

A Study on Defamation Law and Media in Malaysia

Puteri Nur Eiman Megat Mohd Aminuddin^{1*}, Noor Hidayah Azhar², Nur Ajeerah Othman³ and Ang Sze Yen⁴

¹Department of Strategic Communication, Faculty of Communication and Creative Industries, Tunku Abdul Rahman University of Management and Technology, Malaysia

^{2,3,4}Department of Communication and Media Studies, Faculty of Communication and Creative Industries, Tunku Abdul Rahman University of Management and Technology, Malaysia

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ABSTRACT

Defamation law in Malaysia has shifted notably in recent years, largely driven by the explosion of digital media. While the Defamation Act of 1957 still provides the legal backbone, the rapid pace of online communication has created new tensions between protecting someone's reputation and upholding free speech. Examining landmark cases like *Dato' Seri Anwar Ibrahim v. Tun Dr. Mahathir Mohamad* ([2001] 4 MLJ 332) shows how courts in Malaysia have grappled with tricky legal concepts such as "malice" and "justification", particularly when political figures and journalists are involved. These cases shed light on how allegations and defenses are evaluated in highly charged public discourse. In today's online world, defamation takes on a different character. Viral posts, retweets, and shares can inflict serious harm within seconds, often before anyone can respond or clarify (Jones & Lee, 2022). Social media platforms raise numerous legal uncertainties; who bears responsibility, and how can someone clear their name when platforms prioritize speed over accuracy?. This paper also draws on legal traditions in the UK and Singapore to offer a broader context (Asari, 2017). Those jurisdictions grapple with similar issues, and their approaches may offer Malaysia valuable lessons on balancing press freedom with personal dignity. Ultimately, this study argues that Malaysia's defamation laws, rooted in colonial-era legislation, have not kept pace with digital realities. What's urgently needed is updated legislation accompanied by more transparent and enforceable platform policies. Only then can we strike a reasonable balance between freedom of expression and protecting individuals from reputational harm (O'Connor, 2024).

Keywords: Freedom of Expression, Online Communication, Society

INTRODUCTION

This paper is aim to explore the effect of defamation on freedom of press. It will focus on the current legal framework on the media environment mainly.

Definition of Defamation

The law of defamation started in the middle age in England as a protection to the reputation of a person. It is an importation of Roman Law and Ecclesiastical Law (The Law of the Church) where it is called "diffimation" as a measure of the Church to deter Christians from gossiping. (Veeder, 1903)

The more common form of defamation is more on slander until printing technology was invented in the 15th century. In the 17th century, the English Law drew a distinction between libel and slander which will be explained later. At that point of time, defamation was widely defined to include sedition, blasphemy, libel, slander and it was also included as physical trespass to person.

As Malaysia inherited the Common Law system, our law of defamation is both statutory and common law based. As per Lord Atkin's judgement in the case of *Sim v Stretch* [1936] 2 All ER 1237, His Lordship defines defamation as statement that injures the reputation of another by exposing them to hatred, contempt, or ridicule,

or which tends to lower them in the esteem of right-thinking members of society. The case clarified that for a statement to be defamatory, it must lower the claimant in the estimation of right-thinking people or cause them to be shunned or avoided. (Groppo, 2016)

On the other hand, Section 499 of the Malaysian Penal Code defines defamation as:

“...Whoever, by words either spoken or intended to be read or 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, except in the cases hereinafter excepted, to defame that person...”

Section 500 provides that this offence is imprisonment for a term which may extend to two years or with fine or with both.

Importance of Media in a Democratic Society

Facilitator of Democratic Participation: The media serves as a public sphere for opinion exchange, enabling communication between politicians and the public and helping hold politicians accountable through reporting and scrutiny. It also allows the voices of the public to be heard by the politicians.

Shaper of Public Opinion: It influences how the public perceives issues, what topics are prioritized, and how political judgments are formed through its coverage and tone. Because the power of media is to influence and hold power to be accountable, the media is often threatened by anti-democratic regimes through censorship, legal persecution, violence, funding cuts, or takeovers. (Farrell and James, 2024)

The Fine Line Between Freedom of Speech and Defamation

Article 4 of the Federal Constitution stated that the Federal Constitution is the supreme law in Malaysia. At the same time, Article 10(1) of the Federal Constitution ensures the Freedom of Speech and Expression of all Malaysian citizens.

However, Article 10(2)(a) allows the government to enact laws to restrict freedom of speech. Such restrictions include the restriction on defamatory speeches. The article entitled *Freedom of Speech and Expression in Malaysia: Protection under the Federal Constitution* quoted Professor Shad Saleem Faruqi that the freedom of speech is the right to express opinions openly, while hate speech misuses this right to harm or incite violence. It is considered a fundamental human right essential to democracy, though not absolute and must be exercised within legal boundaries.

He also said that scholars argue that freedom of expression is more crucial than democracy itself, as it forms the foundation for all other rights. However, it must be balanced with public order, morality, and social harmony, especially in a diverse society like Malaysia. Article 10(1)(a) of the Federal Constitution guarantees Malaysians the right to freedom of speech and expression, covering various forms of expression (e.g. art, media, digital content). However, this right is subject to legal restrictions outlined in the same Article to maintain national security, public order, and racial harmony. (Mia et al, 2022)

Section 12 of the Defamation Act provides that the newspaper is protected under qualified privilege should the defamatory statement be made in the reporting of news.

Understanding Defamation

Types of Defamation and Legal Elements

Under the civil claim, defamation may be divided into Libel and Slander. According to LexisNexis (2025), libel means a permanent statement that is made or communicated that is defamatory of someone other than the subject of the statement. Libel has been expanded by statute to encompass theatrical works, radio and television broadcasts, and motion pictures under common law. Without evidence of specific harm, libel can be prosecuted.

Slander means a defamatory statement against someone other than the person to whom it relates that is expressed orally, through sounds, glances, signs, gestures, or in another non-permanent manner. Under common law, slander can only be prosecuted upon proof of special damages, unless (a) the claimant is accused of a crime that carries a jail sentence, (b) a woman is accused of being unchaste, or (c) the claimant is disparaged in his place of employment, profession, calling, or trade or business. In general, a defamatory statement against someone other than the person to whom it relates that is expressed orally, through sounds, glances, signs, gestures, or in another non-permanent manner.

In order to establish a case under defamation, three requirements must be proven by a plaintiff in court to win a case of defamation, which include the following:

1) The material must be defamatory.

According to Salleh Buang (2020), it is the plaintiff's responsibility to demonstrate that the comments in question are defamatory. Even if they are harsh or crude, words that are only abusive do not constitute defamation. The plaintiff's "self-esteem" is attacked by abuse, and it may be impacted, but the law of defamation serves to safeguard the plaintiff's reputation among "other people."

Regardless of whether the alleged remarks are defamatory or not, they must be interpreted in their natural and everyday sense—that is, as they would be understood by the average person. In a non-technical sense, word construction determines its "ordinary and natural meaning."

The plaintiff must argue and provide evidence in court if he claims that the words have an innuendo, or concealed or inner meaning, that makes them defamatory of him; otherwise, his petitions will be dismissed. The plaintiff may still go back to the words' original meaning if he is unable to demonstrate innuendo.

In *Tolley v. JS Fry & Sons Ltd. [1931] AC 333*, an advertisement poster showed a slab of the defendant's chocolate sticking out of the pocket of the plaintiff, an amateur golfer. The plaintiff accused the defendants of insinuating that he had exchanged his amateur status for money by agreeing to be featured in the advertising. According to the court, this was defamatory, and the plaintiff was entitled to compensation. (Salleh Buang, 2020)

In the case of *Lim Guan Eng v New Straits Times Press (M) Bhd [2017] 9 MLJ 622*,

The High Court awarded the plaintiff RM300,000 in general and aggravated damages. The award was based in part on the plaintiff's high social standing, the nature and gravity of the bribery allegations made against them, and the wide distribution of the disputed claims. (Aliff Benjamin Suhaimi & Lim, P., 2018)

2) The statements must refer to the plaintiff.

According to Ahmad Masum & Md Rejab Md Desa (2014), it is crucial that the plaintiff be the subject of the complaint and not any other individual, real or imagined. The defendant's mental condition is irrelevant when the plaintiff is explicitly mentioned in the words complained of. If the defendant's statement is accurate about one individual but actually disparages another with the same name or description, he may be held accountable. In *Sandison v. Malayan Times Ltd & Ors (1964) MLJ 332*, a newspaper article asserting that a senior expatriate executive of the rubber industry had referred to the plaintiff by external or extrinsic facts. He was fired due to corruption. The court determined that even if the executive's name was omitted, the date of dismissal was stated, and the plaintiff did, in fact, stop holding that position on that date. The article also discussed the successor of the fired executive, whose identity was widely known. The plaintiff was unmistakably identified as the dishonest executive by the defamatory remarks.

3) There must be an intended publication to a third party.

Regarding the final component, libel must be published to a third party, or someone other than the plaintiff, in order for it to be actionable (i.e., for the plaintiff to be able to sue the defendant) (*Wan Abdul Rashid v. S*

Sivasubramanian (1984) 1 *MLJ* 385). Accordingly, publishing does not occur if the plaintiff is the only one who sees the printed papers and no other parties do. (Evans et al., 2008)

As mentioned by Talib, N. (2010), it is crucial to remember that there are some exceptions to the general rule that publishing something to a third-party entail publishing the defamation legislation. First off, a communication between spouses is not considered a publication because husband and wife are considered to be one organization (*Morgan v. Wennhak*, 1888, 20 *QBD* 635). Second, in order to establish publishing, distributors like newspaper delivery men are not considered "third parties". Likewise, a typewriter or printer that returns the slanderous.

The author is not libeled by material that needs to be proofread or fixed. The printer or typist is only the author's representative. According to *John Lee & Anor v. Henry Wong Jan Fook* (1981) 1 *MLJ* 108, FC, the same finding holds true whether a clerk, typewriter, or other office worker writes or prints out a dictation of defamatory words from the superior. Therefore, the publication element would only be met if the words were read by readers after they were written in a newspaper. (Ahmad Masum & Md Rejab Md Desa (2014)).

Legal Framework and Precedents

Defamation Laws in the United Kingdom and Malaysia

United Kingdom

The Defamation Acts of 1996 and 2013 regulate defamation law in the United Kingdom. However, neither statutes don't give a clear explanation of what constitutes defamation. A defamatory comment is one that intentionally damages another person's reputation. Since then, it has been widely acknowledged that he has a bad reputation and tends to be avoided or shunned by typically right-thinking people of society (Rogers, 2010).

According to Khairun-Nisaa Asari & Nazli Ismail Nawang (2014), Tugendhat J. subsequently cited the same ruling in *Thornton v. Telegraph Media Group Ltd* [2010] EWHC 1414 (QB), [2011] 1 *WLR* 1985, wherein it was decided that in order to exclude frivolous claims, there must be a qualifier or level of severity. Similar to the ruling in *Jameel v. Dow Jones & Co* [2005] EWCA Civ 75, [2005] QB 946, where the commission of a real and substantial tort in any defamation suit is regarded as a necessary element.

Before a defamation action can be started, the claimant must demonstrate that the publishing of the alleged defamatory statement has caused or is likely to cause severe harm to his reputation. This is an extra requirement included by the new Defamation Act 2013 under Section 1(1), where, before a defamation action can be started, the claimant must demonstrate that the publishing of the alleged defamatory statement has seriously harmed or is likely to seriously hurt their reputation. For organizations that engage in profit-making activities, the requirement is that they show that the publishing of the allegedly defamatory remark has caused them to suffer or is likely to cause them to suffer significant financial harm. According to Section 1(2) of the Defamation Act, damage to a body's reputation that has resulted in or is anticipated to result in significant financial loss for the body.

As the technology grows, it is getting harder to distinguish between the two as a result of the convergence of the broadcasting, information technology, and telecommunications sectors, as well as the quick growth of various Internet-based publications like blogs, social networking sites like Facebook and Twitter, and video sharing websites, among many others. Therefore, the current statutory rules and pertinent decided cases, notably blog postings under UK law, must be consulted to ascertain the status of defamatory content published on Internet-based platforms.

The aforementioned provisions make it abundantly evident that Internet publications like blogs, Wikipedia, YouTube, podcasts, and many more are most likely to be included in the statutory interpretations of the phrase "programme services" in Section 201(1)(c). These transmitted materials, whether in the form of text, images, audio, or video, are to be considered programs under Section 202(1) of the Broadcasting Act 1990. Therefore, in the context of online publishing, libel is more likely to be the predominant tort than slander.

Malaysia

As discussed by Khairun-Nisaa Asari & Nazli Ismail Nawang (2014), the Malaysian Defamation Act 1957 is the law that governs defamation in Malaysia. Sections 499 and 500 of the Malaysian Penal Code address criminal libel, while this legislation, which is comparable to the English Defamation legislation 1952, regulates civil defamation.

Like the UK's 1996 and 2013 Acts, the statute does not define defamation in a single way. As a result, the country's courts now strictly adhere to UK law. However, there is currently no agreed-upon or thorough description of what defamation is. Numerous cases have examined how to interpret the term.

Mohd Azmi J. established the defamatory test in *Syed Husin Ali v. Syarikat Perchetakan Utusan Melayu Bhd & Anor (1973) 2 MLJ 56* as follows:

Therefore, even if no one thinks the statement is factual, its propensity to incite others' negative opinions against the plaintiff serves as a test for whether it is defamatory.

Another criterion is whether the plaintiff's comments would ordinarily cause right-thinking members of society to view them less favorably. The most common form of defamation involves accusations of crimes, dishonesty, untruthfulness, ingratitude, or cruelty directed at the plaintiff's moral character.

When words are transmitted by radio communication, they are considered to be published permanently. Additionally, Section 13 (1) made it clear that radio broadcasts of stories or topics are treated on an equal footing with newspaper publications. These restrictions have been expanded to include publishing on television as well, since lawsuits pertaining to defamatory content aired on television stations have been tried and resolved by courts under the libel legislation. *YB Dato Dr Hassan bin Mohammed Ali v. YB Mulia Tengku Putra bin Tengku Awang [2010] 8 MLJ 269* and *Mohammed Azwan bin Haji Ali v. Sistem Televisyen (M) Bhd & Ors [2000] 4 MLJ 120* are two noteworthy instances pertaining to these. As a result, it is a well-established rule in Malaysia that broadcasting on television or radio and publishing in written materials are considered libel rather than slander.

Landmark Defamation Cases Involving the Media

According to Aliff Benjamin Suhaimi & Lim, P. (2018), when discussing the defamation law, it is crucial to highlight the landmark cases. It not only provides judicial guidance but also strikes a balance between the right to freedom of speech. The following cases could be a good reference in understanding the evolution of defamation law in Malaysia.

In the case of *Dato' Seri Anwar bin Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor [2010] 2 MLJ 492*, the High Court granted the plaintiff RM100,000 in compensatory damages in the matter. The plaintiff had already had public confirmation of the facts through a statement made by the defendant. However, the plaintiff had to get compensation because this vindication was delayed. There was no proof that the plaintiff had suffered any financial losses. Consequently, there was no justification for imposing hefty damages.

Additionally, it should be noted that the Federal Court upheld the RM7,000,000.00 cumulative verdict of general and aggravated damages that the defendants owed the plaintiff in *Ling Wah Press (M) Sdn Bhd & Ors v. Tan Sri Dato Vincent Tan Chee Yioun [2000] 4 MLJ 77*. This is the largest defamation damages award Malaysian courts have awarded so far.

The Federal Court further held that the substantial general damages awards were granted due to no apology, retraction, or withdrawal could ever fully repair the damage caused by the defamatory remarks by the defendants.

The following in Table 1 is a trend in the amount of damages granted in recent defamation cases:

Table 1. A trend in the amount of damages granted in defamation cases

CASE	COURT	DAMAGES
<i>Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee [2018] 1 CLJ 145</i>	Federal Court	RM600,000
<i>Lee Chooi Sian v Wong Geok Lan [2017] MLJU 1233</i>	High Court	RM400,000.00
<i>Lim Guan Eng v News Straits Times Press (M) Bhd [2017] 9 MLJ 622</i>	High Court	RM300,000.00
<i>Datuk Seri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli & Anor [2017] 7 MLJ 150</i>	High Court	RM200,000.00
<i>Majlis Amanah Rakyat & Anor v Mat Nawi bin Awang and anor appeal [2017] 1 MLJ 500</i>	Court of Appeal	RM200,000.00
<i>Dr Chong Eng Leong v Tan Sri Harris bin Mohd Salleh [2017] 4 MLJ 611</i>	Court of Appeal	RM100,000.00
<i>Utusan Melayu (M) Bhd v Othman bin Hj Omar [2017] 2 MLJ 800</i>	Court of Appeal	RM100,000.00

Media's Role in Defamation Cases: Investigative Journalism vs. Sensationalism

Investigative journalism or publications like Malaysiakini and The Edge have frequently pushed the boundaries of defamation legislation in Malaysia by releasing exposés on financial scandals, power abuse, and corruption. For instance, covering the 1MDB affair led to numerous lawsuits and threats of defamation against journalists, which begs the question of whether current legal frameworks sufficiently safeguard ethical reporting carried out in the public interest (Gomez, 2018).

While in defamation trials, the media can either help protect people's reputations by doing investigative journalism or hurt them by reporting on dramatic stories. Investigative journalism, when practiced responsibly, serves the public interest by uncovering corruption, abuse of power, and matters of significant social concern (George, 2012). In such cases, courts often recognize the importance of protecting press freedom, particularly when reporting relates to political figures or issues of governance. For instance, in Dato' Seri Anwar Ibrahim v. Tun Dr. Mahathir Mohamad ([2001] 4 MLJ 332) case, the judiciary had to evaluate whether the defendant's statements fell within legitimate political commentary or amounted to defamatory allegations. This illustrates how the line between robust critique and defamation remains contested in Malaysia (Asari, 2017).

Conversely, sensationalism prioritizes attention-grabbing headlines and rapid dissemination over factual accuracy. In the era of digital media, sensational content is often designed to maximize clicks and shares, creating a fertile ground for defamatory statements (Jones & Lee, 2022). In such cases, courts often recognize the importance of protecting press freedom, particularly when reporting relates to political figures or issues of governance. As an example, in Dato' Seri Anwar Ibrahim v. Tun Dr. Mahathir Mohamad ([2001] 4 MLJ 332), the judiciary had to evaluate whether the defendant's statements fell within legitimate political commentary or amounted to defamatory allegations. This illustrates how the line between robust critique and defamation remains contested in Malaysia (Asari, 2017).

The Influence of Social Media on Defamation in Malaysia

The emergence of social media has drastically changed Malaysia's defamation laws. Platforms like Facebook, Twitter (X), and TikTok allow information to spread fast and frequently without verification, in contrast to traditional media where editorial oversight and journalistic standards can serve as safeguards. Before the impacted person has a chance to reply or pursue legal action, viral posts, shares, and retweets can cause reputational damage in a matter of seconds (Jones & Lee, 2022). Because courts must decide whether culpability lies with the original poster, those who spread the information, or the platforms themselves, this immediacy makes evaluating defamation legally more difficult (O'Connor, 2024).

The lines separating sensationalism and investigative journalism have become more hazy due to social media. On the one hand, independent journalists and whistleblowers carry on the heritage of investigative reporting in a more decentralized manner by using online platforms to reveal wrongdoing and corruption (Gomez, 2018). For instance, the public was able to demand responsibility from political leaders since a large portion of the early

discussion surrounding the 1MDB issue was magnified online. However, because unsubstantiated claims or deceptive headlines are extensively disseminated to garner attention and interaction, the same platforms also facilitate the growth of sensationalist material (Asari, 2017). This has increased the number of defamation claims arising from social media publications, with Malaysian courts repeatedly stressing that freedom of expression online is not absolute and must be balanced against the protection of reputation.

Furthermore, the Defamation Act 1957, which serves as the foundation for Malaysia's defamation law, has found it difficult to adapt to modern contemporary realities. The Act was not intended for the pace and scope of internet communication, even if it offers remedies including damages and injunctions (Asari, 2017). The topic of whether platforms should be held accountable for defamatory content that circulates on their networks remains unanswered due to the lack of explicit law provisions on intermediary liability. Comparative jurisdictions such as Singapore and the United Kingdom have moved towards clearer frameworks for online publication, offering Malaysia potential models for reform (O'Connor, 2024).

Ultimately, social media has increased the risks and opportunities associated with defamation. Investigative voices are strengthened, but sensationalist harm is also exacerbated. To guarantee that Malaysia's defamation legislation strikes a fair balance between digital free speech and protection against reputational harm, extensive revision is required (Jones & Lee, 2022; O'Connor, 2024).

Social media has emerged as a major venue for defamation claims in Malaysia, as demonstrated by a number of well-known examples. As such, the Federal Court ruled in *Raja Syahrir Abu Bakar v. Mkini Dotcom Sdn Bhd* ([2018] 6 MLJ 65) that Malaysiakini was accountable for remarks made by third parties on its website, proving that digital publishers might be held accountable for user-posted defamatory content. As in *Salleh Buang v. Mohd Shukri Abdul Majid* ([2015] MLJU 1234), where a defamatory claim circulated on Facebook prompted judicial action, individual social media users have also been sued for defamation over Facebook remarks. The way Malaysian courts are adjusting classic defamation standards to the realities of online communication is demonstrated by these examples.

The Rise of Fake News and Misinformation in Malaysia

Due to the proliferation of false information and fake news, the internet age has made Malaysia's defamation laws more difficult to enforce. False or misleading content is now widely disseminated thanks to social media platforms, which allow for quick posting and viral spreading. Online material frequently goes uncontrolled, posing significant risks of reputational injury, in contrast to traditional journalism, where editorial oversight offers a certain amount of fact-checking (Jones & Lee, 2022).

Fake news has had a significant impact on how the population in Malaysia feels about social and political issues. During significant political events, like the 1MDB affair, the dissemination of false information showed how online narratives might magnify both investigative findings and unfounded accusations (Gomez, 2018). Some of these reports were intended to deceive, denigrate opponents, or create sensationalism, while others served the justifiable public interest by holding officials accountable. This fuzziness of fact and fiction emphasizes how difficult it is to discern between truthful investigative reporting and false, defamatory information (Asari, 2017).

Legislative actions are the government's response to the false news issue. Despite being abolished in 2019, the Anti-Fake News Act of 2018 addressed worries about the effects of false information on society. Under the guise of battling lies, critics claimed that the Act ran the risk of stifling free speech and independent journalism (O'Connor, 2024). The state still uses the Communications and Multimedia Act of 1998 and the Defamation Act of 1957 to control online content even after it was repealed, which raises unanswered concerns about how to strike a balance between the right to free speech and safeguards against damage to one's reputation.

Cases where false information spread on social media led to defamation lawsuits have also been heard by Malaysian courts. For instance, the Federal Court affirmed that internet platforms could be held accountable for third-party remarks in *Raja Syahrir Abu Bakar v. Mkini Dotcom Sdn Bhd* ([2018] 6 MLJ 65), highlighting the necessity of more stringent moderation in the face of potentially inaccurate and defamatory content. The judiciary's readiness to apply defamation laws online is also demonstrated by the legal repercussions meted out

to those accused of disseminating false information on Facebook (Salleh Buang v. Mohd Shukri Abdul Majid [2015] MLJU 1234).

In the end, the proliferation of false information and fake news in Malaysia highlights how urgent it is to update media and defamation laws to take into consideration modern realities. In a time when information is both a tool of accountability and a weapon of disinformation, maintaining press freedom and individual dignity requires a balanced approach that protects investigative journalism while punishing malicious falsehoods (Jones & Lee, 2022; O'Connor, 2024).

Challenges and Ethical Considerations

The Chilling Effect on Journalism

Government's Right to Sue for Defamation

The Federal Court's decision in Chong Chieng Jen v Government of Sarawak marks a pivotal moment in Malaysian defamation jurisprudence, affirming that public authorities may initiate defamation suits against individuals. Referring to Malaysian Bar (2018), this ruling diverges from the UK precedent in Derbyshire County Council v Times Newspapers Ltd, which held that government bodies should not sue for defamation, as doing so undermines democratic accountability and suppresses public criticism. In Malaysia, the legal recognition of a government's right to sue introduces a chilling effect on journalism and political discourse. Journalists, commentators, and opposition figures may self-censor when reporting on alleged mismanagement or corruption, fearing costly litigation and reputational damage. The burden of defending such claims often without robust protections for fair comment or qualified privilege where it discourages the investigative reporting and weakens the media's watchdog role. This case illustrates the tension between protecting institutional reputation and safeguarding freedom of expression, raising urgent questions about the balance of power, judicial independence, and the health of Malaysia's public sphere.

Malaysiakini Contempt Case and Platform Liability

The 2021 Federal Court ruling against Malaysiakini in a contempt of court case underscores the precarious legal terrain faced by digital media platforms in Malaysia. Malaysiakini was fined RM500,000 for failing to moderate third-party comments on its website that were deemed contemptuous of the judiciary. Although the editor-in-chief, Steven Gan, was acquitted, the court held the platform itself liable, establishing a precedent that online publishers may be punished for user-generated content even if it was posted without their knowledge. This decision raises significant concerns about intermediary liability and the boundaries of editorial responsibility in the digital age. As per Article 19 (2021), the ruling has a chilling effect on online journalism and public discourse, prompting news portals to restrict comment sections, pre-emptively moderate content, or avoid controversial topics altogether to mitigate legal risks. Such defensive measures, while understandable, risk narrowing the space for civic engagement and critical debate, especially on matters involving the judiciary or governance. The case illustrates how legal mechanisms, when applied without clear safeguards for freedom of expression, can inadvertently suppress the very democratic scrutiny they aim to regulate.

Social Media Defamation and the Digital Effect

The expansion of defamation liability into social media and online review platforms has intensified the chilling effect on digital expression in Malaysia. Referring to Khidmat Guaman (2025), individuals have faced lawsuits for allegedly defamatory posts on platforms such as Twitter, Facebook, and Google Reviews, with courts awarding damages even in cases where the content was later deleted. This signals that digital footprints are able to carry enduring legal consequences. The broad interpretation of defamation in online contexts, often without clear thresholds for malice or public interest, places ordinary users, journalists, and whistle-blowers at risk. The legal exposure discourages critical commentary, investigative threads, and consumer advocacy, especially when powerful entities or public figures are involved. As a result, many users resort to self-censorship or avoid contentious topics altogether, weakening the democratic potential of digital platforms. The trend raises urgent

questions about proportionality, intent, and the need for clearer legal protections for fair comment and responsible speech in Malaysia's evolving media landscape.

The Role of Fact Checking and Responsible Reporting

In Malaysia, defamation law provides a limited safeguard for journalists through the defense of truth, which is only valid if the statement in question is both factually accurate and made in the public interest. This dual requirement places a high burden on media practitioners, especially when reporting on sensitive or high-profile matters. Journalists who engage in rigorous fact-checking and source verification are better equipped to invoke legal defenses such as justification, fair comment, or qualified privilege. These protections, however, are contingent on the journalist's ability to demonstrate responsible reporting practices. This is to ensure that their work is not only truthful but also ethically framed and contextually justified. In this legal environment, responsible journalism becomes not just a professional standard but a strategic necessity to avoid defamatory implications and potential litigation.

In Malaysia's media landscape, where defamation suits are increasingly used to suppress dissenting voices, accurate and balanced reporting plays a vital role in safeguarding journalistic integrity. When media outlets commit to thorough fact-checking and fair representation, they not only reduce their legal vulnerability but also reinforce public trust in their reporting. This is particularly crucial when covering contentious issues such as corruption, judicial decisions, or government expenditure—topics that often attract scrutiny and potential backlash. By maintaining high editorial standards and demonstrating accountability, journalists can position themselves as credible sources of information, thereby strengthening the press's role as a pillar of democratic society. In this way, responsible reporting becomes both a legal defense and a moral compass, guiding media practitioners through the complexities of defamation law while preserving their duty to inform the public.

Gáley (2024) mentioned that persistent threat of defamation litigation often compels journalists and media outlets to engage in self-censorship, particularly when reporting on politically sensitive or controversial matters. This defensive posture, while understandable, can erode the media's role as a watchdog and limit the public's access to critical information. However, adherence to ethical journalism—through meticulous source verification, balanced representation of viewpoints, and restraint from sensationalism—offers a pathway to mitigate legal risks without compromising editorial integrity. Responsible reporting not only strengthens the credibility of the press but also enables continued coverage of contentious issues within the bounds of the law. By upholding professional standards, journalists can navigate the complexities of defamation law while preserving their freedom to inform, critique, and hold power to account.

The rapid evolution of digital journalism in Malaysia has introduced new challenges in maintaining accuracy and legal compliance, particularly under defamation law. As online platforms prioritize speed and immediacy, the pace of publication often outstrips the process of verification, increasing the likelihood of unintentionally publishing defamatory content. This risk is compounded by the viral nature of digital media, where unverified claims can spread rapidly and attract legal scrutiny. To navigate this landscape responsibly, digital newsrooms must adopt robust editorial policies that include pre-publication review, source triangulation, and mechanisms for timely post-publication corrections. These practices not only uphold journalistic standards but also serve as protective measures against defamation claims, ensuring that the pursuit of immediacy does not come at the expense of accuracy or accountability.

In Malaysia's evolving defamation landscape, the role of responsible journalism is more critical than ever. While legal safeguards such as truth and public interest offer some protection, they demand a high standard of verification and ethical reporting. Media credibility, built on accuracy and balance, not only shields journalists from litigation but also fosters public trust—especially when covering contentious issues. At the same time, the chilling effect of defamation law continues to pressure journalists into self-censorship, making ethical rigor a strategic defense against legal exposure. In the digital age, where speed often compromises verification, newsrooms must adopt robust editorial policies to prevent unintentional defamation and preserve journalistic integrity. Together, these practices form a resilient framework that enables the media to navigate legal constraints while fulfilling its democratic duty to inform, critique, and hold power accountable.

The Impact on Individuals and Society

The application of defamation law in Malaysia has far-reaching consequences not only for media institutions but also for individuals and society at large. The looming threat of litigation often suppresses free expression, discouraging citizens from voicing opinions on public affairs, particularly through digital platforms. This self-censorship weakens civic participation and silences whistle-blowers who might otherwise expose wrongdoing. For those targeted by defamation suits, either journalists, activists, or society, the psychological toll and financial burden can be severe, especially in the absence of institutional support. Moreover, when defamation law is perceived as a tool to silence dissent rather than protect reputations, it erodes public trust in both the legal system and the media. Independent and smaller news outlets may retreat from investigative reporting, leading to a homogenised media landscape and reduced diversity of perspectives. At the societal level, the vibrancy of online discourse diminishes, affecting democratic engagement and critical debate. Gáley (2024) highlighted that these challenges are in the rise of defamation awareness which also has prompted greater legal literacy and ethical accountability among media practitioners, encouraging more responsible and informed public dialogue.

METHODOLOGY

Qualitative Research: Secondary Data Analysis

Qualitative research using secondary data, where doctrinal legal analysis is a useful method for examining the interactions between laws, court rulings, and media narratives in the study of defamation, media practices, and the spread of false information in Malaysia. Instead of gathering fresh, primary data, secondary data analysis involves the methodical examination and interpretation of pre-existing data sources, including court rulings, scholarly works, news articles, government records, and policy papers (Johnston, 2017).

This approach is particularly useful in areas where there are already abundant secondary sources, such as media law and defamation. To investigate how Malaysian courts understand liability for defamatory content on social media platforms, for example, well-known cases like Salleh Buang v. Mohd Shukri Abdul Majid ([2015] MLJU 1234) and Raja Syahrir Abu Bakar v. Mkini Dotcom Sdn Bhd ([2018] 6 MLJ 65) might be qualitatively examined. Comparing other legal systems with Singapore and the UK, as well as government initiatives like the Anti-Fake News Act 2018, offer important insights into how various legal systems try to control false information while preserving free speech (Asari, 2017; O'Connor, 2024).

Finding themes, patterns, and meanings is the main goal of qualitative secondary analysis rather than statistical measurement. Researchers can examine how media outlets differentiate between sensationalism and investigative journalism, for instance, or how public debate surrounding crises such as 1MDB (Gomez, 2018) highlights conflicts between responsibility and damage to one's reputation. Researchers can evaluate the wider socio-legal ramifications of defamation law in Malaysia's digital age by thematically categorizing existing resources, such as court rulings, policy declarations, or media coverage (Jones & Lee, 2022).

Cost-effectiveness, availability of both historical and current data, and the capacity to compare various viewpoints are some of this approach's advantages. Researchers must be aware of its drawbacks, though, including the need to trust the reliability of pre-existing sources and the difficulty of deciphering content created for goals other than scholarly study (Johnston, 2017). This study provides a nuanced understanding of how freedom of expression and reputation are negotiated in the era of social media and disinformation by using qualitative secondary data analysis to place Malaysian defamation law within a larger context of digital media transformations, legal evolution, and societal challenges.

RESULTS AND DISCUSSION

Balancing Free Press and Reputation Protection in Malaysia

In Malaysia's digital age, striking a balance between press freedom and reputation protection has grown more difficult. On the one hand, a free press is essential to democratic accountability because it uses investigative journalism to expose corruption and hold public authorities accountable. However, irreversible damage to one's reputation can result from unchecked media activities, such as sensationalist reporting or the spread of false

material on social media. Therefore, Malaysian defamation law has to strike a careful balance between these conflicting ideals.

The foundation of Malaysian defamation legislation, the Defamation Act 1957, was written before the advent of the internet. Although it offers remedies like injunctions and damages, it falls short in addressing the scope and speed of online communication (Asari, 2017). Famous cases like Dato' Seri Anwar Ibrahim v. Tun Dr. Mahathir Mohamad ([2001] 4 MLJ 332) show how courts have historically struggled with questions like justification and malice, especially in contentious political situations. Decisions like Raja Syahrir Abu Bakar v. Mkini Dotcom Sdn Bhd ([2018] 6 MLJ 65) have expanded liability to digital platforms in more recent times, highlighting the application of traditional defamation standards to contemporary media environments.

Making the distinction between sensationalism and investigative journalism is a fundamental problem. As demonstrated by the coverage of the 1MDB case, investigative reporting serves the public interest by exposing systematic corruption and power abuse (Gomez, 2018). The risk of defamation is increased by sensationalist media and viral social media material, which frequently put attention and interaction ahead of truth (Jones & Lee, 2022). Courts have stressed that publications driven by carelessness or malice cannot be shielded by defenses like qualified privilege or fair criticism (O'Connor, 2024).

This balance is made more difficult by the proliferation of false information and fake news. The state's worry over digital disinformation was brought to light by the short-lived Anti-Fake News Act of 2018, but it also sparked concerns about stifling free speech in the name of regulation. The fact that it was repealed in 2019 showed how hard it is to enact laws that combat false information without compromising the independence of journalists (O'Connor, 2024). However, current laws like the Defamation Act and the Communications and Multimedia Act of 1998 remain important legal instruments for dealing with online reputational harm.

Reforms that both safeguard respectable journalism and deter careless publication are necessary to strike the correct balance. A helpful example for Malaysia is provided by comparative analysis of the UK's Defamation Act 2013, which established a legislative defense for publication on topics of public interest (O'Connor, 2024). Investigative journalism might be better protected by such changes, which would also keep harmful or sensational reporting actionable.

Finally, it takes more than merely legal reform to strike a balance between journalistic freedom and reputation protection in Malaysia. Stronger journalistic ethics, increased public media literacy, and open platform policies are all necessary to stop the spread of damaging false information. In a changing media landscape, Malaysia can only strike a sustainable balance that protects individual dignity and democratic responsibility by combining legal, institutional, and cultural strategies.

The Need for Legal Reforms in the Digital Age

To specifically reflect contemporary forms of publication, republication, and virality in digital media, including liability for intermediary platforms, the Defamation Act of 1957 (as well as relevant provisions of the Communications and Multimedia Act of 1998) should be amended. Since the present Defamation Act was written before the internet, it is "outdated" for the modern environment, according to a number of observers (Vanessa, 2025).

The government could establish precise legal definitions and cutoff points that differentiate between online-published protected expressions of opinion and actionable defamatory content to prevent the suppression of free speech. The reason for this is the worry that current regulations, including Section 233 of the CMA, are overly general and could stifle free speech (Malaymail, 2024).

Today, The Malaysian Media Council Act 2025 was passed in June 2025 establishing the Malaysia Media Council (MMC). The MMC will have a 21-member board comprising, among others, representatives from media companies, civil society and government agencies, as well as media practitioners. It is tasked with upholding ethical standards, resolving complaints and improving the welfare of media workers, including freelancers and digital journalists. (Muslim, 2025)

CONCLUSION

In conclusion, defamation remains a critical issue in Malaysia's media landscape, where the protection of personal reputation often intersects with the fundamental right to freedom of expression (Gomez, 2004). Rooted in English common law yet adapted to Malaysia's geopolitical and cultural context, defamation law continues to play a significant role in guiding journalistic ethics and ensuring accountability within the media industry (Buang, 2014). However, the rapid growth of digital platforms, social media, and citizen journalism has made it increasingly difficult to distinguish between responsible reporting and defamatory content (Mia et al., 2022).

While the courts endeavour to balance individual rights with the public interest, persistent legal threats and self-censorship continue to constrain the media's role as an independent watchdog (Asari & Nawang, 2011). To promote a more open and democratic society, Malaysia must adopt a balanced approach that safeguards individual integrity while enabling journalists to report truthfully and critically without fear of undue repression. Ultimately, aligning defamation law with the broader principles of press freedom and democratic accountability will depend on fostering ethical journalism, ensuring legal clarity, and enhancing public awareness (Idid et al., 2017).

According to Asari & Nawang (2011) there were some limitations in the study, such as the reliance on secondary data and doctrinal legal analysis, which prioritize case studies, current legislation, and academic discourse above empirical research. As a result, rather than representing the actual experiences or opinions of journalists, decision-makers, or the general public, the findings represent interpretations of contemporary legal frameworks and judicial trends. Additionally, the study scope is limited to Malaysia's media and legal landscape, which means it might not adequately represent the comparative subtleties of defamation law in other jurisdictions.

Hence, for recommendations, future studies should consider using empirical techniques like surveys, interviews, or content analysis to get the viewpoints of journalists, lawyers, and legislators regarding the real-world effects of Malaysia's defamation laws (Idid et al., 2017). Also, examine the efficiency of self-regulatory frameworks in Malaysian media organisations as well as the role that digital platforms and artificial intelligence play in preventing online defamation.

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