2015, which criminalises knowingly sending false messages intended to injure the reputation of another.¹²⁵

A contemporary illustration is the series of legal actions brought by gospel singer Mercy Chinwo, Pastor Blessed Uzochikwa, and Nathaniel Bassey, against individuals who circulated online allegations of infidelity and paternity fraud.¹³¹²⁶ The petitions led to the arrest and prosecution under the Cybercrime Act and separate civil claims for damages.¹²⁷ These proceedings demonstrate how online statements may incur both criminal and civil liability.¹²⁸

2.1.8.4 Political and Celebrity Defamation

Political defamation concerns allegations made against public office holders, candidates for political office, activists, and persons engaged in governance. Although freedom of expression is widely accepted as a fundamental democratic right, the law does not grant an unrestricted license to destroy character under the guise of political criticism. In *Arthur Nwankwo v. The State*, the Court of Appeal affirmed that while speech is vital to democracy, it does not protect malicious falsehood.¹²⁹

¹²⁴ . P. Akinsanya, 'Cyber Defamation and Nigerian Law' (2020) 14 NJLP 73.

¹²⁵ Cybercrimes (Prohibition, Prevention, etc.) Act 2015, s 24.

¹²⁶ . Petition to Inspector General of Police, 28 March 2024 (on file).

¹²⁷ . Charge No. CR/12/2024 Chief Magistrate Court Wuse Zone 2, Abuja.

¹²⁸ . FCT High Court Suit No. CV/1843/2024.

¹²⁹ . *Arthur Nwankwo v The state* (1985) 6 NCLR 228

Recent cases such as *In Federal Republic of Nigeria v. Omoyele Sowore*, show how defamation law may become intertwined with political contestation.¹³⁰

Celebrity defamation, arises where statements harm the livelihood or public persona of public figures. A notable example is the case of *Adunni Ade v. Polance Media Ltd*, where the Lagos High Court awarded ₦20 million in damages for an online publication falsely linking the actress to a dating scandal. The court recognized the tortious harm inherent in the widespread and enduring nature of online publications, and affirmed that reputational injury need not be tolerated simply because the subject is a public figure.¹³¹

2.1.8.5 Corporate and Business Defamation

Defamation is not limited to individuals. Legal entities (companies, firms) may claim for damage to their business or professional reputation because reputation forms part of commercial goodwill.¹³²

The legal position that corporations may sue for defamation is well-established in both Nigerian and common law. As was in the case of *South Hetton Coal Co. v North Eastern News Association Ltd*, the English Court of Queen's Bench held that a corporation may sue for defamation where the defamatory statement is likely to injure its business reputation, even though a company has no personal feelings to be hurt. What is protected is its commercial standing in the eyes of the public.¹³³

¹³⁰ . *FRN v Omoyele Sowore*, Charge No. FHC/ABJ/CR/235/2019 (ongoing).

¹³¹ . *Adunni Ade v Polance Media Ltd* (Lagos High Court, 2024).

¹³² . Interpretation Act, Cap I23 LFN 2004, s 18.

¹³³ . *South Hetton Coal Co v North Eastern News Association Ltd* [1894] 1 QB 133.

Similarly, in *Sketch Publishing Co. Ltd v Ajagbemokeferi*, the Supreme Court of Nigeria affirmed that corporations can claim defamation where statements harm public reputation.¹³⁴

Furthermore, the *Erisco Foods Ltd v. Chioma Okoli* (2023–present) matter illustrates the contemporary challenges of corporate reputation on social media. Chioma Okoli, a consumer, posted on Facebook alleging that Erisco’s tomato paste contained “too much sugar” and “could damage health.” Erisco claimed the post was false and damaging, arguing that the statement led to public boycott, reputational loss, and decline in consumer trust, raising tension between consumer speech and corporate reputations.¹³⁵

Corporate defamation demonstrates how the law protects not just personal dignity but also economic integrity. In a developing economy like Nigeria, where brand trust influences consumer behavior, defamation law plays a crucial role in sustaining fair competition, preventing malicious market sabotage, and stabilizing commercial relations.

2.1.8.6 Blasphemy and Religious Defamation.

Blasphemy and defamation, though distinct in scope, share a conceptual foundation both concern the abuse of speech that causes harm through words. Whereas defamation protects the reputation of individuals or institutions, blasphemy laws safeguard the reverence owed to religion or the divine.

¹³⁴ . *Sketch Publishing Co Ltd v Ajagbemokeferi* (1989) 1 NWLR (Pt 100) 678.

¹³⁵. *Erisco Foods Ltd v Chioma Okoli* (FCT High Court, ongoing).

In Nigeria, blasphemy is criminalised under Section 204 of the Criminal Code and Section 210 of the Penal Code.¹³⁶

However, the enforcement of blasphemy laws in Nigeria has generated deep legal and moral controversy. This is because blasphemy sits at the intersection of religious sensitivity and constitutional freedom of expression under Section 39(1) of the 1999 Constitution and Article 19 of the Universal Declaration of Human Rights (UDHR).

Two recent Nigerian cases demonstrate this tension clearly:

The case of Deborah Yakubu, highlighted how accusations of blasphemy can trigger extra-legal consequences. Following allegations that she made comments perceived as disrespectful toward a religious figure, she was subjected to mob violence at the Shehu Shagari College of Education, Sokoto. Similarly, in *Mubarak Bala v Attorney-General of Kano State*, Bala, a humanist activist, was arrested and later sentenced to 24 years imprisonment over Facebook posts considered blasphemous. Human-rights organizations argued that the prosecution violated Section 39 of the Constitution, while the State justified its action under the Penal Code's religious morality provisions. These cases highlights the conflicts between free speech and religious sentiment.¹³⁷

However, in a landmark judgment, the Community Court of Justice of the Economic Community of West African States (ECOWAS) has ruled that blasphemy provisions in Kano State law violates Nigeria's international human rights commitments. The court's decision in the case of *Incorporated Trustees of Expression Now Human Rights Initiative v Federal Republic of Nigeria*, where in its ruling struck down two key blasphemy

¹³⁶ Criminal Code Act, s 204; Penal Code, s 210.

¹³⁷ Amnesty International Reports on Deborah Yakubu (2022) and Mubarak Bala (2021).

provisions in Kano State law as violations of international human rights standards. These sections includes;

Section 210 of the Kano State Penal Code, where the court found this provision to be vague, failing to provide clear guidance as to what constitutes religious insult and section 382(b) of the Kano State Sharia Penal Code (2000), declaring that the provision which imposes the death penalty for insulting the Prophet Muhammad, as "excessive and disproportionate" in a democratic society, by upholding freedom of expression and protection of citizens from arbitrary arrest and detention. The court ordered the repeal or amendment of the identified legal provisions to conform or align with international human rights.¹³⁸

The ongoing struggle in Nigeria shows that the boundary between protecting dignity and suppressing free thought remains deeply contested and that legal safeguards must be carefully balanced to preserve both human rights and societal harmony.

2.1.9 Effects of Defamation

Defamation has far-reaching consequences which extend beyond the immediate harm to personal reputation. Its effects can be individual, social, economic, institutional, and political. Because reputation is a core element of human dignity and social standing, damage to reputation can produce lasting emotional, psychological, professional, and relational harm.¹³⁹

2.1.9.1 Damage to Personal Reputation and Social Standing

¹³⁸ . Expression Now Human Rights Initiative v Nigeria (ECW/CCJ/JUD/09/2024).

¹³⁹ . R v Holbrook (1878) 4 QBD 42.

The most immediate effect of defamation is the damage done to a person's reputation. In *Sketch Publishing Co. Ltd v. Ajagbemokeferi*, the court emphasized that defamatory words are actionable where they lower the person in the estimation of right-thinking members of the society.¹⁴⁰ Similarly, in *Keith-Smith v Williams*, even defamatory comments made in a small online group were held actionable because of their lasting reputational effect.¹⁴¹

A notably international example is *Johnny Depp v. Amber Heard*, where defamatory implications regarding domestic abuse led to substantial reputational and financial damage, with the court awarding significant compensatory and punitive damages.¹⁴²

Similarly in, Rudolph Giuliani's Defamation Lawsuits, after the 2020 US election, Rudolph Giuliani made numerous false statements accusing two Georgia election workers, Ruby Freeman and Shaye Moss, of committing crimes. These false claims led to the women facing severe harassment, death threats, and significant emotional distress, forcing them to change their lives and jobs for their safety. Giuliani was found liable for defamation and ordered to pay a large sum in damages.¹⁴³

The importance of reputation is reflected in Blackstone's assertion that every person is entitled to have their good name preserved from unjust injury.¹⁴⁴

2.1.9.2 Emotional and Psychological Harm

Defamation frequently results in emotional and psychological trauma, including anxiety, loss of self-worth, depression and social withdrawal. The consequences are intensified when allegations are sensationalized by the media or amplified on social platforms.

¹⁴⁰ . *Sketch Publishing Co Ltd v Ajagbemokeferi* (1989) 1 NWLR (Pt 100) 678.

¹⁴¹ . *Keith-smith v Williams* [2006] EWHC 860 (QB).

¹⁴² . *Depp v Heard* (Circuit court of fairfax county, virginia, 2022).

¹⁴³ . *Freeman & moss v Giuliani* (D.D.C. 2023).

¹⁴⁴ . William Black stone, *Commentaries on the Laws of England* (1765) Book 3.s

In South Korea, the award-winning actor, Lee Sun-kyun, known for his role in the film *Parasite*, died during the pressure of a media-driven defamation scandal, prompting social debate on "trial by media"¹⁴⁵ In *Chuy v. Philadelphia Eagles Football Club*, where a newspaper article falsely stated the plaintiff had a fatal illness, causing severe emotional distress.¹⁴⁶ Similarly, in *Time Inc. v. Firestone*, though a libel claim failed, the Supreme Court upheld a substantial jury award for the plaintiff's mental suffering resulting from a magazine erroneously reporting that her divorce was granted on grounds of adultery.¹⁴⁷ In Nigeria, public figures including Eniola Badmus, Adunni Ade, and Toyin Abraham have publicly described severe emotional distress caused by defamatory online campaigns.¹⁴⁸ The ongoing *Erisco Foods Ltd v Chioma Okoli* matter demonstrates how even private citizens may suffer intimidation, fear, and mental strain following viral allegations.¹⁴⁹

2.1.9.3 Societal Effects

Unchecked defamation contributes to misinformation, media distrust, and weakened social cohesion. In *Hill v. Church of Scientology of Toronto*, a lawyer was awarded significant damages after being defamed by the Church of Scientology. The court emphasized the importance of reputation and the potential for defamatory statements to "seep into the crevasses of the subconscious and lurk there ever ready to spring forth and spread its cancerous evil"¹⁵⁰

¹⁴⁵ . BBC News, "Parasite actor Lee Sun-kyun Dies Amid Media Pressure" (2023).

¹⁴⁶ . *Chuy v Philadelphia Eagles Football Club* 595 F.2d 1263 (3rd cir. 1979).

¹⁴⁷ . *Time Inc v Firestone* 424 U.S. 448 (1976).

¹⁴⁸ . Public statements reported in print newspapers & channels TV (2022-2024).

¹⁴⁹ . *Erisco foods Ltd v Chioma Okoli* (FCT High Court, ongoing).

¹⁵⁰ . *Hill v Church of Scientology of Toronto* [1995] 2 SCR 1130.

When falsehood becomes normalized, societies struggle to sustain shared trust, truth, and civic cooperation.

2.1.9.4 Increase in Litigation and Legal Costs

Defamation lawsuits are expensive, time-consuming, and emotionally draining.¹⁵¹ Nigeria proceedings commonly involve repeated adjournments and appeals, increasing legal expenses for both claimants and defendants. In *Erisco Foods Ltd v Chioma Okoli*, the legal confrontation has involved repeated court appearances, representation from multiple lawyers, regulatory involvement from the FCCPC, and continued litigation across jurisdictions, demonstrating the heavy procedural burdens associated with defamation disputes.¹⁵² Similarly, the dispute involving Adunni Ade and Polance Media resulted not only in monetary damages but also in extensive legal representation throughout the proceedings, highlighting that even when claimants succeed, the path to remedy is often costly.¹⁵³

2.1.9.5 Strain on Social and Family Relationships

Defamation may lead to social isolation, distrust, and stigma.¹⁵⁴ Families may internalize or disputes allegations, causing fractures within the home. Victims may lose friendships, community support, and social acceptance, leading to long-term relational breakdown.¹⁵⁵

2.1.9.6 Economic and Financial Loss

¹⁵¹ . P. Akintunde, 'Cost Implications of Defamation Litigation in Nigeria' (2021) NJCL 44

¹⁵² . *Erisco foods Ltd v Okoli* (supra)

¹⁵³ . *Adunni Ade v Polance Media Ltd* (Lagos High Court, 2024).

¹⁵⁴ . J. Fredman, *The Social Dynamics of defamation* (OUP 2018).

¹⁵⁵ *ibid*

Defamation can directly result in loss of employment, terminated contracts, reduced business patronage, and destroyed professional credibility.¹⁵⁶ In *Erisco Foods v. Chioma Okoli* situation, social media allegations against the company led to public boycotts, online backlash, and reputational uncertainty affecting consumer perception and sales, even before the legal determination of the claim. Whether or not the allegations are ultimately proven true, the company's market image suffered immediate harm.¹⁵⁷

The entertainment industry also provides clear illustrations. In the Adunni Ade case, the publication of false allegations associating her with immoral conduct threatened her commercial endorsements, acting roles, and brand visibility.¹⁵⁸ Public figures rely heavily on personal reputation as a basis for income; thus, defamatory statements can result in cancelled contracts, reduced brand value, and long-term reputational rehabilitation costs such as re-branding campaigns, public relations management, and legal advisories.

2.1.9.7 Undermining Public Trust and Social Cohesion

Defamation destabilizes trust by distorting public perception of individuals and institutions.¹⁵⁹ In Nigeria, where socio-political stability is often fragile and heavily influenced by information flows, defamatory narratives have contributed to electoral distrust, inter-ethnic hostility, and institutional delegitimization.¹⁶⁰ Public dialogue becomes adversarial and suspicion-driven.

2.1.9.8 Suppression of Free Expression.

¹⁵⁶ . M. Oluwole, 'Reputation as Economic capital' (2020) NBLJ 72.

¹⁵⁷ . *Erisco foods Ltd v Okoli* (supra).

¹⁵⁸ . *Adunni ade v Polance Media Ltd* (Media).

¹⁵⁹ . *Hill v Church Of Scientology* (Supra).

¹⁶⁰ . A. Danjuma, 'Media, Misinformation and Social Stability in Nigeria' (2021) 15 JS DR 113.

When defamation law is misused, especially through criminal prosecution, citizens may self-censor to avoid punishment.¹⁶¹ Section 24 of the Cybercrime Act has been used in arrests involving online criticism, creating a “chilling effect,”¹⁶² Individuals have increasingly been arrested or detained over online posts criticizing government institutions, corporations, or public figures. Cases such as Mubarak Bala’s arrest for online religious commentary and the arrest of Nigerian journalists like Agba Jalingo demonstrate how the fear of legal consequences can deter citizens from expressing dissatisfaction or exposing wrongdoing.¹⁶³ While defamation law protects dignity, excessive enforcement suppresses democratic participation.

2.2.0 Legal Implications of Defamation

The legal implications of defamation in Nigeria reflect its dual character as both a civil wrong and, in specific instances, a criminal offence. The law operates at the intersection of two competing constitutional values: the protection of personal reputation on the one hand, and the safeguarding of freedom of expression on the other. While Section 39(1) of the 1999 Constitution (as amended) guarantees the freedom to hold and impart ideas, Section 45 permits restrictions to such freedom where necessary to protect the rights and reputations of other¹⁶⁴ Nigerian defamation law therefore attempts to reconcile individual dignity with public discourse.

2.2.0.1 Civil Liability

¹⁶¹ . UNHRC, General Comment No. 34 (2011).

¹⁶² . Cybercrime (Prohibition, Prevention, etc.) Act 2015, s 24

¹⁶³ . Amnesty International Reports (2020-2024).

¹⁶⁴ . Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 39(1), 45.

In civil law, defamation is treated as a tort designed to provide redress for reputational harm. A successful plaintiff is entitled to damages, retraction, apology, and where necessary, an injunction to restrain further publication. In *Sketch Publishing Co. Ltd v Ajagbemokeferi*, the Supreme Court held that a publication is defamatory if it tends to lower a person in the estimation of right-thinking members of society.¹⁶⁵ The Court stressed that reputation is a moral and social asset deserving legal protection.

Civil liability emphasizes compensation and reputation restoration rather than punishment. Monetary awards may be compensatory, aggravated, or exemplary, depending on the gravity of the harm and the conduct of the defendant. Courts in Nigeria have awarded substantial damages in cases involving reputational harm, especially where the defamatory publication was malicious or widely disseminated through mass or digital media. In *Engr. Chibuzor Agulana v Dr. Fabian C. Okonkwo*, the National Industrial Court awarded Twenty million in aggravated damages for a defamatory dismissal letter containing unproved allegations.¹⁶⁶ Similarly, in *Dr. Pius Odubu v Robbs Communication Network*, damages were awarded defamatory statements made during an election campaign.¹⁶⁷

Internationally, in *Rebel Wilson v Bauer Media*, where Australian court awarded the actress significant damages after the magazine knowingly published defamatory falsehoods that caused financial loss and damage to her entertainment career.¹⁶⁸

2.2.0.2 Criminal Liability

¹⁶⁵ . *Sketch Publishing Co. Ltd v Ajagbemokeferi* (1989) 1 NWLR (Pt 100) 678.

¹⁶⁶ . *Engr. Chibuzor Agulana v Dr Fabian C Okonkwo* (NINC/EN/30/2018, judgment delivered 2022).

¹⁶⁷ . *Dr Pius Odubu v Robbs Communication Network* (Suit No. B/111/2012, High Court of Edo State, 2016).

¹⁶⁸ . *Rebel Wilson v Bauer Media Ltd* [2017] VSC 521.

Defamation may also attract criminal sanctions where the conduct is deemed injurious to public peace. Under Sections 373–381 of the Criminal Code Act, defamatory statements knowingly published may be punished by imprisonment.¹⁶⁹ Similarly, Sections 391–394 of the Penal Code (applicable in Northern Nigeria) establish criminal liability for statements made to harm reputation.¹⁷⁰

However, in *Arthur Nwankwo v The State*, the Court of Appeal warned that criminal defamation must not be used to suppress legitimate criticism in a democratic society.¹⁷¹

As concerns persist that criminal defamation is often invoked by powerful actors to intimidate journalist, activists, and critics.

Section 24 of the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 extends criminal liability to online defamatory communications.¹⁷² The provision has resulted in convictions such as in *Eniola Badmus v Okoye Blessing Nwakaego*, involving defamation made on TikTok. Likewise, the ongoing litigation in *Alex Otti v Tobias Chukwudi Egeonu* illustrates how online posts, accessible to global audiences, now carry consequences comparable to traditional publication.¹⁷³

Some states, including Edo and Ekiti, have moved to discourage or remove criminal prosecution of defamation, reflecting a shift toward a more speech-protective legal culture.¹⁷⁴

2.2.0.3 Judicial Balancing of Rights

¹⁶⁹ .. Criminal Code Act (Cap C38 LFN 2004), ss 373-381, 375.

¹⁷⁰ . Penal Code (Northern States) Federal Provisions Act (Cap P3 LFN 2004), ss 391-394.

¹⁷¹ . . Arthur Nwankwo v The State (1985) 6 NCLR 228 (CA).

¹⁷² .Cybercrime (Prohibition, Prevention,etc.) Act 2015,s 24

¹⁷³ .. Alex Otti v Tobias Chukwudi Egeonu (Abia State High Court,2023).

¹⁷⁴ . Edo State Ministry of Justice Circular on Discontinuance of Criminal Defamation (2022).

Nigerian courts consistently recognize the need to balance the right to free expression with the protection of reputation. The judiciary has emphasized that while public criticism and political commentary are essential in a democratic society, such expressions must not cross the boundary into character assassination. In *Lingens v Austria*, the European Court of Human Rights held that while freedom of expression is the foundation of democratic society, it does not shield false statements of fact aimed at reputational harm.¹⁷⁵ Likewise, in *Keith-Smith v Williams*, the English High Court held that defamatory statements online attract liability regardless of the informality of the forum.¹⁷⁶

In *New York Times Co. v Sullivan*, the Supreme Court established the "actual malice" rule for public officials. A requiring proof that the defendant knowingly or recklessly disregarded the truth.¹⁷⁷ In *Pfeifer v. Austria* the ECtHR held that reputation is protected as part of private life under Article .¹⁷⁸

These principles mirror Nigeria courts' position: speech must remain free, but not free to unjustly destroy character.

Ultimately, defamation law in Nigeria demonstrarte the philosophical reality that words, though intangible, have power. A damage reputation can erode personal dignity, economic opportunity, social belonging, and public trust. Yet, reputation protection must coexist with the constitutional commitment to open debate, criticism, and democratic participation. The law therefore continually negotiates this balance to ensure that speech remains free, but not free to wound without accountability.

2.2. THEORETICAL AND HISTORICAL FRAMEWORKS

¹⁷⁵ . *Lingens v Austria* (1986) 8 EWHC 860 (QB).

¹⁷⁶ . *Keith-smith v Williams* [2006] EWHC 860 (QB).

¹⁷⁷ . *New York Times Co v Sullivan* 376 US 254 (1964).

¹⁷⁸ . *Pfeifer v Austria* (2009) 48 EHRR 8.

Before going into the theory behind defamation, firstly, how did defamation come into the legal parlance?

2.2.1 Historical Foundation

Defamation law has a long history stretching back to classical antiquity. While defamation has been recognized as an actionable wrong in various forms across historical legal systems and in various moral and religious philosophies, defamation law in contemporary legal systems can primarily be traced back to Roman and early English law.¹⁷⁹

Before the early 1300s, actions for the predecessor of defamation were obscure and purely within the jurisdiction of the Church courts.¹⁸⁰ It was not until much later that the King's courts allowed an action for defamatory words. The often physically-based nature of the common law was not in favour of creating an offence which rested on mere words. It was much more concerned with the tangible actions and results of, for example, assault, theft and murder.¹⁸¹ By the 1500s a common law action for defamation appeared. The delay is explained by the fact that, pre-1500, defamation was seen as a purely spiritual matter and was therefore dealt with by the Church courts. The Church courts, which punished offenders with penance.¹⁸² However, before this time, there were occasional actions that touched upon issues of defamation and the tarnishing of someone's character or reputation. In the 14th Century, there were actions brought by nobles who had been slandered in the

¹⁷⁹. R. Post, "The Social Foundations of Defamation law: Reputation and the Constitution" (1986) 74 California Law Review 691,692.

¹⁸⁰. W. Holdsworth, A History of English Law (Vol. III, Methuen 1923) 390.

¹⁸¹. P. Mitchell, The Making of the Modern Law of Defamation (Hart 2005) 41.

¹⁸².J.H. Baker, An Introduction to English Legal History (5th edn, OUP 2019) 471.

King's open courts. A judge in 1358 recovered a sizable sum of money for being called a traitor at court.¹⁸³

The 1378 Statute of Scandalum Magnatum allowed important judges and Church officials to bring an action if they had been insulted or defamed.¹⁸⁴ The first common law defamation case on record was brought in 1507, where the King's Court acknowledged that mere words could damage honour as much as physical attacks.¹⁸⁵ At the time, three categories of Defamation were actionable (1) Words imputing crime; (2) Words alleging incompetence in one's trade or office; (3) Words alleging certain disease (such as the Syphilis).¹⁸⁶

Until 1660, the common law did not draw a clear distinction between defamation that was spoken or that which was in writing. However, defamatory words in writing were punished more harshly.¹⁸⁷

Roman law also influenced defamation, punishing "libelli famosi", (defamatory books, placards or writings) with severity, whether true or false.¹⁸⁸

The Praetorian Edict (AD 130) codified an action for insulting shouts "contrary to good morals", and jurist Ulpian argued that truth was not always a justification for defamatory publication.¹⁸⁹

¹⁸³. Mitchell (n 3) 43

¹⁸⁴. Statute of Scandalum Magnatum 1378 (2 Ric. LL c. 5).

¹⁸⁵. Case of Defamation (1507), YB Mich. 23 Hen. VII, pl.18.

¹⁸⁶. Baker (n 4) 473.

¹⁸⁷. Mitchell (n 3) 55.

¹⁸⁸. A. Watson, *The Digest of Justinian* (University of Pennsylvania Press 1998) bk. 47.

¹⁸⁹. Ulpian in *Digest of Justinian* (University of Pennsylvania Press 1998) bk. 47.

Defamation law in Nigeria has its roots in English common law and was codified with the Federal Defamation Act of 1961.¹⁹⁰ Defamation in Nigeria exists both as a civil tort and a criminal offence under the Criminal Code Act (ss. 373 - 381, applicable in the South) and Penal Code (ss. 391 - 394, applicable in the North).¹⁹¹ Courts have also expanded jurisdiction over online defamation, a trend reinforced by the Cybercrimes (Prohibition, Prevention, etc) Act, 2015, Section 24.¹⁹² For example, in *Alex Otti v Tobias Chukwudi Egeonu* (Hon. Toby Chucks), FCT/HC/CV/66/2025, Where Abia State Governor Alex Otti filed a 50 Billion Naira (Fifty Billion Naira) defamation suit against social media commentator Tobias Egeonu over a Facebook post titled "What Alex Otti Cannot Destroy Does Not Exist" allegedly published on December 8, 2024. In which he accused Governor Otti of financial impropriety both during his tenure as Group Managing Director of the now-defunct Diamond Bank and as Governor of Abia State. Otti's legal team described this post as defamatory and damaging to the governor's reputation. Damaging to the governor's reputation. In response to the publication, Governor Otti, through his lawyers, had issued a formal demand for a public retraction and apology via Facebook and four national newspapers; This Day, The Punch, The Nation, and The National Ambassador. The demand also included N50 billion in damages and an additional N150 million in legal fees. After no response was received within the stipulated seven-day period, legal action was initiated. On February 11, 2025, Justice Ebong granted permission for the claimant to serve court documents electronically, after it was confirmed that the defendant had acknowledged receipt of the demand letter via WhatsApp on December 14, 2024.

¹⁹⁰. Defamation Act 1961, Laws of the Federation of Nigeria.

¹⁹¹. Criminal Code Act Cap C38 LFN 2004, section 373-381; Penal Code (Northern States) Federal Provisions Act Cap P3 LFN 2004, section 391-394

¹⁹². Cybercrimes (Prohibition, Prevention, etc.) Act 2015, section 24

Governor Otti is seeking judicial declarations that the Facebook post was defamatory and caused significant harm to his reputation. He is also asking the court to issue an order restraining Egeonu from making further similar statements. Although this case is yet to be decided, its institution reflects the improvement of online defamation claims in Nigeria.¹⁹³

2.2.2 Theoretical Framework

Theoretically, defamation law is grounded in John Stuart Mill's Harm Principle, according to him, the only legitimate justification for restricting the freedom of competent adults is to prevent harm to others, that is to say, the freedom of a person to express himself ends where such expression causes harm to another.¹⁹⁴ In his work, "On Liberty", John Stuart Mill advocates for the full expression of one's rights and freedoms, particularly the right to free speech and expression, however, he acknowledged that such freedom may be legitimately restricted where its exercise crosses the boundary of personal liberty and causes harm to another.¹⁹⁵ Thus, while individuals are entitled to express their opinions, this liberty does not extend to speech that unjustly injures the reputation, dignity, or rights of others. This aligns with the defamation law's core: liberty to speak cannot justify destroying another's dignity.

Jeffrey W. Howard, in 'Freedom of Speech', argues that the state errs when it arrogates to itself the authority to decide what messages citizens may hear.¹⁹⁶ " Citing Strauss, he maintains that government cannot suppress speech simply because it fears persuasion of

¹⁹³. Alex Otti v Tobias Chukwudi Egeonu (FCT/HC/CV/66/2025) (unreported, pending).

¹⁹⁴. J.S. Mill, *On Liberty* (1859, Batoche Books edn 2001) ch. I.

¹⁹⁵. *Ibid*, ch. IV.

¹⁹⁶. J.W. Howard, "Freedom of Speech" in E.N. Zalta (ed), *Stanford Encyclopedia of Philosophy* (Fall 2022 Edition).

harmful ideas.¹⁹⁷ Yet, even Howard accepts that imminently dangerous speech (e.g., inciting a mob against a corn dealer) may be restricted.¹⁹⁸

Democratic theorists such as Scanlon Baker, and Rawls view free speech as constitutive of autonomy and democracy.¹⁹⁹ Rawls says: "to restrict or suppress free political speech... always implies at least a partial suspension of democracy, as to be committed to democracy just is, in part, to be committed to free speech." But Howard also recognises that all legal systems impose limits on harmful speech, for example, International human right law, which emphatically protects the freedom of speech as a fundamental human right while also affirming specific restrictions on certain seriously harmful speech. Article 19(3) ICCPR, which permits restrictions to protect "the rights or reputation of others" or "public order".²⁰⁰ Pallikkathayil adds that hate speech can silence victims, justifying restrictions.²⁰¹ Goebbels cynically observed, democracy that arms its enemies risks self-destruction.²⁰²

Finally, Kramer argues that social-media platforms like Facebook and Twitter now "X" though privately owned, act as public fora and are morally obligated to respect free expression while neutrally regulating harmful content.²⁰³ This neutrality principle resonates with defamation law's purpose: not to stifle free speech, but to ensure words are used not as weapons to unjustly destroy reputations.

¹⁹⁷ D. Strauss, "Persuasion, Autonomy, and Freedom of Expression" (1991) 91 Columbia Law Review 334.

¹⁹⁸ Mill (n 16) ch.III.

¹⁹⁹ T.Scanlon, "A Theory of Freedom of \expression" (1972) 1 Philosophy & Public Affairs 204; C. Baker, Human Liberty and Freedom of Speech (OUP 2009); J. Rawls, Political Liberalism (expanded edn, Columbia UP 2005).

²⁰⁰ International Covenant on Civil and Political Rights 1966, Art 19 (3)

²⁰¹ J. Pallikkathayil, "The harm in Hate Speech" (2020) Ethics 130(2), 161.

²⁰² G. Fox & G. Nolte, *intolerant Democracies* (Springer 1995)

²⁰³M.H. Kramer, *Freedom of Expression as Self-Restraint* (OUP 2021) 58-59

In this sense, theories such as Mill's harm principle and Kramer's neutrality argument converge to explain the birth and necessity of defamation law: freedom of speech, though fundamental, cannot be absolute. The recognition that words have the power to injure as gravely as physical acts gave rise to legal doctrines that protect individuals from reputational harm, while at the same time preserving a wide sphere of open and robust expression. Thus, the evolution of defamation law can be understood as a legal manifestation of these philosophical commitments, a balance between the liberty to speak and the responsibility not to destroy another's good name.²⁰⁴

However, the contours of defamation law did not emerge fully formed; rather, they evolved over centuries in response to changing notions of governance, citizenship, and public discourse. In early English common law, defamation was primarily a criminal offence rooted not in individual dignity but in the Crown's interest in preventing breaches of the peace. Speech was treated as a public threat, and any statement capable of provoking duels, riots, or sedition justified criminal sanction. This punitive orientation reflected a medieval social order that equated speech with disorder and delegated reputation management to the coercive power of the State.

The modern transformation of defamation law occurred with the rise of liberal constitutionalism, the printing revolution, and the gradual recognition of individual rights. Courts shifted from conceiving defamatory speech as an affront to public order to understanding it as a civil wrong against personal honour. This marked a theoretical departure from state-centred protection to person-centred liability, foregrounding compensation, apology, and corrective remedies over imprisonment. As mass

²⁰⁴. Post (n 1) 710

communication expanded and later, the digital age emerged, the law continued adapting to balance private dignity with public debate, demonstrating defamation's evolutionary responsiveness to social change.

This evolution has produced a tension at the heart of modern speech law: while defamation protects reputation, it simultaneously threatens the ideals of free expression. Jurisdictions worldwide now grapple with this dialectic namely, how to reconcile constitutional liberties with the need to prevent reputational harm. In Nigeria, the 1999 Constitution guarantees freedom of expression but permits its restriction for the protection of other rights, including reputation. This reflects a hybrid theoretical structure: influenced by English common law traditions, post-colonial statutory frameworks, and emerging digital realities.

By situating defamation within this evolving theoretical tradition, the framework demonstrates that the law is neither static nor purely punitive. Instead, it represents a dynamic legal institution that mediates competing social values truth and dignity, liberty and accountability, expression and restraint. Understanding this theoretical lineage is therefore essential for appreciating contemporary debates, particularly the resurgence of criminal sanctions via hate speech regimes and cybercrime regulation. These modern developments challenge the liberal trajectory of defamation law and raise critical questions about whether Nigeria is progressing toward global best practices or subtly retreating into punitive speech control.

Taken together, these theories demonstrate that the evolution of defamation law is not accidental, but an embodiment of centuries-long philosophical attempts to define the boundary between speech and harm. From Mill's harm principle to Rawlsian autonomy, Howard's skepticism of censorship, and Kramer's digital neutrality, the law of defamation

emerges as a balancing instrument protecting speech as a democratic necessity while preventing its abuse as a weapon of reputational destruction. Thus, defamation law stands as a legal expression of the enduring truth that freedom of expression is fundamental but not absolute.

2.3 LITERATURE REVIEW

The subject of defamation has attracted significant scholarly attention both within Nigeria and across foreign jurisdictions, particularly because of its complex relationship with freedom of expression and the protection of reputation. In legal discourse, defamation is often examined from two major perspectives: its causes, the social, political, and personal factors that give rise to defamatory statements and its legal implications, which cover both civil and criminal liabilities imposed by law.

Nigerian scholars and jurist have generally emphasised the delicate balance between free speech and the preservation of individual dignity. Authors such as, Ikechukwu Unegbe in his work, 'Defamation as Tort and Crime in Nigeria - Legal Review', argue that;

"Words also form the foundation for most musical renditions which cross boundaries of the earth. In recognition of the importance of words in the overall existence of human beings, most countries' laws, including the Nigerian Constitution contain very elaborate provisions for the protection of free speech. This freedom of speech is, however, not absolute. The law of Defamation is one of the ways freedom of speech has been abridged...Every wrong act, especially conveyed through the medium of human words, should also be amply

compensated for or remedied. The remedy comes through existing laws enacted by the legislatures in every jurisdiction..."²⁰⁵

While Unegbe focuses on the balancing defamation law with freedom of speech, Robert Post elaborates on the invaluableness of reputation. In his seminal work, 'The Social Foundation of Defamation Law: Reputation and Constitution', Post compares reputation to Property, Honour and Dignity:

"Character is not inherited from parents; it is not created by external advantages; it is not the necessary appendage of birth, or wealth, or talents, or station; but the result of one's own endeavors - the fruit and reward of good principles, manifested in a course of virtuous and honorable action. Such character is understood to be a form of 'capital' since it 'creates funds' and the potential for 'patronage and support... One's good name is as truly the product of one's efforts as any physical possession."²⁰⁶ Here, Post likens reputation to property, not merely as a social perception, but as the earned capital of a life lived with integrity. To wound such a reputation, therefore, is no less than to trespass upon the fruits of a person's labor. Defamation law thus emerges not simply as a shield against insult, but as society's recognition that one's good name - fragile, yet invaluable - must be preserved. Though freedom of speech is our embedded right and should not be tampered with or restricted as naturalist might argue, it would be unfair to permit this freedom to become a licence to wound another's dignity. As the African proverb says " The tongue has no bone, but it can break a man's back". Words, once spoken, can build bridges or burn them, lift a man's honour or bury it. Similar, the Bible teaches: "A good name is better than

²⁰⁵. I. Unegbe, defamation as Tort and Crime in Nigeria - Legal Review (unpublished manuscript,2019)12.

²⁰⁶. R.Post, "The Social Foundations of Defamation Law: Reputation and the Constitution" (1986) 74 California Law Review 691, 708-710.

riches"(Ecclesiastes 7:1). Words may seem fleeting, yet they outlast even wealth, for once a reputation is broken, no gold can mend it. It is here that defamation law finds its breath not as a cage to silence expression, but as a compass to ensure that liberty does not become cruelty.

As Oluchukwu P Obioma and Daniel T Etim explain in their work 'Consumer Complaints and Defamation Liability in Nigeria: Balancing Free Speech and Reputation Protection Towards National Development (2024)', reputational protection extends beyond individuals to corporate entities:

" Consumers have the fundamental right to freely share their thoughts and experiences about organisations, products, or services... Nevertheless, the right to freedom of speech and expression does not grant them the privilege to say or publish without being accountable. A person's reputation and good name are legally protected... Although businesses have a right to protect their reputation, they are also obligated to uphold consumers' rights to freely express views and share their experiences".²⁰⁷

This perspective introduces another dimension of reputational protection, not only for individuals, but also for corporations whose goodwill and public image are vital to their survival. This tension was illustrated in the ongoing case of Mrs Chioma Okoli and EriscoFoods Ltd (2023), Okoli's Facebook post about excessive sugar in tomato paste led to litigation involving consumer rights versus corporate reputation.²⁰⁸

The spirit of defamation law finds perhaps its most striking vindication in *Keith-Smith v Williams*, where an unemployed teacher, Tracy Williams, falsely accused a former UK

²⁰⁷. O.P. Obioma and D.T. Etim, "Consumer Complaints and Defamation Liability in Nigeria: Balancing Free Speech and Reputation Protection Towards National Development" (2024) *Journal of Contemporary Nigeria Law* 45.

²⁰⁸. *Mrs Chioma Okoli v Erisco Foods Ltd* (Unreported, Federal High Court Abuja, 2023).

politician, Michael Keith Smith, of being a sexual offender and racist. The court awarded £10,000 damages despite the defamatory remarks being made in a small Yahoo discussion group, reasoning that the publication was global.²⁰⁹ This judgment demonstrates that reputation, like property, deserves shelter from unjust attacks, and that free speech must always walk hand in hand with accountability.

In regards to this, scholars have agreed defamation rarely occurs in isolation but is usually driven by human behaviour, political rivalry or social dynamics. In Nigeria, defamation is often fuelled by malice, ill-will, or the reckless disregard for the truth, particularly in the context of political competition. For example, in *Sketch V Ajagbemokeferi*, the Supreme Court observed that defamatory statements often arise in heated political contests, where rivals resort to words that tarnish the image of opponents in order to gain advantage²¹⁰. Similarly, the rise of digital platforms has created fertile ground for defamatory speech through anonymity, sensationality, and the viral spread of falsehoods. As Khomotso Moshikaro argues, the real basis of liability in defamation lies in the "public propagation of unjust contempt", suggesting that defamation is frequently born out of disdain rather than the mere falsity of words.²¹¹ This view, however, has been criticised, since contempt alone, without reputational injury, may not trigger liability. In the same vein, Robert Post likens reputation to "property" painstakingly built over time, vulnerable to envy and malice that motivate defamatory speech.²¹² Thus, the causes of defamation, whether malice,

²⁰⁹. Keith-Smith v Williams [2006] EWHC 860 (QB), [2006] All ER (D) 102 (Apr).

²¹⁰. Sketch v Ajagbemokeferi (1989) 1 NWLR (Pt. 100) 678.

²¹¹. Khomotso Moshikaro, 'Unjust Contempt as the Gist of Defamation Law' (2020) *The Journal of Legal Philosophy* 67

²¹². Robert C. Post, 'The Social Foundations of Defamation Law: Reputation and Constitution' (1986) 74 *California Law Review* 691.

negligence, politica rivalry, or digital recklessness, reflect deeper social conflicts and the misuse of speech as a weapon.

After consideration of the causes of defamation, what then are its legal implications. The consequences of defamation are both civil and criminal, serving a dual purpose of remedy and deterrence. Under NIgerian law, civil liability allows a claimant to seek damages for injury to reputation, provided they proved publication of a false and defamatory statement to a third party. Criminal liability on the other hand, is recognised under the Criminal Code Act (ss. 373-381, applicable in the South) and the Penal Code Act (ss. 391-394, applicable in the North), with penalties including imprisonment.²¹³ More recently, section 24 of the Cybercrimes (Prohibition, Prevention, etc) Act 2015 has extended liability to online platforms, recognizing the growing problem of internet defamation. The debate over criminal defamation remains sharp, with scholars like Afe Babalola SAN cautioning against its misuse as a political weapon to intimidate journalist and critics, instead recommending civil actions as the proper forum for redress.²¹⁴ Foreign Jurisdictions have taken varied approaches: in the United States, the Supreme Court in *New York Times v Sullivan* created the "actual malice" rule, protecting political criticism unless falsehood were knowingly or recklessly published,²¹⁵ while the UK's Defamation Act 2013 introduced a "serious harm" requirement are broaden defences such as opinion.²¹⁶ In Europe, the European Court of Human Rights has consistently stressed that public figures must tolerate wider criicism, as seen in *Lingens v Austria*, where the Court held that

²¹³. Criminal Code Cap C38 LFN 2004, ss.373-381; Penal Code Act Cap 89 LFN 2004, ss. 391-394.

²¹⁴. Afe Babalola SAN, 'When False Publication May Amount to Criminal Libel' (ABUAD, 2024)<
<https://www.abuad.edu.ng/when-false-publications-may-amount-to-criminal-libel>, last accessed 12 September 2025.

²¹⁵. *New York Times Co v Sullivan* 376 US 254 (1964).

²¹⁶. Defamation Act 2013 (UK) ss. 1-3.

freedom of political debate must not be unduly chilled.²¹⁷ These authorities reflect a consensus that while reputational harm must be redressed, legal implications must also safeguard freedom of expression, especially in democratic contexts.

²¹⁷. *Ligens v Austria* (1986) 8 EHRR 407 (ECtHR).

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR DEFAMATION IN NIGERIA

3.1 Legal Framework for Defamation

The regulation of defamation in Nigeria is rooted in both statutory and common law principles derived from English Law. It also draws from international human rights provisions, particularly regarding the balance between the right to freedom of expression and right to reputation. While international instruments provide broad normative standards, Nigeria's Constitution and statutory provisions give concrete expression to the law of defamation. The legal framework thus reflects a dual purpose: to safeguard reputation and to ensure that freedom of speech is not unjustly stifled.²¹⁸

3.1.1 International Provisions

The protection of reputation and freedom of expression is recognized under various international instruments to which Nigeria is a signatory.

Article 19 of the Universal Declaration of Human Rights (UDHR) 1948 proclaims the right to freedom of opinion and expression, stating thus;

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".²¹⁹

While Article 12 protects individuals against attacks on their honour and reputation.

Providing that;

²¹⁸. Okpara, U., *Fundamental Rights in Nigeria* (Spectrum Books 2005) 211.

²¹⁹. Universal Declaration of Human Rights (1948) art 19.

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".²²⁰

Similarly, Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR)1966, provides that "everyone shall have the right to freedom of expression," yet paragraph (3) of the same article allows the restrictions where necessary "for respect of the rights or reputations of others"²²¹

At the African regional level, Article 9(2) of the African Charter on Human and Peoples' Rights provides that the exercise of the right to freedom of expression "shall be subject to the law."²²²

These instruments collectively show that international law not only recognizes free speech but also emphasizes the necessity of legal limits when speech infringes on the dignity or reputation of others. The ECOWAS Court of Justice has reinforced this principle by striking down laws that unduly restrict freedom of expression while affirming the legitimate need to protect reputations from unjust attack.²²³

In practice, the balance has been affirmed in several international cases. In *Lingens v Austria*,²²⁴ the European Court of Human Rights (ECHR) held that while freedom of expression is a cornerstone of democracy, it does not extend to false and malicious statements that damage another's reputation. This approach resonates strongly with Nigeria's constitutional framework.

²²⁰. Ibid art 12.

²²¹. International Covenant on Civil and Political Rights (1966) art 19 (2)-(3).

²²². African Charter on Human and Peoples' Rights (1981) art 9(2).

²²³. ECOWAS Court of Justice, *Lohe Issa Konate v Burkina Faso* (2014) ECW/CCJ/JUD/23/14

²²⁴. *Lingens v Austria* (1986) 8 EHRR 407

3.1.2 National Statutes

Nigeria's domestic legal framework reflects these international commitments. The 1999 Constitution (as amended), under Section 39, guarantees the right to freedom of expression, while Section 45 subjects this right to restrictions necessary for the protection of public order, morality, health, and the rights of others.²²⁵

The Defamation Act 1961 codifies the civil liability of libel and slander, largely drawing from English common law.²²⁶

The Criminal Code Act (Cap C38 LFN 2004), applicable in Southern Nigeria, under Sections 373 as "any matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule." Section 375 prescribes punishment for defamatory publication with imprisonment up to two years.²²⁷

The Penal Code Law (Cap 89, Laws of Northern Nigeria 1963), applicable in Northern Nigeria, performs the same role in the northern part of the country. Section 391 defines defamation similarly, and Section 392 prescribes punishment for defamation with imprisonment for up to two years, fine or both.²²⁸

With the advent of technology, the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 particularly Section 24, which extends defamation to cyberspace, that is, to online communications. It criminalizes messages that "grossly offensive, indecent, obscene or menacing", or that cause "annoyance, inconvenience, danger, or insult."²²⁹ This provision has been pivotal in prosecuting online defamation, cyberstalking and cyberbullying. Cases

²²⁵. Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 39, 45.

²²⁶. Defamation Act 1961 (Nigeria).

²²⁷. Criminal Code Act (Cap C38 LFN 2004) ss 373, 375.

²²⁸. Penal Code (Northern Nigeria) ss 391-392.

²²⁹. Cybercrimes (Prohibition, Prevention, etc.) Act 2015 s 24.

such as *Eniola Badmus v. Okoye Blessing Nwakaego (2023)*, where the accused was convicted for posting defamatory materials on social media under this provision.²³⁰

Many jurist in regarding this provisions, including Afe Babalola, SAN have argued that criminalizing defamation threatens freedom of press. In his article "When False Publications May Amount to Criminal Libel"(2024), he emphasizes that while individuals should be protected from falsehood, such protection must not become a tool for political suppression.²³¹

3.1.3 Judicial Decisions / Case Law

The Nigerian judiciary has a played a crucial role in shaping the application of defamation law.

In *Sketch Publishing Co. Ltd v. Ajagbemokeferi*,²³² the Supreme Court held that any publication that tends to lower a person in the estimation of right-thinking members of the society is defamatory.

Similarly, in *Benue Printing & Publishing Corp. v. Gwagwada*,²³³ the Court emphasized that reputation is a protected legal interest and that the burden lies on the defendant to prove truth or justification.

Recent Nigerian cases highlights the modern challenges of defamation. In *Mrs Chioma Okoli v. Erisco Foods Ltd (2023)*²³⁴, a Facebook post criticizing the sugar content of

²³⁰. *Eniola Badmus v Okoye Blessing Nwakaego (2023)* Unreported (Lagos Magistrate Court).

²³¹. Afe Babalola, 'When False Publications May Amount to Criminal Libel' (ABUAD Journal, 2024) <<https://www.abuad.edu.ng/when-false-publications-may-amount-to-criminal-libel>> last accessed 22 October 2025.

²³². *Sketch Publishing Co. Ltd v Ajagbemokeferi (1989)* 1 NWLR (Pt 100) 678.

²³³*Benue Printing & Publishing Corp. v Gwagwada (1989)* 4 NWLR (Pt 116) 439.

²³⁴. *Mrs. Chioma Okoli v Erisco Foods Ltd (2023)* unreported (FCT High Court).

tomato paste sparked litigation, raising questions about consumer rights, free expression, and corporate reputation.

Likewise, the pending case of *Alex Otti v. Tobias Chukwudi Egeonu (2025)*²³⁵, where the Governor of Abia State sued a social media commentator for publishing allegations of corruption on Facebook. This case illustrates the evolving scope of defamation into the digital age.

Furthermore, a recent Lagos High Court case, *Adunni Ade v Polance Media Ltd (2024)*²³⁶, awarded Twenty million naira for a publication that falsely associated the actress with a dating scandal. While cast as a privacy/ false light claim relying on Section 37 of the 1999 Constitution, the facts mirror classic defamation elements: false statements, reputational harm, removal orders. This case also demonstrates how courts are adapting to reputational injury in the digital media age, and it underscores the blurring lines between privacy and defamation in Nigerian jurisprudence.

Foreign persuasive authorities reinforce this trend. In *Keith-Smith v. Williams*²³⁷, damages were awarded for defamatory comments made in an online discussion group, confirming that digital publication extends defamation liability globally.

3.2 Institutional Framework for the Regulation of Defamation

The enforcement and regulation of defamation law in Nigeria involves multiple institutions ranging from the judiciary to administrative and regulatory bodies, each playing a role in adjudication, regulation, or advocacy.²³⁸

²³⁵. *Alex Otti v Tobias Chukwudi Egeonu (2025) FCT/HC/CV/66/2025*.

²³⁶. *Adunni Ade v Polance Media Ltd (2024) Unreported (Lagos High Court)*.

²³⁷. *Keith-Smith v Williams [2006] EWHC 860 (QB)*.

²³⁸. Okonkwo, C., *Criminal Law in Nigeria (Spectrum Books 2000)* 156.

3.2.1 The Judiciary

The courts remains the primary forum for adjudicating defamation cases. Civil claims are brought before State High Courts, while criminal defamation prosecutions may begin at the Magistrate Court level. The appellate jurisdiction of th Court of Appeal and Supreme Court ensures uniform interpretation of the law. The judiciary also serves as the protector of the delicate balance between freedom of speech and protection of reputation.

In *Arthur Nwankwo v The State*,²³⁹ the Court of Appeal held that while freedom of speech is vital in a democratic society, it does not grant license to destroy another's character. The decision reinforced judicial readiness to penalize malicious publications while preserving legitimate criticism.

3.2.2 Law Enforcement Agencies

For Criminal defamation, investigation and prosecution are handled by law enforcement agencies such as the Nigeria Police Force, the Office of the Attornel General of the Federation, and the Cybercrime Unit under the Nigerian Police and EFCC when the matter involves online publication. These agencies ensure compliance with Section 24 of the Cybercrime Act. However, critics argue that these powers are sometimes abused to intimidate journalists and political activists.²⁴⁰

3.2.3 Regulatory and Oversight Bodies

Other institutional mechanisms play vital roles in mitigating defamatory practices.

²³⁹. *Arthur Nwankwo v The State* (1985) 6 NCLR 228 (CA).

²⁴⁰. Media Rights Agenda, 'The Use of Criminal Defamation Laws in Nigeria' (2023) <<https://mediarightsagenda.org>> last accessed 22 October 2025.

The Nigerian Press Council (NPC) monitors journalistic ethics and adjudicates complaints related to media defamation.²⁴¹

Similarly, the Federal Competition and Consumer Protection Commission (FCCPC) safeguards corporate reputation and consumer rights, as reflected in *Chioma Okoli v. Erisco Foods Ltd.*²⁴²

Non-governmental organizations like Media Rights Agenda (MRA) and Civil Liberties Organizations (CLO) advocates for reform of defamation laws to align them with democratic values.²⁴³

3.2.4 Professional and Advocacy Bodies

The Nigerian Bar Association (NBA) engages in advocacy to ensure that defamation laws are not misused to stifle free speech. Civil society groups such as Media Rights Agenda (MRA) and SERAP also challenge abuses of defamation laws, pushing for reforms that maintain the delicate balance between reputation and expression.²⁴⁴

Conclusion

The legal and institutional frameworks for defamation in Nigeria demonstrate the country's attempt to balance two conflicting rights: the freedom of expression and the protection of reputation. Statutes and case law provide remedies against reputational harm, while the judiciary regulatory agencies, and advocacy bodies ensure enforcement and reform. Together, they form the backbone of Nigeria's defamation regime in both traditional and modern contexts.²⁴⁵

²⁴¹. Nigerian Press Council Act Cap N128 LFN 2004.

²⁴². FCCPC Act 2018 s 17.

²⁴³. Civil Liberties Organization, Annual Report on Freedom of Expression in Nigeria (2023).

²⁴⁴. SERAP, 'Protecting Free Speech and Press Freedom in Nigeria' (2022).

²⁴⁵. Nwabueze, B.O., Constitutional Democracy in Africa (Vol 2, Spectrum 2003) 301.

CHAPTER FOUR

ANALYSIS OF DEFAMATION LAW AND HATE SPEECH INTERFACE IN NIGERIA: THE UNITED KINGDOM AND THE UNITED STATES

4.0 Introduction

Defamation law, across different legal jurisdictions, engages a fundamental tension between the right to free expression and the protection of personal reputation. While all legal systems recognise these values, the manner in which they prioritize them varies significantly. This chapter examines the comparative development of defamation law in Nigeria, the United Kingdom (UK), and the United States (US), highlighting the distinguishing features of civil and criminal liability and exploring the growing overlap between defamation, hate speech regulation, and digital communication.

4.1 Civil and Criminal Defamation: Theoretical Tension

Defamation exists in both civil and criminal forms in Nigeria. Civil defamation focuses on compensation and restoration of reputation, while criminal defamation imposes punitive sanctions, including imprisonment, on the basis that defamatory expression threatens public peace. The Nigerian Constitution guarantees freedom of expression under Section 39, but this freedom is subject to limitations under Section 45, of the constitution, which permits restrictions necessary for the protection of the rights and reputations of others.²⁴⁶

Though historically, defamation was a usually a criminal offense, While some countries still have the offence of criminal defamation on their statute books, it is widely opposed, most notably by the United Nations, the European Union (EU), and the Council of Europe,

²⁴⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 39, 45.

who have urged states to decriminalise defamation claims to protect the rights to freedom of speech and expression. For instance, the UN Human Rights Council (UNHRC) General Comment No. 34 provides that: "States parties should consider the decriminalisation of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriated penalty".²⁴⁷

Despite such calls for reform, recent events shows that the criminalisation of defamation in Nigeria is resurfacing through other legal instruments. For example, Aare Afe Babalola, SAN, filed a petition on 9 November 2024 against activist Dele Farotimi, alleging defamatory statements in Farotimi's book Nigeria and its Criminal Justice System.²⁴⁸ These claims stand in tension with Babalola's earlier writings urging restraint in applying criminal sanctions for speech.²⁴⁹ His use of criminal defamation provisions underscores how civil remedies may sometimes appear inadequate in cases of reputational harm, especially in a digital context. Moreover, Section 24 of the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 is being used in ways that blur the boundary between defamation and cyber-offences.²⁵⁰

Thus, defamation law must negotiate a balance between individual dignity and public discourse drawing and comparative insights from other jurisdictions are valuable in charting reform.

²⁴⁷ UN Human Rights Committee, General Comment No. 34: Article 19 (Freedom of opinion and expression), UN Doc CCPR/C/GC/34 (12 September 2011) para 47

²⁴⁸ A A Babalola, FULL TEXT: Afe Babalola's petition on how Dele Farotimi 'defamed' him, TheCable (5 December 2024) <https://www.thecable.ng/full-text-afe-babalolas-petition-on-how-dele-farotimi-defamed-him> accessed 17 November 2025

²⁴⁹ Guardian Nigeria, 'Afe Babalola's Lawyers Say Farotimi will be Free if He Proves Allegation' The Guardian (6 December 2024) <https://guardian.ng/news/afe-babalolas-lawyers-say-farotimi-will-be-free-if-he-proves-allegation/> accessed 17 November

²⁵⁰ Cybercrime (Prohibition, Prevention, etc.) Act 2015 (Nigeria) s 24.

4.2 Defamation in the United Kingdom (UK)

The British law of defamation law historically emerged to protect individual's reputations and prevent private retribution. The UK does not have a single written constitution; its rights architecture is large common law based, and Defamation law reflects a strong historical respect for personal reputation over unfettered speech.

The English libel law places the burden of proving truth on the defendant. In a Defamation action, words are presumed false unless the defendant proves otherwise -- a presumption that affects how media outlets reports sensitive stories.

In *Derbyshire County Council v. Times Newspapers Ltd.*, the House of Lords decided the issue of whether a city council could initiate libel proceedings. In this case a local authority brought an action for damages against defendants in respect to two newspaper articles which questioned the propriety of investment made for its superannuation fund. Much of the litigation involved argument based on law set forth in *Sullivan. Council for Times Newspapers* argued that the law on the specific issue at bar was unsettled and ripe for development in a direction that was sensitive to the requirements of a modern, democratic society. The Court stated that there was no public interest in favoring the right of governmental units to sue for libel because it was contrary to the public interest."²⁵¹

Significant reform came with the Defamation Act 2013, which raised the threshold for claimants by introducing a "serious harm" requirement (section 1) and reinforcing public interest defences (section 4).²⁵² In *Lachaux v Independent Print Ltd*, the UK Supreme Court made clear that "serious harm" must be proven on the balance of probabilities that is,

²⁵¹ *Derbyshire County Council v Times Newspapers Ltd* [1993] UKHL 5, [1993] 2 WLR 499 (HL)

²⁵² Defamation Act 2013 (UK) ss 1, 4.

claimants must show actual or likely serious damage, not rely on a legal presumption of harm.²⁵³

However, critics argue that litigation costs remain prohibitively high, which may allow wealthy claimants to bring SLAPP (strategic lawsuit against public participation) suits. Also, though criminal libel was abolished in 2009, powerful individuals may still use civil Defamation suits to chill critical journalism.

4.3 Defamation in the United States (US)

The US takes a strongly speech-protective approach, primarily because of the First Amendment. The landmark case *New York Times Co. v. Sullivan (1964)*, which introduced the “actual malice” standard. Public officials and public figures must prove that a defamatory falsehood was made knowingly or with reckless disregard for truth.²⁵⁴ This high bar discourages defamatory suits against media and facilitates robust political debate and investigative journalism.

In *Philadelphia Newspapers Inc. v. Hepps, (1986)*, the Supreme Court extended this logic: when a media defendant publishes on a public concern, the plaintiff (even a private figure) must bear the burden of proving falsity.²⁵⁵ The Court reasoned that a presumption of truth would chill speech too much, and ambiguity must tilt in favor of free expression.

A modern, illustrative example is *CNN v. Sandmann (2020)*. After several media outlets portrayed 16-year-old Nicholas Sandmann as having engaged in racist conduct during an encounter in Washington, D.C., he filed multiple defamation suits. CNN reached a confidential settlement with him, while other suits proceeded against major networks.

²⁵³ *Lachaux v Independent Print Ltd* [2019] UKSC 27

²⁵⁴ *New York Times Co v Sullivan* 376 US 254 (1964).

²⁵⁵ *Philadelphia Newspapers Inc v Hepps* 475 US 767 (1986)

Though largely resolved privately, the case underscores the immense impact of digital virality and media framing and demonstrates that even in the US, media houses can be held liable where reporting crosses into reckless misrepresentation.²⁵⁶

Despite these protections, critics argue that the Sullivan doctrine may leave reputations dangerously exposed especially in the age of social media and viral misinformation. Moreover, Section 230 of the Communications Decency Act (1996) provides immunity to online platforms for user-generated content, making it very hard for individuals to get redress against intermediaries.²⁵⁷

4.4 Defamation in Nigeria

Nigeria preserves both civil and criminal defamation, on the criminal side:

Criminal Code Act, sections 373–381 (applicable in southern Nigeria) criminalises various defamation offences.²⁵⁸

Penal Code Act (applicable in some northern states), including sections 391–394, handles defamation too.²⁵⁹

Cybercrimes (Prohibition, Prevention, etc.) Act 2015, notably Section 24, criminalises sending messages via computer systems that are false or “grossly offensive ... for the purpose of ... causing ... insult, injury ... ill will or needless anxiety ...” with penalties of up to 3 years’ imprisonment or a fine.²⁶⁰

²⁵⁶ CNN v Sandmann (Ky Ct App, 2020).

²⁵⁷ Communications Decency Act 1996, 47 USC § 230

²⁵⁸ Criminal Code Act (Nigeria), ss 373-381

²⁵⁹ Penal Code Act (Northern Nigeria), ss 391–394.

²⁶⁰ Cybercrimes (Prohibition, Prevention, etc.) Act 2015, s 24.

Although some states (e.g., Edo and Ekiti) have taken steps to discourage criminal defamation, but prosecution continues. In *Arthur Nwankwo v. The State*, the Court of Appeal warned against using criminal defamation to suppress legitimate criticism.²⁶¹

On the civil side, defamation is a common tort. Courts have awarded damages and ordered apologies. For example, in *Engr. Chibuzor Agulana v Dr Fabian Okonkwo*, reputational harm in a professional context was recognised.²⁶² Recent suits, such as *Dr Pius Odubu v Robbs Communication Network*, also illustrate how Nigerian courts handle professional reputational disputes.²⁶³

4.5 The Emerging Tension: Defamation, Hate Speech and Digital Regulation

The evolution of defamation law in Nigeria reflects a gradual movement away from its original civil-oriented remedial purpose toward a more punitive regulatory model influenced by hate speech and digital governance laws. Historically, defamation developed as a private wrong grounded in common law, designed to protect individual reputation through compensation rather than punishment. Its philosophical foundation rested on the assumption that a damaged reputation could be restored by monetary redress and judicial vindication. However, with the advent of new media platforms and the socio-political anxieties surrounding misinformation, the State increasingly perceives speech, not merely as a private injury but as a potential public threat requiring criminal sanction. Thus, what began as a tort aimed at reputation repair is evolving into a speech-control mechanism capable of policing emotions, criticism, and dissent.

²⁶¹ *Arthur Nwankwo v The State* (1985) 6 NWLR (Pt 20) 273.

²⁶² *Engr Chibuzor Agulana v Dr Fabian Okonkwo* (Court of Appeal, 2021).

²⁶³ *Dr Pius Odubu v Robbs Communication Network Ltd* (Edo State High Court, 2017).

A major contemporary challenge in Nigerian jurisprudence is the increasing overlap between defamation law, hate speech regulation, and digital communication controls. While defamation traditionally protects individual reputation, hate speech laws are intended to protect social groups from discrimination, hostility, or violence. However, the rapid expansion of online communication has blurred these boundaries, creating uncertainty about where protected expression ends and punishable speech begins. Nigeria's contemporary legal environment, however, shows a gradual collapse of these distinctions through broad and vague statutory wording, particularly within digital regulation laws. This legislative confusion is most visible in Section 24 of the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, thus;

(1) Any person who knowingly or intentionally sends a message or other matter by means of computer systems or network that

- (a) is grossly offensive, pornographic or of an indecent, obscene or menacing character; or
- (b) he knows to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill-will or needless anxiety to another or causes such message to be sent,

commits an offence and shall be liable on conviction to a fine of not more than ₦7,000,000.00 or imprisonment for a term not more than three years or to both such fine and imprisonment.

This section criminalizes online messages intended to “cause annoyance,” “insult,” or “ill-will.” These terms are significantly broader than the traditional elements of criminal

defamation and do not require proof of reputational harm thereby collapsing the distinctions between offensive speech, civil injury, and criminal liability .²⁶⁴

This legal development has produced what could be describe as the “recriminalization of defamation through the back door.” In accordance with Oyechi Ikpeazu's commentary on the "Hate Speech Bill", were he noted that the bill would "revive criminal libel under a different name".²⁶⁵ Although several states (e.g., Lagos, Ekiti, Edo) have abolished or discouraged criminal defamation, the application of cybercrime and hate speech laws has revived the punitive approach in practice.

International frameworks reflect a clearer approach:

The Council of Europe, for example, defines hate speech as covering all forms of expression that spread, incite, promote, or justify hatred based on intolerance, including xenophobia, ethnocentrism, discrimination, and hostility against minorities. This definition emphasizes public disorder and group-based harm, not individual reputation.²⁶⁶

By contrast, Nigeria’s use of hate speech and cybercrime laws often collapses the threshold. Content that would ordinarily fall under civil defamation, especially online allegations, political criticism, or heated commentary is frequently treated as criminal conduct, sometimes resulting in arrest, detention, or prosecution.

This is not merely academic concern; judicial and political patterns confirm it. Despite the Court of Appeal in *Nwankwo v State* invalidating sedition as incompatible with democratic values, similar prosecutorial impulses reappear in digital-speech

²⁶⁴ Cybercrime (Prohibition, Prevention, etc.) Act 2015, s 24

²⁶⁵ Oyechi Ikpeazu, ‘The Hate Speech Bill and the Revival of Criminal Libel’ (2020) Nigerian Lawyer.

²⁶⁶ Council of Europe, Recommendation No. R(97)20 on Hate Speech (1997).

prosecutions.²⁶⁷ The situation mirrors the pre-independence-era case of *DPP v Obi*, where political critique, “Down with the enemies of the people” was treated as a threat to state order.²⁶⁸

Recently, Agba Jalingo's critics on TikTok and Facebook, and political commentators have been arrested under Section 24 for statements that, though harsh, fall within the realm of political criticism.²⁶⁹ Moreover, recent defamation controversies demonstrate how defamatory speech, especially when linked to sexual crimes, terrorism, ritual killings, or child abuse, increasingly triggers public outrage bordering on vigilante justice. False accusations now operate functionally like hate speech because they mobilize moral panic. In polarized societies like Nigeria where public anger readily converts into mob action defamation can escalate from reputational harm to physical violence.

This phenomenon validates the insight drawn from the Rwandan genocide, where media broadcasts transformed rumours and derogatory characterisations into tools of mass extermination. The progression from speech to violence underscores how defamatory narratives if infused with identity markers may catalyse aggression.

International and comparative jurisprudence also reflects this tension. In *Hill v Church of Scientology*, the Canadian Supreme Court underscored that defamatory statements may “spread their cancerous evil” beyond individual injury, contaminating public perceptions. The consequences are similarly evident in Rudolph Giuliani's defamation judgment, where

²⁶⁷ . Arthur Nwankwo v The State (1985) 6 NCLR 228 (CA).

²⁶⁸ DPP v Obi (1977) NCLR 62.

²⁶⁹ Nigerian journalist Agba Jalingo charged with cybercrime over report on governor's relative <<https://cpj.org/2023/01/nigerian-journalist-agba-jalingo-charged-with-cybercrime-over-report-on-governors-relative/>>last accessed 17,November 2025

false electoral claims provoked nationwide hostility and threats, illustrating the political volatility of misinformation.

In Nigeria, *Bello Shagari v FRN* confirmed how online speech can attract criminal sanction even when framed as political opinion, signalling judicial complicity in extending criminal responsibility for reputational disputes.

And thus, this conflation raises several risks:

1. Legitimate public interest speech (political commentary, investigative journalism) may be chilled.
2. The vagueness of the law gives law enforcement wide discretion, potentially targeting dissent.
3. Without strong procedural safeguards, individuals may face punitive criminal consequences for reputational disputes

4.6 Comparative Lessons and Reform Imperatives.

Comparative analysis suggest several reform paths for Nigeria.

1. Criminal Defamation Should Be Abolished Nationwide

Both the UK (criminal libel abolished) and the US (de facto civil-only defamation) show that criminal defamation can undermine free speech. Nigeria should phase out criminal defamation provisions, including those in the Cybercrimes Act.

2. Section 24 of the Cybercrime Act Requires Narrowing and Clarification

Borrowing from both UK proportionality standards and US First Amendment doctrine, Nigeria should redefine vague terms such as “annoyance,” “insult,” or “ill-will.” These provisions blur the lines between genuine threats, hate speech, and robust criticism,

enabling arrests for online commentary that should fall within constitutionally protected expression.

3. Defining Hate Speech Separately from Defamation

Comparative experience cautions against conflating the two. Hate speech should target incitement to violence or discrimination—not criticism of government, public officials, or corporate actors. Nigeria must avoid allowing hate speech regulation to become a “back door” through which criminal defamation re-enters democratic discourse. For guidance, Nigeria can look to international models (e.g., Council of Europe definitions).

4. Strengthening Civil Remedies, Not Criminal Penalties

Like the UK, Nigeria should enhance civil mechanisms damages, apology orders, retractions, online takedowns while introducing safeguards against frivolous or intimidatory suits. Judicial training on digital harms, serious harm thresholds, and proportionality will further modernize Nigeria’s system.

5. Encouraging Independent Press Regulation and Alternative Dispute Resolution

To prevent SLAPP-style litigation and burdensome court processes, Nigeria could adopt elements of the UK’s arbitration and press regulatory framework, thereby promoting faster, less adversarial resolution of speech disputes.

Conclusion

A comparative look at defamation law reveals no perfect system but offers powerful lessons. The UK model emphasises proportional remedies and protecting discourse, while the US model prioritises free speech even if it risks reputational injury. Nigeria, facing the pressures of digital virality, political polarization, and ambiguous cyber legislation, must craft a hybrid reform: abolish criminal defamation, narrow overbroad cyber-speech

provisions, strengthen civil redress, and safeguard free expression. Thoughtful reform is critical to preserve both personal dignity and democratic debate in a rapidly changing communicative landscape.

CHAPTER FIVE

CONCLUSION

5.1 SUMMARY OF FINDINGS

5.2 RECOMMENDATIONS

5.3 CONTRIBUTIONS TO KNOWLEDGE

5.4 AREAS FOR FURTHER STUDIES

5.5 CONCLUSION

5.1 SUMMARY OF FINDINGS

This study set out to examine the concept of defamation, its causes, legal implications, and the frameworks regulating it in Nigeria. The study finds that defamation remains a significant legal and social issue in contemporary Nigerian society due to the increasing ease with which information is published and circulated, especially through digital communication platforms. Defamation involves the publication of false statements that lower the reputation of an individual in the estimation of right-thinking members of society. Injury to reputation is the central legal harm for which the law seeks to provide redress.

The causes of defamation are both personal and systemic. Personal causes include malice, ill-will, reckless speech, and the desire for sensationalism, while systemic causes arise from political propaganda, competition in the media industry, and the anonymity provided by technology and social media. Misunderstanding of the scope of the right to freedom of expression contributes significantly to defamatory publications, as many individuals assume the right to speak freely is absolute, whereas the law places limits to prevent harm to the reputation and dignity of others.

With respect to the legal framework, Nigerian defamation law is shaped by a combination of international human rights provisions, constitutional guarantees, statutory enactments, and judicial precedents. The right to freedom of expression is guaranteed under Section 39 of the 1999 Constitution (as amended), while the rights to dignity and reputation are protected under Sections 34 and 37. The Criminal Code, Penal Code, Defamation Act, and Cybercrime (Prohibition, Prevention, etc.) Act 2015 collectively regulate defamation in both civil and criminal contexts. However, debate continues regarding the continued existence of criminal defamation in some states, especially as certain states such as Edo and Ekiti have abolished it on grounds of incompatibility with democratic values. Judicial authorities examined in this study, including *Sketch Publishing Co. Ltd. v. Ajagbemokeferi*, *Benue Printing and Publishing Corp. v. Gwagwada*, and recent internet-age cases such as *Chioma Okoli v. Erisco Foods Ltd* and *Adunni Ade v. Polance Media Ltd*, illustrate that Nigerian courts frequently deal with reputational harm arising from digital and social media communication. Courts are increasingly required to balance freedom of expression with the need to protect reputation, particularly in matters involving public figures and political speech.

Furthermore, the study notes an emerging conceptual overlap between defamation and related offences such as blasphemy and sedition. While distinct, all three offences regulate harmful speech and are often situated within the broader debate on the limits of free expression. Recent cases such as the Mubarak Bala and Deborah Yakubu incidents highlight the social and legal tensions that arise when speech intersects with religion and public morality.

The comparative analysis of UK and US defamation law reveals that Nigeria's legal framework could benefit from lessons abroad. The UK model demonstrates the importance of setting higher thresholds for claims through requirements such as "serious harm" and strengthening defences like truth, honest opinion, and public interest publication to protect investigative journalism. The US model illustrates the value of robust free speech protections, particularly the "actual malice" standard, which fosters public debate, investigative reporting, and political criticism. Nigeria's retention of criminal defamation, vague cybercrime provisions, and overlapping hate speech laws contrast with these models and risk chilling legitimate speech, especially online. The comparative study underscores the need for Nigeria to refine civil remedies, clarify statutory provisions, and maintain a careful balance between reputation and democratic discourse.

Overall, the findings suggest that defamation law in Nigeria continues to evolve in response to social change, technological advancement, and democratic pressures. However, there remains a need for clearer legal boundaries, better public awareness, abolition of criminal defamation, careful regulation of online speech, and strengthened civil remedies to ensure that the law protects reputation without suppressing legitimate expression. Comparative lessons from the UK and US provide valuable guidance for crafting reforms that balance individual dignity with freedom of expression in the digital age.

5.2 RECOMMENDATIONS

Based on the findings of this study, the following recommendations are proposed:

1. Abolition of Criminal Defamation Nationwide:

While some states such as Edo and Ekiti have repealed criminal defamation provisions, several states continue to enforce them. The continued criminalisation of defamation poses risks to democratic participation and press freedom. It is recommended that the National Assembly undertake reforms to harmonize state laws and exclude imprisonment as a sanction for defamatory expression, reserving defamation strictly for civil remedy.

2. Public Awareness and Legal Literacy:

The prevalence of defamatory publications often stems from ignorance regarding the limits of freedom of expression. Government institutions, the Nigerian Bar Association, and civil society organizations should promote legal education campaigns, particularly on social media, to sensitize the public about responsible speech.

3. Judicial Development of Clear Standards for Online Defamation:

Courts should issue clearer guidelines for establishing harm in digital defamation cases, including standards for proof of publication, republication liability, and the role of digital anonymity. This would help ensure consistent judicial outcomes and prevent frivolous litigation.

4. Strengthening of Media Accountability Bodies:

The Nigerian Press Council and the Broadcasting Organizations of Nigeria should be strengthened to ensure faster, non-litigious dispute resolution mechanisms for defamation cases involving journalists and media houses. This will reduce court congestion and encourage responsible journalism.

5. Balancing Free Speech with Reputation:

Legislators should develop clearer statutory boundaries that explicitly state the limits of free speech within the context of public debate, political speech, satire, and artistic

expression. This balance is necessary to prevent the misuse of defamation laws as tools of intimidation

5.3 CONTRIBUTIONS TO KNOWLEDGE

This study contributes to existing legal scholarship on defamation in several significant ways:

1. Clarification of the Conceptual Boundaries of Defamation:

The study has provided a clear analytical distinction between defamation, hate speech, blasphemy, sedition, and political expression. By doing so, it resolves conceptual ambiguities that often lead to misapplication of the law in public discourse and legal argumentation.

2. Integration of Digital-Era Defamation into Traditional Legal Frameworks:

Unlike earlier works which discuss defamation within conventional media spaces, this study situates the phenomenon in contemporary digital environments. The analysis of cyber defamation and the application of the Cybercrimes Act contributes to current debates on online speech regulation.

3. Evaluation of Institutional Roles Beyond the Courts:

This research broadens the understanding of institutional responsibility by examining the roles of regulatory and advocacy bodies such as the Nigerian Press Council, FCCPC, NBA, SERAP, and Media Rights Agenda. This institutional perspective is often overlooked in studies that focus solely on courts and legislation.

4. Contribution to Ongoing Advocacy for Decriminalization:

By highlighting the constitutional tension between criminal defamation and freedom of expression, this study reinforces reform-oriented arguments and contributes to the scholarly and legislative discourse on abolishing criminal sanctions for defamatory speech.

5.4 AREAS FOR FURTHER STUDIES

The study identifies several areas in which further research is needed:

1. Comparative Analysis of Defamation Law Across African Jurisdictions:

A broader comparative study between Nigeria, Ghana, Kenya, and South Africa would provide deeper insight into how post-colonial states reform defamation law to balance free speech and reputation.

2. Empirical Study on the Impact of Social Media on Reputational Harm:

Future research may employ empirical surveys or case data to examine the extent and speed of reputational damage in digital-native environments, particularly among public figures and corporations.

3. The Role of Artificial Intelligence in Defamation Detection:

As technology advances, AI tools are increasingly deployed to track and correct false information. Research into AI-mediated defamation monitoring could support more efficient regulatory enforcement.

4. Reform of Media Accountability Structures:

Further work is required to assess whether media self-regulation, co-regulation, or statutory regulation is most suitable for Nigeria's evolving information landscape.

5.5 CONCLUSION

This study has shown that defamation remains a significant legal and social issue in Nigeria, particularly in the digital age, where information spreads rapidly. Both civil and criminal frameworks exist, but their application—especially through cybercrime and hate speech laws has created tensions between protecting reputation and safeguarding freedom of expression.

Comparative analysis of the UK and US demonstrates valuable lessons: the UK model emphasizes proportional civil remedies and higher thresholds for claims, while the US prioritizes robust free speech protections. Nigeria’s retention of criminal defamation and broad digital provisions risks chilling legitimate speech.

In conclusion, Nigerian defamation law requires reform to balance reputation protection with democratic discourse, provide clear legal boundaries, and strengthen civil remedies, ensuring responsible expression in the modern digital landscape.

BIBLIOGRAPHY

Legislation & International Instruments

African Charter on Human and Peoples' Rights 1981

Constitution of the Federal Republic of Nigeria 1999 (as amended).

Communications Decency Act 1996, 47 USC § 230

Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004.

Cybercrimes (Prohibition, Prevention, etc.) Act 2015.

Defamation Act 2013 (United Kingdom).

International Covenant on Civil and Political Rights (ICCPR) 1966

Penal Code Act, Laws of Northern Nigeria 1963.

Universal Declaration of Human Rights 1948.

2. Cases

(Nigeria)

Adunni Ade v Polance Media Ltd (Federal High Court Lagos, 2024).

Alex Otti v Tobias Chukwudi Egeonu (High Court of Abia State, 2023).

Arthur Nwankwo v The State (1985) 6 NWLR (Pt 20) 273.

Aviomoh v Commissioner of Police & Anor (2021, ongoing)

Benue Printing & Publishing Corp v Gwagwada (1989) 4NWLR (Pt 116) 439.

Chioma Okoli v Erisco Foods Ltd (2023) (ongoing).

Dr Pius Odubu v Robbs Communication Network Ltd (Suit No B/209/2014, High Court of Edo State).

Engr Chibuzor Agulana v Dr Fabian C Okonkwo (18 July 2017).

Eniola Badmus v Okoye Blessing Nwakaego (FCT Magistrate Court, December 2023).

Erisco Foods Ltd v Chioma Okoli (2023, ongoing)

Eze v Okechukwu (2002) 18 NWLR (Pt 799) 348.

Sketch Publishing Co Ltd v Ajagbemokeferi (1989) 1 NWLR (Pt 100) 678.

(Foreign / Comparative)

Chuy v Philadelphia Eagles Football Club 595 F.2d 1265 (3rd Cir 1979).

Cooke v MGN Ltd [2014] EWHC 2831 (QB).

Curtis Publishing Co v Butts 388 US 130 (1967)

Derbyshire County Council v Times Newspapers Ltd [1993] UKHL 5, [1993] 2 WLR 499

(HL)

Dominion Voting Systems v Fox News Network LLC (2023)

Johbby Debb v Amber Head (civil trial in Fairfax County, Virginia)

Hill v Church of Scientology of Toronto [1995] 2 SCR 1130.

Keith-Smith v Williams [2006] EWHC 860 (QB).

Lachaux v Independent Print Ltd [2019] UKSC 27

Lingens v Austria (1986) 8 EHRR 407.

Morgan v Odhams Press Ltd [1971] 1 WLR 1239.

New York Times Co v Sullivan 376 US 254 (1964).

Parmiter v Coupland (1840) 6 M & W 105.

Pfeifer v Austria (2007) 48 EHRR 8.

Philadelphia Newspapers Inc v Hepps 475 US 767 (1986)

Pullman v Hill & Co Ltd [1891] 1 QB 524.

Rebel Wilson v Bauer Media Pty Ltd [2017] VSC 521.

Time Inc v Firestone 424 US 448 (1976).

Youssouf v MGM Picture Ltd (1934) 50 TLR 581.

3. Books

Afe Babalola, Freedom of Expression and the Limits of Defamation (Public Lecture, 2019).

Blackstone W, Commentaries on the Laws of England, Vol 3 (1765).

Gatley R, Gatley on Libel and Slander, 12th edn (Sweet & Maxwell 2013).

George Orwell, Nineteen Eighty-Four (Secker & Warburg 1949).

Keyser P, The Law of Defamation in Commonwealth Africa (Cambridge University Press 2020).

Olusegun Adeniyi, 'Reckless Journalism and Media Accountability in Nigeria' *ThisDay* (n.d).

Ugochukwu E Ugwueze, 'Social media and Defamation in Nigeria' (2020) 41 JML 32

4. Journal Articles / Online Materials

A A Babalola, FULL TEXT: Afe Babalola's petition on how Dele Farotimi 'defamed' him, TheCable (5 December 2024) <<https://www.thecable.ng/full-text-afe-babalolas-petition-on-how-dele-farotimi-defamed-him>> last accessed 17 November 2025

Afe Babalola SAN, 'When False Publication May Amount to Criminal Libel' <<https://www.abuad.edu.ng/when-false-publications-may-amount-to-criminal-libel>> last accessed 25 October 2025

Atoyebi O, 'Defamation in Nigeria: Meaning, Defences, Remedies and Damages' (2022) OMAPLEX Law Review.

Federa Competition & Consumer Protection Commission (FCCPC) Public Filings On Erisco Foods Ltd v Chioma Okoli <<https://www.fccpc.gov.ng>> last accessed

'Giuliani Ordered to Pay Defamation Damages' BBC News <<https://www.bbc.com>> last accessed

Guardian Nigeria, 'Afe Babalola's Lawyers Say Farotimi will be Free if He Proves Allegation' The Guardian (6 December 2024)< <https://guardian.ng/news/afe-babalolas-lawyers-say-farotimi-will-be-free-if-he-proves-allegation/>> last accessed 17 November

Khomotso Moshikaro, 'Unjust Contempt as the Gist of Defamation Law: A Constitutional Court Review' (2022).

Jeffrey W Howard, 'Freedom of Speech'

Ikechukwu Unegbe, 'Defamation as Tort and Crime in Nigeria - Legal Review'

Media Rights Agenda, 'The Use of Criminal Defamation Laws in Nigeria' (2023) <<https://mediarightsagenda.org>> last accessed 22 October 2025.

Rebel Wilson 'Defamation Case Summary' Supreme Court of Victoria Case Files <<https://www.supremecourt.vic.gov.au>> last accessed

Oluchukwu P. Obioma & Daniel T. Etim, 'Consumer Complaints and Defamation Liability in Nigeria: Balancing Free Speech and Reputation Projection Towards National Development' (2024)

Robert C. Post, The Social Foundation of Defamation Law:

UN Human Rights Committee, General Comment No. 34: Article 19 (Freedom of opinion and expression), UN Doc CCPR/C/GC/34 (12 September 2011) para 47