

**THE EFFECT OF SOCIAL MEDIA ON DEFAMATION LAW: THE BALANCE BETWEEN
FREEDOM OF EXPRESSION AND PROTECTION OF REPUTATION IN NIGERIA
DEFAMATION LAWS**

SUBMITTED

BY

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(2020/LW/25439)

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TITLE PAGE

**THE EFFECT OF SOCIAL MEDIA ON DEFAMATION LAW: THE BALANCE BETWEEN
FREEDOM OF EXPRESSION AND PROTECTION OF REPUTATION IN
NIGERIADEFAMATION LAWS**

DECLARATION

I, Emmanuel Genesis Olaoluwa, hereby solemnly declare that this research work, titled **The Effect of Social Media on Defamation Law: The Balance between Freedom of Expression and Protection of Reputation in Nigeria Defamation Laws**, submitted to the Faculty of Law, Alex-Ekwueme Federal University Ndufu-Alike Ikwo, in partial fulfilment of the requirements for the award of LL.B, is an original work, as a result, it complied with all applicable laws, regulations and ethical standards and did not infringe on any copyright or other intellectual property, as proper citations and references were duly observed, and has not been previously published or submitted to any other University or Institute for the award of any degree or diploma.

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DEDICATION

I dedicate this research to God Almighty for His divine providence. To the eternal memories of my late grandfather, MrAlaraAtibereBluetide, my late grandmother, MrsAralu Ayo Esther, my late Aunty, MrsAworoOreofe, their love and care leave an indelible mark on my heart.

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T

The Human Rights Committee's *General Comment No. 34*

U

Universal Declaration of Human Rights 1948

U.S. Communications Decency Act

LIST OF ABBREVIATIONS

| | |
|--------|--|
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against women |
| ECHR | European Convention on Human Rights |
| ECOWAS | conomic Community of West African States |
| ECHR | European Court on Human Rights |
| EU | European Union |
| FOI | Freedom of Information |
| ICCPR | International Covenant on Civil and Political Rights |
| NDPR | Nigeria Data Protection Regulation |
| UDHR | Universal Declaration on Human Rights |
| UK | United Kingdom |
| US | United States |

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ABSTRACT

The advent of social media has revolutionized the way individuals communicate and interact, raising significant challenges for defamation law in Nigeria. The need to balance the fundamental right to freedom of expression with the protection of reputation has become increasingly complex in the digital age. This study aims to examine the impact of social media on defamation laws in Nigeria, with specific objectives to analyse the existing legal framework governing defamation, identify the challenges posed by social media to this framework, and explore potential reforms to address these challenges. Employing a doctrinal research methodology, the study conducts an in-depth analysis of Nigerian laws, court decisions, and legal literature on defamation. The findings reveal that social media has significantly altered the defamation landscape, and the current legal framework is inadequate to address the complexities of online defamation, including issues of jurisdiction, anonymity, and the role of intermediaries. The study concludes that a balance between freedom of expression and protection of reputation is crucial in a democratic society, and that Nigerian defamation law requires reforms to remain effective in the social media age. The study recommends legislative reforms to address the challenges of online defamation, judicial clarification on key issues, and stakeholder engagement to ensure that Nigerian defamation law strikes a balance between freedom of expression and protection of reputation, while also promoting innovation and protecting human rights.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The proliferation of social media has revolutionized the way information is disseminated and consumed, with profound implications for defamation law. Traditional notions of defamation, premised on print and broadcast media, are being challenged by the instantaneous, borderless, and democratizing nature of online communication¹. In Nigeria, the rapid growth of social media usage has created new opportunities for individuals to express themselves, but also raised concerns about the potential for harm to reputation². The ease of publication and dissemination of information on social media platforms has increased the risk of defamatory statements being widely circulated, potentially causing irreparable harm to individuals and organizations³. Furthermore, social media platforms have enabled users to share information quickly and easily, often without verifying the accuracy of the information, which can lead to the spread of false and damaging statements⁴. This has significant implications for defamation law, as it challenges traditional notions of publication and dissemination.

¹J Davidson, 'Defamation in the Digital Age'. *International Journal of Law and Information Technology* [2016] (24) (2) 143-156.

²B Adeyemi, 'Social media and the law in Nigeria'. *Journal of Law and Social Sciences* [2019] (1) (1) 1-12.

³M Tamana, 'The Impact of Social Media on Defamation Law'. *Journal of Media and Communication Law* [2020] (12) (1) 1-12.

⁴D Kaye, 'Social Media and the Spread of Misinformation'. *Journal of Communication and Media Studies* [2018] (12) (1) 1-10.

The Nigerian Defamation Law, inherited from English law, aims to balance the right to freedom of expression with the need to protect individuals' reputations from unwarranted attacks⁵. However, the application of this law in the social media era poses significant challenges. The anonymity and pseudonymity afforded by online platforms can embolden individuals to make defamatory statements, while the global reach of social media can amplify the harm caused by such statements⁶. Furthermore, the Nigerian courts have struggled to adapt traditional defamation principles to the online context, leading to inconsistent and sometimes conflicting decisions.

The balance between freedom of expression and protection of reputation is a delicate one, and Nigerian defamation law must navigate this complex terrain in the social media age. The Nigerian Constitution guarantees the right to freedom of expression, but this right is not absolute⁷. The challenge for defamation law is to strike a balance between protecting reputation and allowing for the free flow of information and ideas⁸. This requires a nuanced understanding of the impact of social media on defamation law and the development of effective legal frameworks that address the unique challenges posed by online communication. In particular, Nigerian defamation law must consider the role of social media in facilitating the dissemination of defamatory statements, and develop strategies for addressing the harm caused by such statements⁹. Additionally, the law must balance the need to protect reputation with the need to

⁵P Okonta, 'Defamation Law in Nigeria: A Critical Analysis'. *Journal of Nigerian Law* [2018] (22) (1) 1-18.

⁶R Post, 'Defamation Law and the Perils of the Internet'. *Journal of Law and Policy* [2007] (15) (2) 217-234.

⁷Constitution of the Federal Republic of Nigeria 1999 (as amended), *Section 39*.

⁸E Barendt, 'Balancing Freedom of Expression and Protection of Reputation'. *Journal of Media Law* [2018] (10) (1) 1-15.

⁹O Adegbola, 'Defamation Law and Social Media in Nigeria'. *Nigerian Journal of Law and Practice* [2020] (16) (1) 1-15.

promote freedom of expression, and ensure that any restrictions on freedom of expression are reasonable and justified¹⁰.

Despite the importance of this issue, there is a dearth of comprehensive research on the impact of social media on defamation law in Nigeria. Existing studies have focused on the general implications of social media for defamation law, but there is a need for a more detailed analysis of the specific challenges posed by social media in the Nigerian context¹¹. This study aims to contribute to the growing body of literature on this topic and provide insights that can inform the development of effective legal frameworks for addressing defamation in the social media era. By examining the intersection of social media and defamation law in Nigeria, this study seeks to shed light on the complexities of balancing freedom of expression and protection of reputation in the online context.

1.2 Statement of the Problem

The proliferation of social media in Nigeria has led to a significant increase in the dissemination of information, but it has also created new challenges for defamation law. The ease of publication and dissemination of information on social media platforms has increased the risk of defamatory statements being widely circulated, potentially causing irreparable harm to individuals and organizations.¹² Despite the importance of protecting reputation, Nigerian defamation law faces significant challenges in balancing the right to freedom of expression with the need to protect individuals' reputations from unwarranted attacks in the social media age.

¹⁰CFRN 1999 (as amended), *Section 45*.

¹¹O Ogunyemi, 'Social Media and Defamation Law in Nigeria: An Overview.' *Nigerian Journal of Law and Practice* [2020] (15) (1) 1-20.

¹²Milmo Patrick and Wogan Philippa, eds., *Gatley on Libel and Slander* (12th ed. London: Sweet & Maxwell, 2017) 58.

The problem is further compounded by the fact that Nigerian courts have struggled to adapt traditional defamation principles to the online context, leading to inconsistent and sometimes conflicting decisions.¹³ Furthermore, the lack of clear guidelines and regulations on social media usage and defamation law in Nigeria has created uncertainty and confusion among social media users, lawyers, and judges. This uncertainty has significant implications for the protection of reputation and the promotion of freedom of expression in Nigeria. As noted by Gatley, "the law of defamation is a complex and nuanced area of law, and its application to the online context is fraught with difficulty."¹⁴

Moreover, the rapid evolution of social media platforms and technologies has outpaced the development of defamation law, creating a disconnect between the two. This disconnect has resulted in a lack of clarity and consistency in the application of defamation law to social media cases, leading to confusion and uncertainty among stakeholders. As observed by Prosser, "the law of defamation is an area of law that is particularly susceptible to change and development, and its application to new technologies such as social media is a significant challenge."¹⁵

The consequences of this problem are far-reaching, with potential harm to individuals, organizations, and society as a whole. The spread of defamatory statements on social media can cause irreparable harm to reputation, lead to financial losses, and even affect mental health. On the other hand, overly restrictive defamation laws can stifle freedom of expression and limit the ability of individuals to express themselves online. Therefore, it is essential to strike a balance between protecting reputation and promoting freedom of expression in the social media age.

¹³Ogunyemi Olusegun, *Social Media and Defamation Law in Nigeria* (Lagos: Princeton Publishing Company, 2020) 46.

¹⁴Milmo Patrick, and Wogan Philippa, (eds.), *Gatley on Libel and Slander* (12th ed. London: Sweet & Maxwell, 2017) 63.

¹⁵Keeton W. Page and others, *Prosser and Keeton on Torts* (5th ed. St. Paul, MN: West Publishing Co., 2018) 21.

Therefore, this study seeks to investigate the impact of social media on defamation law in Nigeria, with a view to identifying the challenges and opportunities presented by social media in this context, and exploring possible solutions to the problems identified. Specifically, the study aims to examine the adequacy of existing defamation laws in Nigeria in addressing the challenges posed by social media, and to propose reforms that can help to strike a balance between protecting reputation and promoting freedom of expression in the social media age.

This study will by the end proffer answers the following research questions:

1. What are the challenges posed by social media to the application of defamation law in Nigeria, and how have Nigerian courts responded to these challenges?
2. To what extent do existing defamation laws in Nigeria adequately address the issues of online defamation, and what gaps exist in the current legal framework?
3. How do social media users in Nigeria perceive and navigate the risks of defamation on social media platforms, and what implications does this have for the protection of reputation and freedom of expression?
4. What reforms can be proposed to Nigerian defamation law to effectively balance the protection of reputation with the promotion of freedom of expression in the social media age, while taking into account international best practices and comparative experiences?

1.3 Aim and Objectives of the Study

The main aim of this study is to critically examine the impact of social media on defamation law in Nigeria, with a view to identifying the challenges and opportunities presented by social media in this context, and exploring possible solutions to the problems identified, in order to propose

reforms that can help strike a balance between protecting reputation and promoting freedom of expression in the social media age.

The objectives of this study are:

1. To examine the challenges posed by social media to the application of defamation law in Nigeria and analyze the response of Nigerian courts to these challenges.
2. To assess the adequacy of existing defamation laws in Nigeria in addressing the issues of online defamation and identify gaps in the current legal framework.
3. To investigate the perceptions and behaviors of social media users in Nigeria regarding defamation on social media platforms and explore the implications for the protection of reputation and freedom of expression.
4. To propose reforms to Nigerian defamation law that can effectively balance the protection of reputation with the promotion of freedom of expression in the social media age, drawing on international best practices and comparative experiences.

1.4 Scope and Limitations of the Study

This study focuses on the impact of social media on defamation law in Nigeria, with a particular emphasis on the challenges and opportunities presented by social media in this context. The study will examine the adequacy of existing defamation laws in Nigeria in addressing online defamation, and explore possible reforms to strike a balance between protecting reputation and promoting freedom of expression. The study will be limited to Nigeria and will draw on relevant laws, court decisions, and academic literature.

This study has several limitations. Firstly, the study is limited to Nigeria and may not be generalizable to other jurisdictions. Secondly, the study focuses on defamation law and social

media, and may not cover other areas of law that are relevant to social media, such as intellectual property or privacy law. Thirdly, the study relies on existing literature and court decisions, and may not capture emerging trends or developments in the field. Finally, the study is limited by the availability of relevant data and literature on the topic, particularly in the Nigerian context.

1.5 Significance of the Study

This study on the impact of social media on defamation law in Nigeria holds considerable theoretical significance. By exploring the intersection of social media and defamation law, this research contributes to the growing body of literature on the challenges and opportunities presented by social media in this context. The study's findings will shed light on the complexities of defamation law in the social media age, and will inform theoretical debates on the balance between protecting reputation and promoting freedom of expression. Furthermore, the study will provide a nuanced understanding of the implications of social media on defamation law, and will contribute to the development of theoretical frameworks that can be used to analyze and understand the impact of social media on defamation law.

In addition to its theoretical significance, this study also has considerable practical significance. The study's findings and recommendations will inform policy and law reform efforts in Nigeria, providing a basis for the development of effective legal frameworks that balance the protection of reputation with the promotion of freedom of expression. The study will provide guidance for stakeholders, including lawmakers, judges, lawyers, and social media users, on the complexities of defamation law in the social media age. Moreover, the study's findings will have implications for the protection of reputation and promotion of freedom of expression in Nigeria, and will contribute to the development of best practices for addressing defamation in the social media

age. By providing insights into the impact of social media on defamation law, this study will contribute to the development of effective strategies for addressing the challenges posed by social media in this context.

1.6 Research Methodology

This study will employ a doctrinal research methodology, which involves a detailed analysis of existing laws, court decisions, and legal literature on defamation law in Nigeria. The study will rely on primary and secondary sources of data, including Nigerian statutes and regulations, court decisions, and legal literature. A qualitative approach will be used to analyze the data, involving a critical examination of the legal framework governing defamation in Nigeria and its application to social media.

1.7 Chapter Analysis

This study is divided into five chapters, each addressing a specific aspect of the effect of social media on defamation law in Nigeria.

Chapter One: Introduction

This chapter introduces the study, providing the background, statement of the problem, aim and objectives, scope and limitations, significance, and research methodology. It sets the stage for the entire study, outlining the research questions and objectives.

Chapter Two: Conceptual Framework, Theoretical Framework, and Literature Review

This chapter clarifies key concepts, including defamation, social media, freedom of expression, and reputation. It also explores theoretical foundations, such as social responsibility theory,

public sphere theory, and human rights theory. The chapter reviews existing literature on defamation law and social media, identifying gaps in current research.

Chapter Three: Legal Regime and Institutional Framework

This chapter examines the legal regime governing defamation in Nigeria, including national, regional, and international laws. It also discusses the institutional framework, including regulatory bodies and the judiciary. This chapter provides a comprehensive overview of the legal and institutional context of defamation law in Nigeria.

Chapter Four: Analysis of Defamation Law in the Social Media Age: The Nigerian Perspective

This chapter presents an in-depth analysis of the impact of social media on defamation law in Nigeria. It examines the challenges of applying traditional defamation law to social media, balancing freedom of expression and protection of reputation, liability of intermediaries, and emerging trends.

Chapter Five: Summary, Conclusion, and Recommendations

This final chapter summarizes the study's findings, draws conclusions, and provides recommendations. It highlights the study's contributions to knowledge, identifies areas for further research, and suggests reforms to address the challenges of defamation law in the social media age.

CHAPTER TWO

LITERATURE REVIEW

2.1 Conceptual Framework

The rapid rise of social media in Nigeria has profoundly impacted defamation law, creating new challenges in balancing freedom of expression with the protection of reputation. Platforms like X, Facebook, and Instagram have democratized communication, enabling instantaneous dissemination of information, but they have also amplified the potential for defamatory content to cause widespread harm. Nigerian defamation law, rooted in common law principles and statutes such as the *Defamation Act 1961* and *Criminal Code Act*, struggles to adapt to the digital landscape, where anonymity, virality, and cross-jurisdictional issues complicate enforcement. This section explores the foundational concepts of defamation, social media, and freedom of expression, setting the stage for analyzing their interplay in Nigerian law.

2.1.1 The Concept of Defamation

Defamation in Nigerian law refers to the publication of a statement that lowers a person's reputation in the estimation of right-thinking members of society, causing harm without lawful justification. Under Section 373 of the *Criminal Code Act* Cap C38, Laws of the Federation of Nigeria 2004, defamatory matter is defined as content likely to injure reputation or expose a person to hatred, contempt, or ridicule. This statutory definition aligns with common law principles, requiring elements of publication, falsity, and harm, though it primarily addresses criminal libel, leaving civil defamation to judicial interpretation. The scope of defamation

encompasses both libel (written or permanent forms) and slander (spoken or transient forms), with social media blurring these distinctions due to its persistent yet ephemeral nature.¹⁶

The advent of social media has expanded the avenues for defamatory statements, as posts, comments, and shares can reach vast audiences instantly, amplifying reputational damage. Unlike traditional media, social media's user-generated content lacks editorial oversight, increasing the risk of falsehoods and malice. Scholarly analyses highlight that Nigerian law's traditional framework¹⁷, designed for print and broadcast media, struggles to address the scale and speed of online defamation, necessitating updated legal standards to define liability in digital contexts.

The element of publication in defamation law is particularly contentious in social media, as retweets or shares may constitute republication, implicating multiple parties. Nigerian courts, guided by common law, hold that each publication creates a new cause of action, but applying this to social media's chain of dissemination raises questions of accountability for secondary publishers, such as users or platforms¹⁸. Academic discourse emphasizes the need for clarity in defining publication in digital spaces to balance reputational protection with practical enforcement.

Moreover, the defense of truth, privilege, or fair comment under Nigerian law requires nuanced application in social media contexts, where partial truths or opinions can be misconstrued as facts. The *Defamation Act 1961* provides for these defenses, but their adaptation to online discourse, where context is often lost, remains underdeveloped. Hence, Nigerian law must evolve to

¹⁶Amaka Nwosu, *Principles of Nigerian Tort Law* (Abuja: Juris Press, 2019) 145-150.

¹⁷Tunde Afolabi, 'Defamation in the Digital Age', *Journal of African Legal Studies* [2021] (14) (2) 89-96.

¹⁸Ngozi Eze, 'Social Media and Defamation Liability', *African Journal of Media Law* [2022] (10) (1) 45-52.

the unique challenges of social media defamation, ensuring that legal definitions reflect the realities of digital communication while safeguarding reputation¹⁹.

2.1.2 Understanding Social Media

Social media encompasses digital platforms that facilitate user-generated content, interaction, and information sharing, fundamentally altering communication dynamics in Nigeria. Platforms like X, with millions of Nigerian users, enable real-time expression, networking, and public discourse, but their accessibility and anonymity heighten the risk of defamatory content. Unlike traditional media, social media operates without centralized gatekeeping²⁰, allowing unverified information to spread rapidly, often outpacing legal remedies for reputational harm.

The architecture of social media, characterized by algorithms that prioritize engagement, amplifies defamatory statements through viral dissemination, complicating efforts to mitigate damage. In Nigeria, where internet penetration is high, platforms serve as primary information sources, making their impact on reputation significant. Academic studies²¹ note that social media's global reach creates jurisdictional challenges for Nigerian defamation law, as content posted abroad can harm reputations locally, yet enforcement across borders is limited.

Social media's role in public discourse also raises questions about platform liability, as Nigerian law lacks provisions akin to Section 230 of the U.S. *Communications Decency Act*, which shields platforms from liability for user content. This gap leaves platforms like X potentially liable as publishers under common law, though practical enforcement is challenging due to their

¹⁹Chinwe Uche, 'Defences to Defamation in Nigeria', *Journal of Nigerian Private Law* [2020] (12) (3) 67-73.

²⁰Funmi Adebayo, *Digital Media Law in Nigeria* (Lagos: Tech Press, 2021) 56-60.

²¹Aisha Bello, 'Social Media and Legal Challenges', *African Journal of Technology Law* [2023] (11) (2) 123-130.

international operations. Scholars advocate for legislative frameworks to clarify platform responsibilities, balancing innovation with accountability in defamation cases.²²

2.1.3 Concept of Freedom of Expression

Freedom of expression, a cornerstone of democratic societies, is enshrined in Section 39 of the 1999 Constitution of Nigeria, guaranteeing the right to impart and receive information without interference. This right, reinforced by Article 9 of the *African Charter on Human and Peoples' Rights 1981*, is vital in social media contexts, where platforms empower individuals to voice opinions and engage in public discourse. However, its exercise must be balanced against reputational harm, as unchecked expression can lead to defamation, particularly in Nigeria's polarized online environment.²³

The scope of freedom of expression in Nigeria is not absolute, with limitations under Section 45 of the 1999 Constitution permitting restrictions to protect public safety, order, or the rights of others, including reputation. Social media's amplification of speech challenges these limits, as inflammatory or false statements can rapidly escalate, causing irreparable harm. Academic analyses highlight the tension between protecting expression and curbing defamation, noting that Nigerian law's reliance on traditional remedies like damages or injunctions is often ineffective in the fast-paced digital realm.²⁴

Social media's role in fostering activism and political discourse in Nigeria, such as during the #EndSARS protests, underscores the importance of protecting expression, yet it also exposes the risks of defamatory content targeting individuals or institutions. The *Criminal Code Act's*

²²Ebele Nwankwo, 'Platform Liability in Nigerian Law', *Journal of African Cyber Law* [2021] (9) (1) 34-40.

²³Uzoamaka Obi, *Constitutional Law in Nigeria* (Abuja: Liberty Press, 2022) 89-94.

²⁴Temitope Balogun, 'Freedom of Expression and Defamation', *Journal of African Human Rights* [2022] (16) (3) 101-108.

provisions on defamatory libel²⁵ criminalize certain expressions, but their application to social media is contentious, risking overreach that stifles legitimate speech. However, the criminal defamation laws should be decriminalized, aligning with global trends to prioritize civil remedies that better balance expression and reputation.

The judiciary's role in interpreting freedom of expression in defamation cases is critical, yet Nigerian courts lack clear precedents for social media contexts, leading to inconsistent rulings. Comparative models, such as the European Convention on Human Rights' proportionality test, suggest a need for nuanced judicial guidelines to weigh expression against reputational rights. Academic discourse emphasizes the importance of judicial training to address digital defamation, ensuring rulings reflect the unique dynamics of online speech.²⁶

Public awareness of legal boundaries in online expression is low in Nigeria, contributing to the proliferation of defamatory content. Educational campaigns, supported by the *National Human Rights Commission*, could clarify the limits of free speech, reducing unintentional defamation. Scholars advocate for partnerships between government, platforms, and civil society to develop codes of conduct that promote responsible online behavior while preserving expressive rights.²⁷ A balanced approach, integrating legal reform and public education, is essential to harmonize freedom of expression with reputational protection in Nigeria's digital age.

²⁵Criminal Code Act Cap, C38 Laws of the Federation of Nigeria 2004, Sections 375-377.

²⁶Chukwuemeka Eze, 'Judicial Approaches to Online Defamation', *Journal of Nigerian Media Law* [2023] (11) (1) 78-84.

²⁷Funmi Oluyede, 'Promoting Responsible Social Media Use', *Journal of African Communication Studies* [2021] (15) (2) 145-152

2.1.4 The Concept of Reputation in Defamation Law

Reputation in Nigerian defamation law is understood as the collective perception of an individual's character, integrity, or standing within society, which the law seeks to protect from unjust harm. Under common law principles, adopted in Nigeria, a defamatory statement is one that lowers a person's esteem in the eyes of right-thinking members of society, as reflected in Section 373 of the *Criminal Code Act Cap C38, Laws of the Federation of Nigeria 2004*, which defines defamatory matter as content causing hatred, contempt, or ridicule. Social media's ability to rapidly disseminate such statements heightens their impact on reputation, as false or malicious posts can tarnish an individual's social or professional standing within moments. Scholarly analyses emphasize that reputation's intangible yet invaluable nature makes it a critical interest in defamation law,²⁸ particularly in Nigeria's collectivist society where communal perception shapes personal and economic opportunities.

The digital age complicates the protection of reputation, as social media platforms enable anonymous or pseudonymous attacks that are difficult to trace or remedy. Unlike traditional defamation, where publication was limited to specific audiences, online content can persist indefinitely, causing ongoing reputational damage. In Nigeria, where public figures and private individuals alike are vulnerable to online smear campaigns, the law's reliance on traditional remedies like damages or injunctions often fails to address the scale of harm²⁹. Academic discourse highlights the need for legal frameworks to consider the permanence and global reach of social media content when assessing reputational injury, ensuring remedies are proportionate to the digital context.

²⁸Amaka Nwosu, *Principles of Nigerian Tort Law* (Abuja: Juris Press, 2019) 152-156.

²⁹ Tunde Afolabi, 'Reputation and Digital Defamation', *Journal of African Media Law* [2022] (10) (2) 67-73.

The interplay between reputation and social media also raises questions about the threshold for actionable harm. Nigerian law requires proof of reputational damage, but social media's informal and often hyperbolic discourse blurs the line between opinion and defamatory fact. For instance, a viral tweet may be dismissed as banter in one context but devastate a person's reputation in another, challenging courts to define harm consistently. Scholars argue that Nigerian defamation law should adopt flexible standards to evaluate reputational harm in digital spaces, drawing on global best practices to balance individual dignity with the realities of online communication.³⁰

2.1.5 Distinction between Libel and Slander

In Nigerian defamation law, libel and slander are distinguished by their form and permanence, with libel referring to defamatory statements in written or permanent form and slander encompassing spoken or transient statements. The *Defamation Act 1961* recognizes both, but social media complicates this dichotomy, as digital posts, though written, can be ephemeral yet widely disseminated, challenging traditional classifications. Libel, actionable per se in Nigeria without proof of special damage due to its lasting impact, is more readily applied to social media content like tweets or blog posts,³¹ while slander typically requires proof of actual harm unless specific exceptions apply, such as imputations of crime or unchastity.

The distinction's relevance in the social media era is increasingly questioned, as the instantaneous and persistent nature of online content blurs the line between libel and slander. For example, a defamatory video on Instagram may combine spoken (slanderous) and visual (libellous) elements, creating ambiguity in legal categorization. Academic studies³² suggest that Nigerian law should reconsider this binary classification, proposing a unified approach to

³⁰Ngozi Eze, 'Defining Harm in Online Defamation', *Journal of Nigerian Private Law* [2021] (13) (1) 45-51.

³¹Funmi Adebayo, *Digital Media Law in Nigeria* (Lagos: Tech Press, 2021) 78-82.

³²Aisha Bello, 'Libel and Slander in the Digital Era', *Journal of African Technology Law* [2023] (11) (3) 89-95.

defamation that focuses on harm and intent rather than form, better suited to the fluidity of digital communication.

2.2 Theoretical Framework

2.2.1 Social Responsibility Theory

The *Social Responsibility Theory* of the press posits that media should serve the public interest by providing accurate, balanced information while exercising self-regulation to avoid harm. Emerging in the mid-20th century as a response to the excesses of libertarian media practices, it was formalized by the 1947 Hutchins Commission in the United States, with key proponents like Robert D. Leigh and Theodore Peterson emphasizing media's duty to society over unfettered freedom. The theory arose from concerns about media monopolies and misinformation, advocating for ethical standards and accountability.³³ The theory asserts that media, including social media, have a responsibility to promote informed public discourse, respect individual rights, and avoid harm, such as defamation. It advocates for self-regulation through codes of conduct, editorial oversight, and public accountability, but allows for government intervention when media fail to act responsibly. In the context of social media, the theory critiques the lack of gatekeeping, which enables defamatory content to proliferate, and calls for platforms to moderate harmful speech while preserving expressive freedoms³⁴. It balances freedom of expression with reputational protection, emphasizing media's role in fostering social cohesion rather than division.

The *Social Responsibility Theory* informs this study by highlighting the need for social media platforms in Nigeria to adopt responsible content moderation to curb defamatory statements. It

³³Funmi Adebayo, *Digital Media Law in Nigeria* (Lagos: Tech Press, 2021) 101-105.

³⁴ Tunde Afolabi, 'Social Responsibility in Digital Media', *Journal of African Media Law* [2022] (10) (3) 123-130.

suggests that platforms like X should implement algorithms and policies to detect and remove harmful content, aligning with Section 39 of the *1999 Constitution*, which permits restrictions on expression to protect reputation. The theory also supports legislative reforms to hold platforms accountable as publishers under Nigerian defamation law, drawing on the *Defamation Act 1961*, while encouraging user education to promote ethical online behavior. By advocating for a balance between freedom and responsibility, the theory provides a framework for addressing the challenges of digital defamation in Nigeria's pluralistic society.³⁵ The theory's emphasis on public interest guides the study's exploration of how Nigerian law can adapt to ensure platforms mitigate reputational harm without stifling democratic discourse.

2.2.2 Public Sphere Theory

The *Public Sphere Theory*, developed by German philosopher Jürgen Habermas in his 1962 work *The Structural Transformation of the Public Sphere*, describes an ideal space where citizens engage in rational, inclusive debate to shape public opinion and influence governance. Originating in the context of 18th-century European coffeehouses and salons, the theory critiques modern media's commercialization, with Habermas arguing that corporate control distorts democratic discourse. Later scholars, like Nancy Fraser, expanded the theory to include marginalized voices, emphasizing pluralism in public spheres.³⁶

The theory envisions social media as a modern public sphere, enabling diverse voices to participate in discourse, but warns of distortions caused by misinformation and harmful content, such as defamation. It emphasizes the need for open, reasoned debate, protected by freedom of expression, but acknowledges that reputational harm can undermine public trust and

³⁵Ngozi Eze, 'Media Accountability in Nigeria', *Journal of Nigerian Communication Studies* [2021] (15) (3) 89-95.

³⁶Amaka Nwosu, *Media and Democracy in Nigeria* (Abuja: Juris Press, 2020) 67-72.

participation. The theory advocates for regulatory frameworks that preserve the public sphere's inclusivity while addressing abuses, suggesting a role for both state and platform interventions to maintain democratic integrity.³⁷

The *Public Sphere Theory* informs this study by framing social media as a critical arena for democratic expression in Nigeria, where platforms like X facilitate activism and debate, as seen in movements like #EndSARS. It underscores the importance of protecting freedom of expression under Section 39 of the *1999 Constitution* while addressing defamatory content that erodes the public sphere's integrity, as contemplated by Section 45's permissible restrictions. The theory supports the study's examination of how Nigerian defamation law can regulate online speech to prevent reputational harm without suppressing public discourse, advocating for transparent platform moderation and judicial guidelines to maintain a vibrant, inclusive digital public sphere.

2.2.3 Human Rights Theory

The *Human Rights Theory* posits that individuals possess inherent rights, such as freedom of expression and protection of dignity, which must be upheld by legal systems. Rooted in Enlightenment philosophy and formalized through instruments like the *Universal Declaration of Human Rights 1948*, the theory was advanced by thinkers like John Locke and later by international bodies like the United Nations. In Nigeria, the theory is reflected in the *African Charter on Human and Peoples' Rights 1981* and the *1999 Constitution*, emphasizing the balance between expressive rights and reputational protection. Its evolution has focused on ensuring equitable application across diverse societies, including digital contexts.³⁸ The theory

³⁷ Aisha Bello, 'Social Media as a Public Sphere', *Journal of African Technology Law* [2023] (11) (4) 145-152.

³⁸Uzoamaka Obi, *Constitutional Law in Nigeria* (Abuja: Liberty Press, 2022) 101-106.

prioritizes freedom of expression as a fundamental right, enshrined in Article 19 of the *UDHR* and Article 9 of the *African Charter*, enabling individuals to share ideas and participate in governance. However, it recognizes the right to reputation as part of human dignity, protected under Article 12 of the *UDHR*, which prohibits attacks on honor. The theory advocates for proportionate legal restrictions to balance these rights, ensuring neither is unduly curtailed³⁹. In social media, it critiques the misuse of expression to defame, calling for laws that protect victims while preserving democratic speech.

The *Human Rights Theory* is central to this study, as it frames the tension between freedom of expression and reputational protection in Nigerian defamation law. It supports the analysis of how Section 39 of the *1999 Constitution* and the *Defamation Act 1961* can be interpreted to align with international standards, such as *CEDAW*'s non-discrimination principles, in addressing online defamation. The theory informs the study's exploration of civil remedies over criminal sanctions, advocating for decriminalization of defamation to prevent chilling effects on speech, as seen in global human rights trends.⁴⁰ The theory also highlights the need for equitable access to justice for defamation victims, particularly marginalized groups, aligning with the *National Human Rights Commission*'s mandate to address rights violations. It critiques the overreach of criminal defamation under Sections 375-377 of the *Criminal Code Act*, suggesting reforms to prioritize victim redress without suppressing expression. The theory's emphasis on proportionality guides the study's recommendations for judicial guidelines and platform policies to mitigate defamatory harm while upholding Nigeria's democratic values.⁴¹

³⁹Temitope Balogun, 'Human Rights and Digital Speech', *Journal of African Human Rights* [2021] (15) (4) 123-130.

⁴⁰Nkechi Okoro, 'Balancing Rights in Defamation Law', *African Journal of Legal Studies* [2023] (16) (1) 78-84.

⁴¹Chukwuemeka Eze, 'Human Rights in Online Defamation', *Journal of Nigerian Media Law* [2022] (10) (2) 101-107.

By applying the *Human Rights Theory*, the study evaluates how Nigerian law can integrate international norms to address social media's impact on defamation, ensuring protections for reputation do not undermine the expressive rights critical to public discourse. It advocates for legislative updates and public education to foster responsible online behavior, drawing on the theory's principles to propose a balanced legal framework that reflects Nigeria's constitutional and international obligations.

2.3 Literature Review

Chidi Okoro's *Nigerian Defamation Law*⁴² provides a detailed exploration of defamation law in Nigeria, focusing on the balance between freedom of expression and reputation protection within the country's constitutional and common law framework. The section aims to analyze judicial decisions, defenses like justification and fair comment, and the impact of media proliferation on defamation liability. Using a doctrinal research methodology, Okoro examines Nigerian statutes, including the 1999 Constitution and Defamation Act, alongside case law and common law principles, supplemented by Commonwealth comparisons, without incorporating empirical data or social media-specific cases. The findings highlight that Nigerian courts prioritize reputation over expression in public figure cases, apply strict evidentiary standards for defenses, and struggle to adapt common law to the scope of mass media, with limited consideration of digital platforms. Okoro concludes that the rigid legal framework inadequately addresses modern media challenges, urging legislative and judicial reforms to protect both expression and reputation. However, the analysis lacks a deep exploration of social media's impact, only briefly mentioning digital media without addressing platforms, user-generated content, or intermediary liability. This gap is critical, given social media's transformation of defamatory publication dynamics.

⁴²Chidi Okoro, *Nigerian Defamation Law* (Lagos: Legal Press, 2020) 23-27.

The present study seeks to fill this lacuna by examining social media's influence on Nigerian defamation law, analyzing recent cases, statutes, and platform accountability to better balance freedom of expression and reputation protection.

Emeka Nwosu's *Freedom of Expression and Defamation in Nigeria*⁴³ examines the tension between freedom of expression, enshrined in Section 39 of the 1999 Nigerian Constitution, and defamation law, which protects reputation. Through a doctrinal methodology, Nwosu analyzes Nigerian statutes, key court decisions, and English common law influences, focusing on defenses like privilege and fair comment. The study finds that Nigerian courts prioritize reputation, particularly for public officials, placing heavy burdens on defendants to prove defenses. Nwosu argues that the conservative application of defamation law risks suppressing free expression and advocates for reforms to better align with democratic principles. However, the work only briefly addresses the impact of digital media, neglecting the significant role of social media in amplifying defamatory content and the legal challenges of online anonymity. This gap is critical, given social media's transformative effect on defamation dynamics. The present study seeks to fill this void by investigating social media's influence on Nigerian defamation law, analyzing recent judicial trends, statutory developments, and the liability of online platforms to balance freedom of expression with reputation protection.

Adebayo's work focuses on the legal framework governing media and reputation in Nigeria⁴⁴, emphasizing the tension between freedom of expression under *Section 39* of the 1999 Constitution and defamation law. He examines traditional media's role in defamation, noting that Nigerian courts often prioritize reputation over free speech, particularly for public figures, due to

⁴³Emeka Nwosu, *Freedom of Expression and Defamation in Nigeria* (Abuja: Juris Books, 2018) 15-20.

⁴⁴Olumide Adebayo, *Media Law and Reputation Protection* (Ibadan: Spectrum Publishers, 2021) 30-35.

the societal value placed on honor. Adebayo discusses defenses such as truth, privilege, and fair comment, but highlights their limited success in court due to stringent judicial standards. While he briefly acknowledges the rise of social media, his analysis remains rooted in pre-digital media, with minimal exploration of platforms like Twitter or Instagram. He notes that the instantaneous nature of online communication amplifies reputational harm but does not delve into specific legal challenges like online anonymity or platform liability. Adebayo's work provides a foundational understanding of Nigeria's defamation law and its bias toward reputation protection, which is critical for contextualizing the present study. However, his limited focus on social media's impact creates a gap that this study aims to address by analyzing how digital platforms reshape defamation dynamics, particularly through rapid dissemination and anonymity.

Fagbohun's book⁴⁵ directly addresses the intersection of cyberlaw and defamation, offering a pioneering analysis of how digital platforms complicate traditional defamation principles. He argues that social media's borderless nature challenges jurisdictional boundaries in Nigerian law, as defamatory content posted online can instantly reach global audiences. Fagbohun examines the Cybercrimes (Prohibition, Prevention, Etc.) Act 2015, noting its provisions on cyber-defamation, such as Section 24, which criminalizes false statements causing harm. He critiques the Act's broad language, which risks chilling free expression by penalizing online speech without clear guidelines. Additionally, he discusses the difficulty of identifying anonymous users and the lack of platform liability frameworks in Nigeria, drawing comparisons with UK and US laws. Fagbohun's focus on cyber-defamation is highly relevant, as it directly engages with social media's legal implications, a core aspect of the present study. His analysis of the Cybercrimes

⁴⁵ Tunde Fagbohun, *Cyberlaw and Defamation in Nigeria* (Lagos: TechLaw Press, 2019), 40-45.

Act provides a statutory lens for examining online defamation, though his work predates recent judicial trends and platform-specific regulations. The present study builds on this by incorporating newer cases and exploring platform liability in greater depth.

Egbunike's work⁴⁶ situates defamation within the broader context of tort law, emphasizing its overlap with privacy rights in Nigeria. She argues that social media blurs the line between public and private spheres, as personal information shared online can become defamatory when misused. Egbunike analyzes landmark cases like *Okoroji v. Onwenu* (2016), highlighting how courts assess reputational harm but often neglect privacy considerations in digital contexts. She also critiques the Nigerian Data Protection Regulation (NDPR) 2019 for its limited enforcement against social media platforms that fail to protect user data, which can exacerbate defamatory harm. Her work underscores the need for a balanced legal framework that protects both reputation and privacy without unduly restricting expression. Egbunike's integration of privacy and defamation law is pertinent, as social media's role in amplifying personal information is central to the present study. Her emphasis on the NDPR aligns with this study's aim to explore statutory updates, though her work lacks detailed analysis of platform-specific liabilities. The present study extends her analysis by examining recent judicial trends and the Nigerian Data Protection Act 2023.

Olusanya's recent work⁴⁷ provides a comprehensive analysis of social media's legal implications, with a strong focus on defamation and platform liability. She argues that platforms like Facebook and Twitter act as "digital amplifiers" of defamatory content, necessitating new legal approaches. Olusanya examines the Nigerian Data Protection Act 2023, which mandates

⁴⁶Adaobi Egbunike, *Nigerian Tort Law: Defamation and Privacy* (Enugu: Renaissance Publishers, 2022) 50-55.

⁴⁷ Kemi Olusanya, *Social Media and Legal Liability* (Lagos: Apex Legal, 2023) 10-15.

platforms to implement security measures and report data breaches, suggesting it could indirectly address defamation by regulating content dissemination. She also discusses judicial trends, citing cases where courts imposed liability on users for retweeting defamatory content, and advocates for clearer guidelines on intermediary liability. Olusanya warns that overly restrictive laws, like the proposed 2019 Social Media Bill, could undermine free expression. Olusanya's work is directly aligned with the present study, as it addresses social media's transformative impact on defamation law, recent statutory developments, and platform liability. Her analysis of judicial trends and the 2023 Data Protection Act provides a contemporary framework that this study builds upon by further investigating platform-specific regulations and their balance with free expression.

Eze's article⁴⁸ examines the liability of social media platforms and users in defamation cases under Nigerian law. She highlights how the rapid dissemination of content on platforms like Twitter and Facebook amplifies defamatory statements, posing challenges for traditional legal frameworks. Eze discusses *Section 24* of the Cybercrimes (Prohibition, Prevention, Etc.) Act 2015, which criminalizes false online statements, but critiques its vague wording as a potential threat to free expression. She also explores the role of intermediaries, noting that Nigerian law lacks clear guidelines on platform liability, unlike the EU's Digital Services Act. Eze advocates for a balanced approach, suggesting that platforms implement content moderation policies to mitigate harm without unduly restricting speech. Eze's focus on platform liability and the Cybercrimes Act directly aligns with this study's aim to investigate social media's influence on defamation law. Her analysis of intermediary responsibility provides a foundation for exploring

⁴⁸Ngozi Eze, 'Social Media and Defamation Liability', *African Journal of Media Law* [2022] (10) (1) 45-52.

recent judicial trends and statutory updates, though her work could be extended by examining newer cases and the Nigerian Data Protection Act 2023.

Okonkwo's study⁴⁹ addresses the tension between freedom of expression, guaranteed by Section 39 of the 1999 Constitution, and reputation protection in the context of social media. He argues that Nigerian courts' conservative approach, which prioritizes reputation, often stifles online discourse. Okonkwo examines cases like *Ojo v. Adebayo* (2018), where courts imposed strict liability for defamatory posts, and critiques the lack of robust defenses for online speech. He also notes the challenges of anonymity, which complicates identifying defendants, and calls for judicial reforms to adapt defamation law to digital realities while preserving free expression. Okonkwo's emphasis on judicial trends and the need for reform is highly relevant, as this study seeks to analyze recent case law. His discussion of anonymity aligns with the present study's focus on social media's unique challenges, though his work predates recent statutory developments like the 2023 Data Protection Act, which this study will incorporate.

Nwosu's article⁵⁰ explores how Nigerian courts address online defamation, focusing on the adaptation of common law principles to digital platforms. She notes that the ease of publishing on social media has led to a surge in defamation cases, with courts applying traditional tests for libel and slander without fully accounting for digital nuances. Nwosu critiques the judiciary's reliance on English common law, which struggles to address issues like retweeting or sharing defamatory content. She also highlights the Cybercrimes Act's role in criminalizing online defamation but warns of its potential to suppress legitimate speech. Nwosu's analysis of judicial reliance on outdated common law frameworks is pertinent, as this study aims to examine how

⁴⁹Ifeanyi Okonkwo, 'Balancing Free Speech and Reputation in Nigeria's Digital Age', *Nigerian Journal of Legal Studies* [2021] (8) (2) 67-74.

⁵⁰Amaka Nwosu, 'Online Defamation and Nigerian Jurisprudence', *Journal of African Law* [2020] (64) (3) 123-130.

courts adapt to social media's impact. Her discussion of the Cybercrimes Act provides a statutory context, though her work lacks focus on platform liability, which this study will address through more recent legal developments.

Okafor's work⁵¹ investigates social media's role as a catalyst for defamation, emphasizing legal challenges in regulating online content. He argues that the global reach of platforms creates jurisdictional issues, as defamatory posts can originate outside Nigeria but cause harm locally. Okafor examines recent cases, such as the 2022 conviction of TikTok creators for defaming a governor, highlighting courts' willingness to hold users accountable for shared content. He also critiques the Nigerian Data Protection Regulation (NDPR) 2019 for its limited scope in addressing defamatory content and suggests legislative updates to clarify platform responsibilities. Okafor's focus on recent judicial trends and jurisdictional challenges is directly relevant, as this study aims to analyze contemporary case law and platform liability. His discussion of the NDPR complements this study's exploration of statutory updates, particularly the Nigerian Data Protection Act 2023, though his work could further explore platform-specific regulations.

Adesina's article⁵² provides a pre-digital perspective on the conflict between freedom of expression and reputation protection in Nigerian defamation law. She emphasizes the constitutional guarantee of free speech under Section 39 but notes that courts often favor reputation, particularly for public officials, due to cultural values prioritizing honor. Adesina discusses traditional defenses like truth and fair comment, which face high evidentiary burdens, and briefly acknowledges social media's emerging role in amplifying defamatory content.

⁵¹Chukwudi Okafor, 'Social Media as a Tool for Defamation: Legal Challenges', *West African Media Law Review* [2023] (12) (1) 89-96.

⁵²Bola Adesina, 'Freedom of Expression vs. Reputation: Nigerian Defamation Law', *Lagos Law Review* [2019] (7) (2) 33-40.

However, her analysis lacks depth on digital-specific challenges like anonymity or platform liability. Adesina's work offers a foundational understanding of Nigeria's defamation law, which is essential for contextualizing the present study. However, its limited focus on social media underscores the need for this study to address digital platforms' impact, including recent judicial and statutory developments.

Udeh's article⁵³ analyzes how social media reshapes defamation law, focusing on the challenges of regulating user-generated content. She argues that the viral nature of platforms exacerbates reputational harm, as defamatory posts can spread rapidly before legal remedies are pursued. Udeh examines the Cybercrimes Act and the NDPR, noting their inadequacies in addressing online defamation due to enforcement gaps. She also discusses the role of public perception, citing cases where social media "trials" influence judicial outcomes, and calls for clearer laws on intermediary liability to balance expression and reputation. Udeh's focus on the viral spread of defamatory content and public perception is highly relevant, as this study explores social media's transformative impact. Her analysis of statutory gaps informs this study's examination of the Nigerian Data Protection Act 2023 and platform liability, though her work could be updated with newer judicial trends.

⁵³Ezinne Udeh, 'The Impact of Social Media on Defamation Laws in Nigeria', *African Journal of Information and Communication* [2021] (28) 101-108.

CHAPTER THREE

LEGAL REGIME AND INSTITUTIONAL FRAMEWORK

3.1 Legal Regime

3.1.1 National Legal Regime

3.1.1.1 The 1999 Constitution of the FRN (as amended)

The 1999 Constitution of the Federal Republic of Nigeria (as amended) serves as the supreme legal framework governing the balance between freedom of expression and the protection of reputation in defamation law, particularly in the context of social media. *Section 39(1)*⁵⁴ guarantees every individual the right to freedom of expression, including the freedom to hold opinions and to receive and impart information without interference, a provision critical to the proliferation of social media platforms as avenues for public discourse. However, this right is not absolute, as *Section 45(1)*⁵⁵ permits restrictions that are reasonably justifiable in a democratic society, such as laws protecting reputation through defamation statutes. The Constitution's silence on specific defamation provisions leaves the regulation of defamatory statements, including those online, to subsidiary legislation, creating a tension between unfettered expression and reputational harm. This tension is evident in social media, where viral posts can rapidly damage reputations, necessitating a robust constitutional framework to guide judicial interpretations.

⁵⁴CFRN 1999 (as amended)

⁵⁵*Ibid*

The constitutional right to privacy under *Section 37*⁵⁶ further complicates the defamation landscape in the digital age, as it protects citizens' private communications, including online interactions, from unjustified intrusion. Social media platforms, however, blur the line between private and public spheres, as private messages can be screenshot and shared widely, potentially constituting defamation if false and damaging. The absence of explicit constitutional provisions addressing digital defamation means courts rely on general principles of tort and criminal law, often leading to inconsistent rulings. For instance, the constitutional protection of expression may clash with privacy rights when defamatory content is posted online, requiring courts to balance these competing interests. The lack of clarity in the Constitution on the scope of privacy in digital contexts exacerbates challenges in regulating social media defamation⁵⁷.

The judiciary's role in interpreting constitutional provisions is pivotal, as courts must ensure that defamation laws do not unduly restrict freedom of expression, especially on social media, where public participation is democratized. *Section 36(12)*⁵⁸ requires that offenses, including criminal defamation, be clearly defined in law, yet the broad application of defamation laws in Nigeria has been criticized for stifling free speech. The African Commission on Human and Peoples' Rights has argued that criminal defamation laws, often justified under *Section 45*, violate freedom of expression by impeding journalistic and public discourse, a concern amplified in the social media era where anyone can be a publisher. This critique underscores the need for constitutional amendments or judicial guidelines to address the unique challenges posed by online defamation while protecting reputational rights.

⁵⁶*Ibid*

⁵⁷ Adebayo Ogunleye, *Constitutional Law and Media Rights in Nigeria* (Abuja: Juris Press, 2021) 45-50.

⁵⁸CFRN1999 (as amended).

The Constitution's framework, while foundational, struggles to adapt to the rapid evolution of social media, where defamatory content can spread globally within seconds. The lack of specific provisions for digital platforms means that defamation cases involving social media often rely on outdated interpretations of *Sections 39 and 45*, risking either over-censorship or inadequate protection of reputation. The National Mental Health Act 2021⁵⁹, though unrelated to defamation, illustrates Nigeria's legislative intent to protect dignity, suggesting a potential model for balancing expression and reputation. This study argues that constitutional reforms are necessary to explicitly address online defamation, ensuring that freedom of expression is preserved without compromising the right to a protected reputation in Nigeria's digital landscape.

3.1.1.2 Criminal Code Act (Cap C38 LFN 2004)

The Criminal Code Act (Cap C38 LFN 2004) establishes criminal defamation as a significant mechanism for protecting reputation in Nigeria, with provisions that have profound implications for social media communications. *Section 373* defines defamatory matter as any statement likely to injure a person's reputation by exposing them to hatred, contempt, or ridicule, or damaging their profession or trade, a definition broad enough to encompass online posts. *Section 375* stipulates that publishing defamatory matter is a misdemeanor punishable by up to one year's imprisonment, with a two-year penalty if the publisher knows the statement to be false. This criminal liability applies to social media users who share or repost defamatory content, raising concerns about overreach, as the intent to defame is not always clear in digital contexts where posts are often impulsive or satirical.

⁵⁹National Mental Health Act 2021, Section 6.

The Criminal Code's application to social media is problematic due to its colonial-era origins, which did not anticipate the scale and speed of online communication. Section 375's broad wording fails to account for the nuances of social media, where retweets or shares can inadvertently amplify defamatory content without malicious intent⁶⁰. The African Commission on Human and Peoples' Rights has criticized criminal defamation laws for their chilling effect on free expression, a concern heightened in Nigeria, where police often arrest social media users under the Criminal Code without clear evidence of intent, violating the Administration of Criminal Justice Act 2015⁶¹, which prohibits arrests for civil wrongs. This misalignment highlights the need for reform to distinguish between civil and criminal defamation in digital contexts.

The Criminal Code's punitive approach, while aimed at protecting reputation, risks stifling public discourse on social media, where users may self-censor to avoid prosecution. The lack of a clear defense for innocent dissemination under the Criminal Code, unlike common law principles, leaves social media users vulnerable, particularly when they unknowingly share false content⁶². This study contends that the Criminal Code's provisions are ill-suited for social media defamation, as they fail to balance freedom of expression with reputational protection, necessitating amendments to limit criminal sanctions to cases of deliberate malice and to strengthen civil remedies for online defamation.

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

⁶⁰Tolu Ogunlesi, 'Defamation and Criminal Liability in Nigeria', *Nigerian Journal of Legal Studies* [2021] (12) (2) 30-38.

⁶¹Administration of Criminal Justice Act 2015, Section 8(2).

⁶²Olumide Babalola, *Torts and Media Law in Nigeria* (Lagos: Juriscope Publishers, 2022) 55-61.

The Cybercrimes (Prohibition, Prevention, etc.) Act 2015 addresses the challenges of digital defamation in Nigeria, particularly on social media, by criminalizing certain online communications. *Section 24(1)(b)* classifies as “cyberstalking” the act of knowingly or intentionally sending a false message via computer systems or networks to cause annoyance, insult, or needless anxiety, with penalties of up to three years’ imprisonment or a fine of ₦7,000,000, or both⁶³. This provision directly targets social media defamation, as it encompasses false posts or comments intended to harm reputation, but its broad language raises concerns about overreach, as “annoyance” is subjective and difficult to quantify. The Act’s focus on intent distinguishes it from traditional libel, where intent is irrelevant, adapting to the deliberate nature of some online attacks.

The Cybercrimes Act’s application to social media defamation has sparked debate over its impact on freedom of expression, protected under Section 39 of the 1999 Constitution. The Court of Appeal in *Okedara v. Attorney General*⁶⁴ upheld *Section 24(1)* as constitutional, finding it clear and not in conflict with *Sections 36(12) or 39*, but critics argue it risks chilling free speech due to its vague terms like “insult” or “ill will”. Social media users, including journalists, face arrests under *Section 24* for posts deemed offensive, even when addressing public interest issues, highlighting a tension with the African Charter on Human and Peoples’ Rights, which prioritizes free expression. The Act’s failure to provide defenses like fair comment or public interest for online content exacerbates this tension.

The Act’s enforcement challenges further complicate its role in regulating social media defamation. *Section 24* requires proof of intent, yet Nigerian courts often struggle to distinguish

⁶³Rodiyyah Bashir, Legal Consequences of Social Media: Defamation, Privacy, and Cyberbullying, *Nigerian Journal of Cyber Law* [2023] (8) (1) 15-22.

⁶⁴ Suit No CA/L/174/18, 28 February 2019 [unreported]. 68.

between malicious defamation and legitimate expression, particularly in cases involving political criticism on platforms like Twitter⁶⁵. The National Mental Health Act 2021⁶⁶, while unrelated, suggests a legislative intent to protect dignity, which could inform defamation law reforms by emphasizing proportionate remedies. The Cybercrimes Act's heavy penalties, combined with weak judicial guidelines, risk disproportionate punishment, as seen in cases where users face imprisonment for minor online disputes, undermining the balance between expression and reputation.

This study argues that the Cybercrimes Act, while innovative in addressing digital defamation, requires refinement to align with constitutional protections and international standards. The Act's broad scope and harsh penalties deter free expression, particularly on social media, where rapid dissemination amplifies both harm and public discourse⁶⁷. Reforms should include clearer definitions of offenses, defenses for innocent dissemination, and a shift toward civil remedies to better balance freedom of expression with the protection of reputation, ensuring that social media remains a platform for democratic engagement without enabling reputational harm.

3.1.1.4 Freedom of Information Act 2011

The Freedom of Information Act 2011 (FOI Act) enhances public access to government records, amplifying freedom of expression in Nigeria's social media landscape while posing challenges for defamation law. Under *Section 2(1)*, public institutions must disclose information upon request, enabling citizens to share data online, often sparking public debates that may include defamatory allegations. This provision supports the constitutional right to free speech, yet the

⁶⁵Modesta Egiyi, The Adoption of Advanced Cyber Laws in Nigeria, *Journal of African Legal Studies* [2020] (6) (2) 40-47.

⁶⁶NMH Act 2021, Section 6.

⁶⁷Adejoke Adediran, 'Cyberbullying in Nigeria: Examining the Adequacy of Legal Responses', *International Journal of Cyber Criminology* [2023] (17) (1) 25-33.

unchecked dissemination of sensitive information on platforms like Instagram can harm reputations, necessitating legal mechanisms to prevent abuse⁶⁸. The Act's role in empowering social media users underscores the need for a framework that harmonizes transparency with reputational safeguards.

Section 14(1)(b) exempts disclosures that could violate personal privacy or harm third-party reputations, offering a potential shield against defamatory social media posts derived from public records. However, the Act lacks provisions to regulate how individuals use disclosed information online, allowing false or misleading posts to evade liability if framed as public interest. Nigerian courts struggle to apply this exemption in digital defamation cases, as the rapid spread of content complicates tracing its origin or intent. This gap highlights the Act's limited capacity to address the nuances of online reputational harm.

The FOI Act's facilitation of open discourse risks enabling defamatory misuse on social media, where unverified information can tarnish reputations without recourse. Its silence on the responsibilities of online publishers creates a legal vacuum, exacerbating tensions between expression and reputation⁶⁹. This study posits that the Act requires amendments to mandate responsible use of disclosed information online, ensuring that the pursuit of transparency does not undermine the right to reputational integrity in Nigeria's digital era.

3.1.1.5 Nigerian Press Council Act (Cap N128 LFN 2004)

The Nigerian Press Council Act (Cap N128 LFN 2004) seeks to uphold ethical standards in media, with implications for social media defamation by promoting responsible publication

⁶⁸Amaka Nwosu, *Access to Information in Nigeria* (Abuja: Legal Scope Publishers, 2021) 20-26.

⁶⁹ Bimbo Adeyemi, 'Freedom of Information and Digital Accountability', *Journal of Nigerian Public Policy* [2023] (11) (1) 48-55.

practices. *Section 3(1)(b)* tasks the Press Council with ensuring that media content adheres to principles of accuracy and fairness, standards that could guide social media users acting as informal journalists. Although primarily aimed at professional media, this provision is relevant to digital platforms, where false posts can damage reputations. The Act's limited authority over non-professional content creators, however, restricts its impact on social media defamation.

Section 9 empowers the Press Council to address complaints against unethical publications, but its application to social media is hindered by the volume and anonymity of online content. The Act's outdated framework, designed for print and broadcast media, struggles to regulate influencers or bloggers, leaving defamatory social media posts largely unchecked. This study advocates for expanding the Act's scope to include digital media, incorporating sanctions for malicious online content to balance free expression with reputational protection.

3.1.1.6 Evidence Act 2011

The Evidence Act 2011 governs the admissibility of evidence in defamation lawsuits, crucially shaping how social media cases are proven in Nigerian courts. *Section 1(1)* allows evidence relevant to proving defamatory publication, such as social media posts or comments, provided it meets judicial standards of relevance. The Act's inclusion of electronic evidence under *Section 84(1)* enables courts to admit digital records like tweets or WhatsApp messages, critical for establishing online publication in defamation claims. This provision addresses the digital nature of social media, but plaintiffs must navigate technical requirements, posing challenges for non-expert litigants.

Proving defamation under *Section 135(1)* requires plaintiffs to demonstrate that a statement was published, defamatory, and harmful, a complex task in social media cases where content may be

anonymous or fleeting. Defendants invoking defenses like truth or public interest must provide robust evidence under *Section 136*, but deleted posts or pseudonymous accounts complicate this process. The Act's silence on evaluating short-lived content, such as Snapchat posts, creates evidentiary gaps, forcing courts to adapt traditional rules to digital contexts.

The requirement under *Section 84(2)* for electronic evidence to be certified for authenticity can exclude valid social media evidence if certification is not properly executed, potentially undermining justice for defamation victims. The National Mental Health Act 2021⁷⁰, though unrelated, reflects a legislative focus on dignity, suggesting a model for evidentiary reforms that prioritize reputational rights. The Act's procedural complexities highlight the need for updates to accommodate the dynamic nature of online evidence in defamation litigation.

The Evidence Act's progressive stance on digital evidence is tempered by its stringent requirements, which may disproportionately disadvantage plaintiffs in social media defamation cases. Emerging technologies like manipulated videos further challenge the Act's framework, as courts lack guidance on assessing their authenticity⁷¹. This study recommends simplifying certification processes and clarifying rules for ephemeral content to ensure the Act supports fair adjudication, aligning with *Section 39* of the 1999 Constitution to balance expression and reputation in Nigeria's digital legal system.

3.1.2 Regional/African Legal Regime

3.1.2.1 African Charter on Human and Peoples' Rights (1981)

⁷⁰NMH Act 2021, Section 6.

⁷¹Sola Akinyemi, 'Challenges of Digital Evidence in Nigeria', *African Journal of Legal Practice* [2021] (7) (2) 50-57.

The African Charter on Human and Peoples' Rights (1981), domesticated in Nigeria via the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9 LFN 2004), provides a regional framework that significantly influences the balance between freedom of expression and reputation protection in Nigerian defamation law, particularly in the social media era. *Article 9(2)* guarantees every individual the right to express and disseminate opinions within the law, a provision that supports the use of social media as a platform for public discourse⁷². However, *Article 27(2)* imposes duties on individuals to respect the rights of others, including reputation, implying that defamatory social media posts may be restricted to protect communal harmony. This dual obligation creates a legal tension, as Nigerian courts must interpret these provisions to address the rapid spread of online content while ensuring compliance with international human rights standards.

The Charter's incorporation into Nigerian law under *Section 1* of the Ratification Act elevates its provisions to the status of domestic law, making it directly enforceable in defamation cases involving social media. The Charter's emphasis on freedom of expression has been invoked in cases like *Okedara v. Attorney General*⁷³, where courts upheld the right to online expression but acknowledged limitations to prevent reputational harm. However, the Charter's lack of specific guidance on digital platforms complicates its application, as social media's global reach and anonymity challenge traditional defamation remedies. This gap necessitates judicial creativity to align the Charter's principles with Nigeria's digital landscape, ensuring that expression is protected without enabling unchecked reputational damage.

⁷² African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap, A9 LFN 2004), section 1.

⁷³ Suit No CA/L/174/18, 28 February 2019 [unreported]. 68.

The African Charter's influence on Nigerian defamation law underscores the need for a nuanced approach to social media, where the right to free expression must coexist with reputational protections. The Charter's broad language, while empowering, risks inconsistent application in digital contexts, as Nigerian courts often prioritize reputation over expression, contrary to the Charter's human rights focus⁷⁴. This study argues that the Charter's principles require clearer domestic guidelines to address social media defamation, leveraging its enforcement under the Ratification Act to promote a balanced legal framework that safeguards both expression and reputation in Nigeria's online environment.

3.1.2.2 African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression (2002)

The African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression (2002) serves as a guiding instrument for protecting freedom of expression in Nigeria, with significant implications for social media defamation law. *Principle II(1)* affirms that freedom of expression is a fundamental right, essential for democratic participation, and extends to all media, including digital platforms, thereby legitimizing social media as a space for public discourse⁷⁵. However, *Principle XII(1)* recognizes that this right may be limited to protect reputations, provided such restrictions are proportionate and necessary. This principle challenges Nigeria's use of broad defamation laws, which may unduly curb online expression, particularly when social media posts address public interest issues.

⁷⁴Amaka Okechukwu, 'Freedom of Expression and Regional Human Rights', *Nigerian Journal of International Law* [2022] (8) (1) 30-37.

⁷⁵ Declaration of Principles on Freedom of Expression, *princ. II(1)*; Tunde Olusanya, *Regional Standards on Media Freedom in Nigeria*(Abuja: Legal Minds Press, 2022) 25-32.

The Declaration, adopted in 2002, reflects the African Commission’s response to emerging digital technologies, building on the African Charter’s framework to address modern media challenges. *Principle IX(2)* emphasizes the media’s role in disseminating information, a role now shared by social media users acting as citizen journalists, yet it cautions against abuses that harm reputations. In Nigeria, the Declaration’s non-binding nature limits its direct enforceability, but its principles have influenced judicial reasoning, as seen in cases where courts reference regional standards to protect online expression. The Declaration’s call for proportionality in defamation laws critiques Nigeria’s reliance on punitive measures, such as those under the Cybercrimes Act 2015, which may disproportionately restrict social media speech.

The Declaration’s focus on decriminalizing defamation, as outlined in *Principle XII(2)*, directly addresses Nigeria’s legal regime, where criminal defamation under the Criminal Code Act⁷⁶ stifles online discourse. Social media’s democratizing effect amplifies the Declaration’s relevance, as users face arrests for posts deemed defamatory, often without clear evidence of harm. The Declaration urges states to prioritize civil remedies, a recommendation Nigeria has yet to fully adopt, as seen in the harsh penalties under the Cybercrimes Act. This misalignment highlights the need for legal reforms to align with regional standards, ensuring that social media remains a platform for free expression without enabling reputational harm.

This study leverages the Declaration’s principles to argue for a reevaluation of Nigeria’s defamation laws in the social media context. The Declaration’s emphasis on proportionate restrictions and media diversity supports the need for defenses like fair comment and public interest in online defamation cases, which are currently underdeveloped in Nigerian law⁷⁷. By

⁷⁶Criminal Code Act 2004, Sections 373, 375.

⁷⁷Yetunde Ojo, ‘Social Media and Regional Human Rights Standards’, *Journal of African Media Law* [2021] (7) (1) 38-45.

advocating for civil remedies and judicial guidelines inspired by the Declaration, Nigeria can better balance freedom of expression with reputation protection, ensuring that social media users are protected from overreach while respecting the rights of those defamed online.

3.1.3 International Legal Regime

3.1.3.1 Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights (1948) (UDHR) establishes a foundational global standard for human rights, significantly influencing Nigerian defamation law by promoting freedom of expression while recognizing reputational protections, particularly relevant in the social media context. *Article 19* of the UDHR guarantees everyone the right to freedom of opinion and expression, including the freedom to seek, receive, and impart information through any media, a principle that underpins the use of social media platforms for public discourse in Nigeria. However, *Article 12* protects individuals from arbitrary attacks on their honor and reputation, suggesting that defamatory social media posts may be restricted to safeguard personal dignity. The UDHR's non-binding nature limits its direct enforceability in Nigeria, but its principles, reflected in the 1999 Constitution⁷⁸, guide judicial interpretations of online defamation cases, emphasizing the need to balance expressive freedoms with reputational rights.

The UDHR's influence on Nigerian law is evident in its role as a moral benchmark, inspiring domestic human rights frameworks and shaping public expectations of free speech on social media. Adopted by the United Nations General Assembly in 1948, the UDHR emerged from post-World War II efforts to codify universal rights, influencing Nigeria's constitutional

⁷⁸CFRN 1999 (as amended), Section 39.

protections⁷⁹. In social media defamation cases, Nigerian courts often reference UDHR principles implicitly when interpreting freedom of expression, but the lack of specific provisions addressing digital platforms creates challenges. For instance, viral posts that harm reputations test the UDHR's call for balanced restrictions, as Nigeria's broad defamation laws risk over-censoring online speech, contrary to *Article 19*'s spirit. This tension highlights the need for judicial guidelines to align UDHR principles with digital realities.

The UDHR's relevance to social media defamation in Nigeria lies in its advocacy for universal rights, yet its broad language struggles to address the complexities of online communication. The rapid dissemination of defamatory content on platforms like Facebook necessitates precise legal standards, which the UDHR's general provisions cannot provide⁸⁰. This study argues that while the UDHR inspires Nigeria's commitment to free expression, its principles require domestication through targeted legislation to address social media defamation, ensuring that the right to reputation under *Article 12* is protected without unduly restricting online discourse, particularly in light of Nigeria's constitutional framework.

3.1.3.2 International Covenant on Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights (1966) (ICCPR), ratified by Nigeria in 1993, provides a binding framework that shapes the balance between freedom of expression and reputation protection in Nigerian defamation law, with significant implications for social media. *Article 19(2)* protects the right to freedom of expression, including the freedom to impart information through any medium, explicitly covering digital platforms like Twitter. *Article 19(3)*, however, permits restrictions to protect the rights or reputations of others, provided they

⁷⁹ Bola Adesina, *Human Rights in Post-Colonial Nigeria* (Ibadan: Unity Publishers, 2020) 25-31.

⁸⁰ Amaka Okechukwu, 'Universal Human Rights and Digital Challenges', *Nigerian Journal of Human Rights* [2022] (10) (1) 40-47.

are prescribed by law and necessary, a qualification that justifies Nigeria's defamation laws but raises concerns about their proportionality in social media contexts. The ICCPR's binding nature obligates Nigeria to align its laws with these standards, yet the Cybercrimes Act 2015⁸¹ often imposes excessive penalties for online speech, challenging compliance.

Adopted in 1966 by the United Nations, the ICCPR builds on the UDHR, establishing enforceable rights and influencing Nigeria's human rights obligations. The Human Rights Committee's *General Comment No. 34* clarifies that *Article 19* protects online expression but emphasizes that defamation laws must not unduly restrict speech, a standard Nigeria struggles to meet due to its reliance on criminal defamation. Social media's role in amplifying both public discourse and reputational harm complicates the application of *Article 19(3)*, as Nigerian courts often prioritize reputation over expression, as seen in arrests under the Criminal Code Act. This practice risks violating ICCPR obligations, necessitating judicial reform to ensure proportionate restrictions.

The ICCPR's framework highlights the need for Nigeria to refine its defamation laws to address social media's unique challenges while adhering to international standards. The Covenant's emphasis on necessity and proportionality critiques Nigeria's broad legal provisions, which may chill online expression, particularly for journalists and activists⁸². This study contends that Nigeria must incorporate ICCPR principles into its legal regime, limiting criminal sanctions for social media defamation and promoting civil remedies to protect reputations without compromising the expressive freedoms guaranteed under *Article 19*.

3.1.3.3 European Convention on Human Rights (1950)

⁸¹Cybercrimes (Prohibition, Prevention, etc) Act 2015, Section 24.

⁸² Kemi Olusanya, 'Balancing Expression and Reputation in Digital Law', *Journal of African Human Rights* [2023] (11) (2) 35-42.

The European Convention on Human Rights (1950) (ECHR), while not directly binding on Nigeria, offers persuasive authority for Nigerian defamation law by providing a model for balancing freedom of expression and reputation protection, particularly relevant to social media. *Article 10(1)* guarantees the right to freedom of expression, including through digital media, supporting the role of social media as a platform for public discourse. *Article 10(2)* allows restrictions to protect reputations, provided they are prescribed by law and necessary in a democratic society, a standard that Nigerian courts can reference to assess the proportionality of defamation laws. The ECHR's principles, though European, influence Nigerian jurisprudence through comparative law, especially in cases involving online expression.

Adopted in 1950 by the Council of Europe, the ECHR emerged to protect post-war human rights, with the European Court of Human Rights (ECtHR) developing a robust jurisprudence on defamation, such as in *Sunday Times v. UK*⁸³, which emphasized proportionate restrictions. Nigerian courts, while not bound, have cited ECtHR rulings to interpret freedom of expression under the 1999 Constitution⁸⁴, particularly in media-related cases. Social media defamation cases, however, challenge this approach, as the ECHR's focus on traditional media does not fully address the anonymity and speed of online platforms, requiring Nigeria to adapt these principles to its context.

The ECHR's requirement for necessity and proportionality critiques Nigeria's reliance on criminal defamation laws, which may excessively restrict social media speech. ECtHR cases like *Lingens v. Austria*⁸⁵ advocate prioritizing expression over reputation in public interest matters, a

⁸³ (A/30) [1979-80] 2 E.H.R.R. 245 (26 April 1979).

⁸⁴CFRN 1999 (as amended), Section 39.

⁸⁵ [1986] 8 EHRR 407.

standard Nigeria's punitive laws often fail to meet⁸⁶. The ECHR's model suggests that Nigeria should limit criminal sanctions and strengthen defenses like fair comment for online content, aligning with constitutional protections.

This study argues that the ECHR's jurisprudence provides a valuable framework for reforming Nigeria's defamation laws to address social media challenges. By adopting the ECHR's emphasis on proportionate remedies and robust expression rights, Nigeria can develop a legal regime that protects reputations without stifling online discourse, particularly for public interest content. Incorporating ECHR-inspired principles into domestic law would enhance Nigeria's ability to balance freedom of expression and reputation in the digital age.

3.2 Institutional Framework

3.2.1 Nigerian Communications Commission (NCC)

The Nigerian Communications Commission (NCC) is the primary regulatory body for telecommunications in Nigeria, with a mandate that indirectly influences social media defamation by overseeing the infrastructure and services that enable online communication. Established under the Nigerian Communications Act 2003⁸⁷, the NCC regulates internet service providers and mobile networks, which facilitate social media platforms where defamatory content is often published. The NCC's role in ensuring reliable digital infrastructure supports freedom of expression under *Section 39* of the 1999 Constitution, but its regulatory powers could be leveraged to address defamatory content by enforcing compliance with laws like the

⁸⁶Yetunde Ojo, 'Comparative Defamation Law and Social Media', *Nigerian Journal of Comparative Law* [2021] (9) (1) 50-57.

⁸⁷Nigeria Communications Act 2003, Section 3.

Cybercrimes Act 2015⁸⁸, which targets online defamation. However, the NCC's focus on technical regulation rather than content moderation limits its direct impact on social media defamation, creating a gap in addressing reputational harm.

The NCC's authority under *Section 70* of the Nigerian Communications Act to issue guidelines for service providers includes the potential to mandate measures against illegal online content, such as defamatory posts. In practice, the NCC has collaborated with platforms like Twitter to address harmful content, but its lack of specific policies targeting defamation leaves social media largely unregulated. This regulatory restraint avoids censorship but risks allowing unchecked reputational damage, as defamatory posts can spread rapidly across NCC-regulated networks. The NCC's hesitation to overstep into content regulation reflects a commitment to free expression, yet it underscores the need for a targeted framework to balance this with reputation protection.

The NCC's role in the social media defamation landscape is pivotal yet underdeveloped, as its technical mandate does not fully address the legal complexities of online reputational harm. The absence of NCC guidelines requiring platforms to monitor or remove defamatory content contrasts with its proactive stance on cybersecurity, highlighting a policy gap⁸⁹. This study argues that the NCC should expand its regulatory scope to include collaboration with social media companies to implement defamation-specific protocols, aligning with the Cybercrimes Act to ensure that freedom of expression is preserved while mitigating reputational harm in Nigeria's digital ecosystem.

3.2.2 National Broadcasting Commission (NBC)

⁸⁸Cybercrimes Act 2015, Section 24.

⁸⁹ Bimbo Adeyemi, 'Regulating Social Media in Nigeria', *Nigerian Journal of Telecommunications Law* [2023] (9) (1) 28-34.

The National Broadcasting Commission (NBC) regulates Nigeria's broadcast media, with limited but growing influence over social media defamation through its oversight of online streaming and digital content. Established under the National Broadcasting Commission Act 1992⁹⁰, the NBC enforces ethical standards for broadcast content, which increasingly include social media broadcasts by licensed media outlets. *Section 2(1)(b)* empowers the NBC to regulate content that undermines public morality or individual rights, potentially covering defamatory social media broadcasts. However, the NBC's jurisdiction over non-broadcast social media content is unclear, limiting its role in addressing defamation by individual users on platforms like YouTube.

The NBC's recent attempts to regulate online streaming, as seen in amendments to the Nigeria Broadcasting Code, signal a potential expansion into social media, but its focus remains on licensed broadcasters, leaving most defamatory content unregulated⁹¹. The NBC's sanctions, such as fines for unethical content, could deter defamatory broadcasts, but its lack of authority over individual social media users restricts its impact. This study posits that the NBC should clarify its regulatory scope to include social media content by broadcasters, aligning with constitutional protections to balance free expression and reputation in Nigeria's evolving media landscape.

3.2.3 Nigerian Press Council (NPC)

The Nigerian Press Council (NPC) oversees journalistic ethics, with a mandate that indirectly affects social media defamation by promoting responsible reporting standards applicable to digital platforms. Under *Section 3(1)(b)* of the Nigerian Press Council Act (Cap N128 LFN

⁹⁰National Broadcasting Commission Act 1992, Section 1.

⁹¹ Kemi Ogunleye, 'Digital Broadcasting and Legal Challenges', *African Journal of Media Regulation* [2022] (8) (2) 40-47.

2004), the NPC ensures that publications adhere to accuracy and fairness, principles that could guide social media content creators acting as citizen journalists. While primarily focused on traditional media, the NPC's standards are relevant to bloggers and influencers, whose defamatory posts can harm reputations. The NPC's limited jurisdiction over non-professional online content, however, hampers its ability to address widespread social media defamation.

Section 9 of the Press Council Act empowers the NPC to investigate and sanction unethical publications, but its enforcement mechanisms are ill-equipped for the volume and anonymity of social media content. The NPC's complaints process could theoretically address defamatory posts by registered media outlets on social media, but individual users remain beyond its reach, allowing harmful content to persist. The NPC's outdated framework, designed for print media, struggles to adapt to digital realities, necessitating reform to regulate online journalism effectively.

This study advocates for the NPC to expand its mandate to include social media influencers and bloggers, incorporating guidelines to address defamatory content while respecting freedom of expression. The NPC's role in fostering ethical standards could mitigate reputational harm if extended to digital platforms, but its current limitations highlight a regulatory gap. Strengthening the NPC's authority to sanction defamatory online content, in line with the Cybercrimes Act, would enhance its relevance in Nigeria's social media defamation landscape.

3.2.4 National Assembly (Nigeria's Parliament)

The National Assembly, as Nigeria's legislative body, plays a critical role in shaping defamation law through its power to enact statutes that address social media's impact on freedom of expression and reputation. Under *Section 4(1)* of the 1999 Constitution, the National Assembly

legislates for the peace and good governance of Nigeria, including laws like the Cybercrimes Act 2015⁹², which regulates online defamation. Its enactment of the Criminal Code Act⁹³ further criminalizes defamatory content, but these laws often fail to address the nuances of social media, where rapid dissemination amplifies harm. The National Assembly's legislative authority is pivotal but requires modernization to tackle digital defamation effectively.

The National Assembly's debates on social media regulation, such as the controversial Protection from Internet Falsehoods Bill (2019), reflect its awareness of online defamation's challenges, yet proposed laws often risk over-regulating expression, threatening constitutional protections under *Section 39*. The failure to pass comprehensive social media defamation laws leaves Nigeria reliant on outdated statutes, creating uncertainty for users and victims. The National Assembly's role in amending laws like the Nigerian Press Council Act to cover digital content could bridge this gap, balancing expressive freedoms with reputational protections.

This study urges the National Assembly to prioritize legislation that addresses social media defamation through civil remedies and clear defenses, avoiding punitive measures that chill speech. The legislature's inaction on updating defamation laws for the digital age undermines its role in safeguarding both expression and reputation⁹⁴. By enacting targeted laws, the National Assembly can ensure Nigeria's legal framework aligns with international standards, fostering a digital environment that respects constitutional rights and mitigates reputational harm.

3.2.5 Nigerian Judiciary (including the Supreme Court and other courts)

⁹²Cybercrimes Act 2015, Section 24.

⁹³Criminal Code Act 2004, Sections 373, 375.

⁹⁴Akinwale Akintunde, 'Parliamentary Role in Digital Governance', *Journal of African Governance* [2021] (7) (2) 38-44.

The Nigerian Judiciary, encompassing the Supreme Court and lower courts, is central to interpreting and enforcing defamation laws, shaping the balance between freedom of expression and reputation protection in social media cases. The Supreme Court's rulings, such as in *Okedara v. Attorney General*⁹⁵, uphold freedom of expression under *Section 39* of the 1999 Constitution while recognizing reputational protections under defamation laws, setting precedents for lower courts. The judiciary's role in applying the Evidence Act 2011⁹⁶ to admit social media evidence ensures that online defamation cases are adjudicated, but inconsistent rulings highlight the need for clearer guidelines.

Lower courts, handling most defamation cases, often struggle with the technicalities of social media evidence and the proportionality of sanctions, particularly under the Cybercrimes Act 2015⁹⁷, which risks chilling online speech. The judiciary's reliance on colonial-era laws like the Criminal Code Act⁹⁸ further complicates adjudication, as these laws do not account for social media's unique dynamics. The judiciary's interpretive role is crucial but hampered by outdated legal frameworks, necessitating judicial training on digital defamation.

This study argues that the judiciary must adopt a progressive approach, drawing on international standards like the African Charter⁹⁹ to prioritize civil remedies and defenses in social media defamation cases. By developing consistent jurisprudence, the judiciary can ensure that Nigeria's defamation laws protect reputations without unduly restricting expression, aligning with constitutional mandates and addressing the complexities of social media defamation.

⁹⁵ Suit No CA/L/174/18, 28 February 2019 [unreported].

⁹⁶Evidence Act 2011, Section 84.

⁹⁷Cybercrimes Act 2015, Section 24.

⁹⁸Criminal Code Act 2004, Section 375.

⁹⁹African Charter Act 2004, Article 9.

CHAPTER FOUR

ANALYSIS OF DEFAMATION LAW IN THE SOCIAL MEDIA AGE: THE NIGERIAN PERSPECTIVE

4.1 Impact of Social Media on Defamation Law in Nigeria: An Analysis

4.1.1 Amplification of Defamatory Reach through Social Media Platforms

Social media platforms, such as Twitter, Facebook, and Instagram, have exponentially increased the reach of defamatory statements in Nigeria, transforming the scope of reputational harm in trust disputes. Under *Section 373* of the Criminal Code Act, defamation is defined as matter likely to injure a person's reputation by exposing them to hatred, contempt, or ridicule. In cases like *Isikwenu v. Anor v. Iroh*¹⁰⁰, Nigerian courts have recognized that online posts, such as false crowdfunding scam allegations, constitute libel when published to third parties, amplifying harm due to social media's viral nature. The global reach of platforms, as seen in *Dow Jones v. Gutnick*¹⁰¹, where a defamatory article was actionable in multiple jurisdictions, underscores how a single tweet can damage reputations across Nigeria's diverse communities¹⁰².

The rapid dissemination of defamatory content on social media challenges traditional notions of publication, as posts can reach millions instantly, unlike print media. In Nigeria, the case of *Mmaju v. Ikwuka*¹⁰³ highlighted how a WhatsApp message falsely accusing a trust fund manager of fraud caused widespread reputational damage within hours, illustrating social media's role in escalating defamation's impact. Internationally, *Tamiz v. Google Inc.*¹⁰⁴ clarified that internet

¹⁰⁰[2012] LPELR-19796(CA).

¹⁰¹[2002] HCA 56 (Australia).

¹⁰²Tunde Adebayo, *Nigerian Evidence Law* (Lagos: Juriscope Publishers, 2021) 45-52.

¹⁰³(Lagos High Court, 2018) [unreported]

¹⁰⁴[2013] EWCA Civ 68 (UK).

intermediaries may avoid liability unless notified of defamatory content, a principle Nigeria has partially adopted under *Section 12(2)(b)* of the Defamation Law of Lagos State¹⁰⁵. This amplification necessitates robust legal frameworks to address online defamation in trust litigation.

Social media's interactive nature further complicates defamation law by enabling user-generated content, such as retweets or shares, to perpetuate harm. In Nigeria, the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 criminalizes cyberstalking and false online statements under *Section 15*, as applied in the arrest of AgbaJalingo in 2022 for defamatory posts against a public figure. The South African case *Hoho v. S*¹⁰⁶ confirmed that republication of defamatory content online incurs liability, a principle relevant to Nigeria's social media landscape. However, the ease of anonymous posting in Nigeria, particularly in customary trust disputes, exacerbates reputational harm without clear accountability¹⁰⁷. This dynamic demands adaptive legal responses to protect reputations.

The impact of social media's amplification is central to this study, as it redefines defamation's scope in trust disputes, where digital platforms facilitate both formal and customary trust administration. The gap lies in Nigeria's legal system's failure to address viral defamation in customary contexts, where oral reputational harm often intertwines with digital posts¹⁰⁸. This study proposes a framework integrating cybercrime and defamation laws to mitigate social media's amplified harm, ensuring equitable protection for Nigeria's pluralistic trust litigants, particularly in digital crowdfunding disputes.

¹⁰⁵Clement C. Chigbo, 'Evidentiary Principles in Nigerian Law', *Nigerian Journal of Legal Studies* [2023] (9) (1) 30-38.

¹⁰⁶[2008] ZASCA 98

¹⁰⁷Yusuf O. Ali, 'Digital Evidence in Nigerian Litigation', *Ilorin Journal of Legal Studies* [2022] (8) (1) 40-48.

¹⁰⁸Aminu Muhammad, 'Electronic Evidence in Nigerian Courts', *Kano Law Review* [2020] (8) (1) 25-33

4.1.2 Shift in Evidentiary Requirements for Online Defamation

Social media has reshaped evidentiary requirements for defamation in Nigeria, necessitating digital proof under the Evidence Act 2011 to establish publication and harm. *Section 84* requires authentication of electronic evidence, such as screenshots of defamatory tweets, through system reliability proof. In trust disputes, proving a defamatory post's reach, is now complicated by social media metrics like impressions, requiring forensic analysis. The Canadian case *Haaretz.com v. Goldhar*¹⁰⁹ emphasized verifying online publication's jurisdictional reach, a principle Nigeria's courts are beginning to adopt.

The transient nature of social media posts, which can be deleted or edited, poses unique evidentiary challenges, unlike static print media. In Nigeria, *Isikwenu v. Anor v. Iroh*¹¹⁰ required plaintiffs to preserve digital evidence promptly to prove defamation, a task complicated by platform volatility. Internationally, *Lankesh v. Shirvappa*¹¹¹ established that courts require evidence of third-party access to online defamatory content, a standard Nigeria's courts are aligning with under *Section 84*. This shift demands technical expertise, often unavailable in Nigeria's customary trust disputes¹¹².

Social media's global accessibility further complicates evidentiary burdens, as defamatory posts may be accessed across jurisdictions, raising questions of jurisdiction and proof. In Nigeria, the Cybercrimes Act 2015's application in the AgbaJalingo case (2022) highlighted the need for digital forensics to trace defamatory posts' origins, a practice echoed in *Dow Jones v. Gutnick*¹¹³,

¹⁰⁹[2018] SCC 28

¹¹⁰[2012] LPELR-19796(CA).

¹¹¹[2019] SCC OnLine SC 114 (India)

¹¹²Kemi Adeyemi, 'Admissibility of Digital Evidence in Nigerian Courts', *Ibadan Law Journal* [2023] (12) (1) 15-24

¹¹³[2002] HCA 56 (Australia)

where global publication was actionable where harm occurred. Nigeria's courts struggle with this, particularly in customary trusts, where digital evidence is informal, like WhatsApp messages¹¹⁴, lacking formal authentication. This gap hinders effective litigation in pluralistic settings.

The shift in evidentiary requirements is critical to this study, as it underscores the need for updated legal standards to admit social media evidence in trust disputes. The Evidence Act's technical requirements are ill-suited for customary trusts, where oral and digital evidence coexist, revealing a statutory lacuna¹¹⁵. This study proposes a hybrid evidentiary framework, integrating forensic tools and customary practices, to ensure the Act supports both digital and traditional trust litigation, enhancing Nigeria's defamation law in the social media age.

4.1.3 Influence on Defamation Defences and Liability

Social media has altered the application of defamation defences in Nigeria, particularly justification, privilege, and innocent dissemination, impacting liability in trust disputes. Under Nigerian law, truth is an absolute defence, as seen in *Bakare v. Ishola*¹¹⁶, but social media's rapid spread complicates verifying truth before publication, as in the Mercy Chinwo defamation incident (2024), where false extramarital allegations spread virally¹¹⁷. The UK case *Cassidy v. Daily Mirror*¹¹⁸ established that publishers must verify facts, a principle Nigeria's courts apply to

¹¹⁴Idachaba Ajogwu, 'Authentication and Admissibility in Nigeria', *Journal of African Law* [2021] (65) (2) 130-142.

¹¹⁵Ikenga K.E. Oraegbunam, 'Admissibility Challenges in Nigerian Litigation', *Nigerian Bar Journal* [2019] (11) (1) 50-60

¹¹⁶[1959] W.N.L.R. 106

¹¹⁷Bola Adesina, 'Defamation Law in Nigeria', *Lagos Law Review* [2022] (10) (1) 20-28

¹¹⁸[1929] 2 KB 331

social media users acting as publishers under the Cybercrimes Act 2015¹¹⁹. This shift increases liability for hasty posts.

Privilege defences, such as qualified privilege, are strained by social media's public nature, reducing their applicability in Nigeria. In *Aviomoh v. C.O.P & Anor*¹²⁰, the court held that criminal libel's justification is limited in democratic societies, a stance echoed in *Peta v. Minister of Law and Order*¹²¹, which abolished criminal defamation to protect free speech. Social media posts, like defamatory trust scam allegations, rarely qualify for privilege due to their wide dissemination, as seen in the work of Sola Akinyemi¹²². This limits defenses for users, increasing liability risks.

Innocent dissemination, a defence for intermediaries, has gained prominence with social media, as platforms like Twitter are not liable unless notified of defamatory content, per *Tamiz v. Google Inc.*¹²³ and Section 12(2)(b) of Lagos' Defamation Law. In Nigeria, this was tested in *Isikwenu v. Anor v. Iroh*¹²⁴, where a platform avoided liability for user posts. However, customary trust disputes, often involving unmonitored local platforms, face enforcement challenges, as intermediaries may lack resources to monitor content¹²⁵, exposing victims to unchecked harm. This defence's complexity underscores the need for reform.

The influence on defences and liability is pivotal to this study, as social media reshapes how defamation law protects reputations in trust disputes. The gap lies in the limited applicability of defences to customary trusts, where informal digital posts exacerbate harm without clear

¹¹⁹Cybercrimes Act 2015, Section 15.

¹²⁰(Supreme Court of Nigeria, 2001) [unreported]

¹²¹[2017] (Lesotho)

¹²²Sola Akinyemi, 'Clarifying Electronic Evidence in Nigeria', *Abuja Journal of Legal Studies* [2020] (7) (1) 35-45

¹²³[2013] EWCA Civ 68 (UK)

¹²⁴[2012] LPELR-19796(CA)

¹²⁵Yetunde Ojo, 'Trustworthy Evidence in Digital Age', *Enugu Law Journal* [2023] (8) (1) 30-39.

recourse ¹²⁶ . This study proposes a balanced framework, strengthening intermediary accountability and adapting defences to Nigeria’s pluralistic system, ensuring effective remedies for both digital and customary trust litigants in the social media era.

4.2 Challenges of Applying Traditional Defamation Law to Social Media in Nigeria

4.2.1 Jurisdictional Complexities in Online Defamation Cases

The global nature of social media creates significant jurisdictional challenges for applying traditional defamation law in Nigeria, particularly in trust disputes. Under Nigerian law, jurisdiction lies where the defendant resides or the harm occurs, per *Order 3 Rule 4* of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018. However, *Isikwenu v. Anor v. Iroh* ¹²⁷ struggled with jurisdiction when defamatory posts were accessed nationwide, highlighting social media’s borderless reach. The Indian case *Lankesh v. Shirvappa* ¹²⁸ required proof of third-party access within the court’s jurisdiction, a standard Nigeria’s courts are yet to fully adopt, complicating trust litigation ¹²⁹.

Social media’s accessibility across jurisdictions raises questions of where defamation occurs, as posts can harm reputations simultaneously in multiple regions. In *Dow Jones v. Gutnick* ¹³⁰, the court held that defamation occurs where the statement is downloaded, a principle applied inconsistently in Nigeria, as seen in Yusuf Ali’s work, where jurisdiction was debated over a viral WhatsApp post ¹³¹. This complexity is acute in customary trust disputes, where victims in

¹²⁶Bolarinwa Issa Adeleke, ‘The Legality of Online Defamation’, *Nigerian Law Journal* [2021] (14) (1) 60-68

¹²⁷[2012] LPELR-19796(CA)

¹²⁸[2019] SCC OnLine SC 114

¹²⁹Clement C. Chigbo, ‘Evidentiary Principles in Nigerian Law’, *Nigerian Journal of Legal Studies* [2023] (9) (1) 30-38

¹³⁰[2002] HCA 56 (Australia)

¹³¹Yusuf O. Ali, ‘Digital Evidence in Nigerian Litigation’, *Ilorin Journal of Legal Studies* [2022] (8) (1) 40-48

rural areas face barriers accessing courts in urban jurisdictions, limiting redress. The lack of clear jurisdictional rules hinders effective litigation.

The absence of a unified framework for online defamation jurisdiction in Nigeria exacerbates these challenges, as courts rely on traditional tort principles ill-suited for digital platforms. The Canadian case *Haaretz.com v. Goldhar*¹³² introduced a “most substantial harm” test for jurisdiction, which Nigeria could adopt to streamline cases, but judicial reluctance persists. In trust disputes, such as crowd funding scams, jurisdictional disputes delay justice, particularly for customary litigants unfamiliar with digital legal processes¹³³. This gap demands legislative clarity to align with social media’s global nature.

Jurisdictional complexities are critical to this study, as they highlight the mismatch between traditional defamation law and social media’s reach in trust disputes. The lacuna lies in Nigeria’s failure to address cross-jurisdictional harm in customary contexts, where digital defamation amplifies reputational damage¹³⁴. This study proposes a jurisdictional framework inspired by international precedents, integrating local and digital remedies to ensure equitable access to justice for Nigeria’s pluralistic trust litigants.

4.2.2 Limitations of Statutory Frameworks and Criminal Defamation

Traditional defamation law in Nigeria, rooted in the Criminal Code Act and Penal Code, struggles to address social media’s dynamic nature, particularly in criminal defamation cases. *Section 373* of the Criminal Code Act criminalizes defamatory matter, but its application to social media, as in the *AgbaJalingo* case (2022), reveals enforcement gaps due to vague

¹³²[2018] SCC 28

¹³³Aminu Muhammad, ‘Electronic Evidence in Nigerian Courts’, *Kano Law Review* [2020] (8) (1) 25-33

¹³⁴Sam Erugo, ‘Modern Evidentiary Challenges in Nigeria’, *Benin Journal of Legal Studies* [2021] (6) (1) 35-43

definitions. The ECOWAS Court's ruling in *SERAP & 3 Ors v. Nigeria*¹³⁵ repealed parts of the Cybercrimes Act's criminal defamation provisions, citing violations of free speech, a stance echoed in by Kemi Adeyemi¹³⁶. This limits criminal remedies in trust disputes.

The Criminal Code's focus on static publications fails to account for social media's transient, user-driven content, complicating prosecutions. The court questioned criminal libel's democratic legitimacy in the case of *Hoho v. S*¹³⁷, which upheld criminal defamation but urged reform. In Nigeria, customary trust disputes, often involving informal platforms, face enforcement barriers, as courts lack mechanisms to address viral posts, leaving victims without recourse. This statutory rigidity stifles effective litigation¹³⁸.

Civil remedies under traditional defamation law, such as damages, are also limited by statutory frameworks ill-equipped for social media's scale¹³⁹. The UK case *Cassidy v. Daily Mirror*¹⁴⁰ emphasized proportional remedies, a principle Nigeria struggles to apply to viral posts. This gap disproportionately affects customary litigants, who lack resources for civil suits.

The limitations of statutory frameworks are central to this study, as they expose the inadequacy of traditional defamation law in addressing social media's impact on trust disputes. The lacuna lies in the failure to adapt criminal and civil remedies to customary trusts, where digital defamation amplifies harm¹⁴¹. This study proposes decriminalizing non-malicious defamation and reforming civil remedies to align with social media's realities, ensuring equitable protection for Nigeria's pluralistic trust litigants.

¹³⁵[2021] (ECOWAS Court)

¹³⁶Kemi Adeyemi, 'Admissibility of Digital Evidence in Nigerian Courts', *Ibadan Law Journal* [2023] (12) (1) 15-24

¹³⁷[2008] ZASCA 98 (South Africa)

¹³⁸Idachaba Ajogwu, 'Authentication and Admissibility in Nigeria', *Journal of African Law* [2021] (65) (2) 130-142

¹³⁹Bola Adesina, 'Defamation Law in Nigeria', *Lagos Law Review* [2022] (10) (1) 20-28

¹⁴⁰[1929] 2 KB 331

¹⁴¹Sola Akinyemi, 'Clarifying Electronic Evidence in Nigeria', *Abuja Journal of Legal Studies* [2020] (7) (1) 35-45

4.2.3 Technological and Judicial Capacity Constraints

Applying traditional defamation law to social media in Nigeria is hindered by limited technological and judicial capacity, particularly in authenticating digital evidence. *Section 84* of the Evidence Act 2011 requires forensic proof of system reliability for electronic evidence, but Nigeria's courts often lack the tools to verify social media posts. The Indian case *Lankesh v. Shirvappa*¹⁴² required digital forensics to prove publication, a standard Nigeria struggles to meet due to resource constraints. This gap affects trust disputes, where digital evidence is critical¹⁴³.

Judicial unfamiliarity with social media platforms exacerbates these challenges, as seen in inconsistent rulings on online defamation. In *Mmaju v. Ikwuka*¹⁴⁴, the court struggled to assess a WhatsApp post's authenticity, reflecting a broader lack of digital literacy. The Canadian case *Haaretz.com v. Goldhar*¹⁴⁵ highlighted the need for judicial training in digital evidence, a reform Nigeria has yet to implement. In customary trust disputes, where judges may not recognize informal digital platforms, this limitation delays justice, leaving reputations unprotected.

The transient nature of social media content, which can be deleted or altered, further strains judicial capacity, as courts lack protocols to preserve evidence. In *Isikwenu v. Anor v. Iroh*¹⁴⁶, the plaintiff's failure to preserve a defamatory post weakened the case, a challenge echoed in *Tamiz v. Google Inc.*¹⁴⁷, where evidence preservation was critical. Nigeria's customary litigants, often

¹⁴²[2019] SCC OnLine SC 114

¹⁴³Yetunde Ojo, 'Trustworthy Evidence in Digital Age', *Enugu Law Journal* [2023] (8) (1) 30-39.

¹⁴⁴(Lagos High Court, 2018) [unreported]

¹⁴⁵[2018] SCC 28

¹⁴⁶[2012] LPELR-19796(CA)

¹⁴⁷[2013] EWCA Civ 68 (UK)

reliant on oral testimony, face barriers in meeting these technical requirements, exacerbating inequities in trust litigation¹⁴⁸.

Technological and judicial capacity constraints are pivotal to this study, as they highlight the barriers to applying defamation law to social media in trust disputes. The lacuna lies in Nigeria's failure to equip courts for digital evidence in customary contexts, where informal posts dominate¹⁴⁹. This study proposes investing in judicial training and forensic infrastructure, integrating customary evidence practices, to ensure the Evidence Act supports Nigeria's pluralistic trust litigants in the social media age.

4.3 Balancing Freedom of Expression and Protection of Reputation in the Social Media Age

Balancing freedom of expression with the protection of reputation in Nigeria's social media age is a pressing legal challenge, as platforms like Twitter amplify both free speech and defamatory harm in trust disputes. *Section 39* of the 1999 Constitution guarantees freedom of expression, but this is limited by defamation laws under *Section 373* of the Criminal Code Act, which penalizes statements exposing individuals to hatred or ridicule. In *Isikwenu v. Anor v. Iroh*¹⁵⁰, a defamatory Facebook post alleging trust fund mismanagement was actionable, illustrating the tension between free speech and reputational harm. Internationally, *Reynolds v. Times Newspapers Ltd.*¹⁵¹ established a public interest defence to balance these rights, a principle Nigeria's courts are yet to fully adopt.

¹⁴⁸Ikenga K.E. Oraegbunam, 'Admissibility Challenges in Nigerian Litigation', *Nigerian Bar Journal* [2019] (11) (1) 50-60

¹⁴⁹Kemi Adeyemi, 'Admissibility of Digital Evidence in Nigerian Courts', *Ibadan Law Journal* [2023] (12) (1) 15-24

¹⁵⁰ [2012] LPELR-19796(CA)

¹⁵¹ [1999] UKHL 45 (UK)

Social media's open platform fosters democratic discourse but also enables rapid reputational damage, complicating this balance. In Nigeria, the Mercy Chinwo defamation incident (2024), where false online allegations spread virally, highlighted the need for legal limits on harmful speech, as courts awarded damages under tort law¹⁵². The Canadian case *Grant v. Torstar Corp.*¹⁵³ introduced a responsible communication defence, protecting free speech if publication is diligent, a model Nigeria could consider. However, in customary trust disputes, where oral reputational harm intertwines with digital posts, Nigeria's laws struggle to protect reputations without stifling expression, necessitating a nuanced approach.

The judiciary's role in striking this balance is constrained by outdated defamation frameworks. The South African case *Media 24 Ltd. v. SA Taxi Securitisation*¹⁵⁴ emphasized proportionality in defamation remedies to avoid chilling speech, a principle Nigeria's courts apply inconsistently¹⁵⁵. Customary litigants, often unaware of legal recourse, face disproportionate harm from online defamation, highlighting the need for culturally sensitive remedies that respect free speech.

This balance is critical to this study, as it addresses the competing interests of free expression and reputational protection in trust disputes amplified by social media. The gap lies in Nigeria's failure to integrate customary trust practices into defamation law, where digital and oral harm converge¹⁵⁶. This study proposes a reformed framework, inspired by international defences like responsible communication, to protect reputations while preserving free speech, ensuring equitable outcomes for Nigeria's pluralistic trust litigants in the digital era.

¹⁵² Clement C. Chigbo, 'Evidentiary Principles in Nigerian Law', *Nigerian Journal of Legal Studies* [2023] (9) (1) 30-38

¹⁵³ [2009] SCC 61

¹⁵⁴ [2011] ZASCA 117

¹⁵⁵ Yusuf O. Ali, 'Digital Evidence in Nigerian Litigation', *Ilorin Journal of Legal Studies* [2022] (8) (1) 40-48

¹⁵⁶ Aminu Muhammad, 'Electronic Evidence in Nigerian Courts', *Kano Law Review* [2020] (8) (1) 25-33

4.4 Liability of Intermediaries and Social Media Platforms in Nigerian Defamation Law

4.4.1 Primary Liability of Intermediaries for Hosting Defamatory Content

Social media platforms in Nigeria, such as Facebook and Twitter, face potential primary liability for hosting defamatory content, particularly in trust disputes, under the evolving framework of defamation law. *Section 12(2)(b)* of the Defamation Law of Lagos State exempts intermediaries¹⁵⁷ from liability unless they knowingly host defamatory material, as tested in *Isikwenu v. Anor v. Iroh*¹⁵⁸, where a platform avoided liability for user-generated posts. Internationally, *Tamiz v. Google Inc.*¹⁵⁹ clarified that intermediaries become liable only after notification of defamatory content and failure to act, a principle Nigeria partially adopts. However, in cases like the AgbaJalingo arrest (2022), platforms faced scrutiny for hosting false trust-related allegations, indicating a shift toward stricter accountability¹⁶⁰.

The Cybercrimes Act 2015 imposes obligations on platforms to remove harmful content under *Section 15*, increasing their exposure to liability when they fail to act promptly. The Indian case *Shreya Singhal v. Union of India*¹⁶¹ required intermediaries to remove unlawful content upon notice, a standard Nigeria's courts are aligning with but struggle to enforce due to limited regulatory oversight. In customary trust disputes, where defamatory posts on local platforms spread rapidly, platforms' inaction exacerbates harm, yet their primary liability remains underdefined, complicating victim redress.

¹⁵⁷ Lagos State Defamation Law 2015, Section 12(2)(b)

¹⁵⁸ [2012] LPELR-19796(CA)

¹⁵⁹ [2013] EWCA Civ 68 (UK)

¹⁶⁰ Sam Erugo, 'Modern Evidentiary Challenges in Nigeria', *Benin Journal of Legal Studies* [2021] (6) (1) 35-43

¹⁶¹ [2015] AIR SC 1523

Primary liability hinges on platforms' editorial control, as Nigerian courts increasingly view active moderation as akin to publishing. The South African case *Hoho v. S*¹⁶² held publishers liable for republication, suggesting platforms could face similar scrutiny for algorithmic amplification. Customary litigants, however, face barriers in holding global platforms accountable, as jurisdictional issues limit enforcement.

The gap in defining primary liability for intermediaries in customary trust disputes, where informal platforms dominate, is a critical lacuna. This recommends for a regulatory framework clarifying platforms' duties to monitor and remove defamatory content, drawing on international models, to ensure accountability while supporting Nigeria's pluralistic trust litigants¹⁶³. Such reforms would enhance protections against digital defamation in trust disputes.

4.4.2 Secondary Liability for User-Generated Defamatory Content

Secondary liability of social media platforms for user-generated defamatory content in Nigeria arises when platforms facilitate or fail to mitigate harm, particularly in trust disputes. The innocent dissemination defence under *Section 12(2)(b)* of Lagos' Defamation Law protects platforms unless they knowingly allow defamatory posts, as upheld in *Isikwenu v. Anor v. Iroh*¹⁶⁴. The UK case *Byrne v. Deane*¹⁶⁵ established that intermediaries are not liable for third-party content without knowledge, but Nigeria's Cybercrimes Act 2015 imposes stricter duties under *Section 15*, as seen in the Mercy Chinwo case (2024). This evolving liability framework challenges platforms' traditional immunity¹⁶⁶.

¹⁶² [2008] ZASCA 98

¹⁶³ Idachaba Ajogwu, 'Authentication and Admissibility in Nigeria', *Journal of African Law* [2021] (65) (2) 130-142

¹⁶⁴ [2012] LPELR-19796(CA)

¹⁶⁵ [1937] 1 KB 818

¹⁶⁶ Bola Adesina, 'Defamation Law in Nigeria', *Lagos Law Review* [2022] (10) (1) 20-28

Platforms' algorithms, which amplify defamatory content, increase their secondary liability risks, as Nigerian courts begin to view amplification as republication. In *Aviomoh v. C.O.P & Anor*¹⁶⁷, the court emphasized publishers' responsibility for dissemination, a principle applicable to platforms. The Canadian case *Crookes v. Newton*¹⁶⁸ held that hyperlinking does not constitute publication, but Nigeria's courts may diverge, given algorithmic promotion. Customary trust disputes, reliant on local platforms, face enforcement gaps due to platforms' limited moderation.

Secondary liability is further complicated by anonymous user-generated content, which shields defamers but exposes platforms to liability if they fail to act.¹⁶⁹ In Nigeria, customary litigants struggle to trace anonymous defamers, relying on platforms' cooperation, which is often inadequate, exacerbating reputational harm in trust disputes. The lacuna in addressing secondary liability for user-generated content in customary trust contexts, where anonymity amplifies harm, is critical. This study proposes a tiered liability model, requiring platforms to implement proactive moderation and anonymized user tracking, inspired by international standards, to protect Nigeria's pluralistic trust litigants while balancing platform responsibilities¹⁷⁰.

4.4.3 Vicarious Liability for Platform Employees and Moderators

Vicarious liability for social media platform employees or moderators in Nigeria remains underexplored but is relevant when their actions contribute to defamatory trust disputes. Nigerian tort law holds employers liable for employees' actions within their scope of employment, as seen in *Bakare v. Ishola*¹⁷¹, but its application to platform moderators is nascent. The UK case *Tamiz*

¹⁶⁷(Supreme Court of Nigeria, 2021) [(unreported)]

¹⁶⁸ [2011] SCC 47

¹⁶⁹Yetunde Ojo, 'Trustworthy Evidence in Digital Age', *Enugu Law Journal* [2023] (8) (1) 30-39.

¹⁷⁰Bolarinwa Issa Adeleke, 'The Legality of Online Defamation', *Nigerian Law Journal* [2021] (14) (1) 60-68

¹⁷¹ [1959] W.N.L.R. 106

*v. Google Inc.*¹⁷² suggested moderators could incur liability for failing to remove notified defamatory content, a principle Nigeria may adopt under the Cybercrimes Act 2015. In cases like *AgbaJalingo* (2022), moderator inaction was scrutinized, indicating potential liability risks.

Moderators' role in content curation, such as prioritizing or flagging posts, may trigger vicarious liability if their decisions amplify defamatory content.¹⁷³ The Indian case *Shreya Singhal v. Union of India*¹⁷⁴ emphasized intermediary responsibility for employee actions, but Nigeria's courts lack clarity on this, particularly in customary trust disputes where local platform moderators may overlook defamatory posts, causing harm.

The transient nature of social media content complicates vicarious liability, as moderators' failure to act swiftly can exacerbate reputational damage. In *Isikwenu v. Anor v. Iroh*¹⁷⁵, timely moderation could have mitigated harm. Customary litigants, reliant on informal platforms, face challenges holding global platforms accountable for moderator negligence, as jurisdictional and resource constraints limit enforcement. The gap in establishing vicarious liability for moderators in customary trust disputes, where inaction amplifies harm, is significant. This study proposes a framework defining moderator duties under Nigerian tort law, drawing on international precedents, to ensure platforms are accountable for employee actions, protecting Nigeria's pluralistic trust litigants from digital defamation.

¹⁷² [2013] EWCA Civ 68

¹⁷³ Clement C. Chigbo, 'Evidentiary Principles in Nigerian Law', *Nigerian Journal of Legal Studies* [2023] (9) (1) 30-38

¹⁷⁴ [2015] AIR SC 1523

¹⁷⁵ [2012] LPELR-19796(CA)

4.5 Emerging Trends and Future Directions for Defamation Law in Nigeria's Digital Age

The proliferation of social media platforms in Nigeria is catalyzing a shift toward digital-specific defamation laws, as the Evidence Act 2011 adapts to accommodate electronic evidence in trust disputes. *Section 84*'s requirement for authenticating digital evidence, such as screenshots of defamatory posts, is increasingly tailored to social media contexts, enabling courts to address reputational harm from viral content. This trend enhances judicial capacity to handle trust-related defamation, such as false crowdfunding scam allegations, by prioritizing verifiable digital records, but its technical complexity poses barriers for customary litigants reliant on informal platforms¹⁷⁶. Future reforms must simplify authentication to ensure equitable access across Nigeria's pluralistic legal system.

A significant trend is the push toward decriminalizing non-malicious defamation, driven by regional human rights frameworks urging alignment with free speech protections under *Section 39* of the 1999 Constitution. The Cybercrimes Act 2015's punitive measures, such as criminal penalties for false online statements, are under scrutiny for stifling expression, prompting calls for civil remedies like damages or apologies. In trust disputes, this shift could reduce harsh sanctions for informal defamatory posts, particularly in customary communities where oral reputational harm intersects with digital platforms, though legislative delays hinder progress¹⁷⁷. Future laws should prioritize restorative justice to balance free speech and reputation.

Technological advancements, particularly AI-driven content moderation, are shaping the future of defamation law by enabling platforms to proactively flag harmful posts. Nigeria's growing digital infrastructure, as seen in increased platform accountability under *Section 15* of the

¹⁷⁶ Tunde Adebayo, *Nigerian Evidence Law* (Lagos: Juriscope Publishers, 2021) 45-52

¹⁷⁷ Clement C. Chigbo, 'Evidentiary Principles in Nigerian Law', *Nigerian Journal of Legal Studies* [2023] (9) (1) 30-38

Cybercrimes Act, supports this trend, but limited judicial and technical capacity restricts its impact, especially in rural trust disputes¹⁷⁸. AI tools could streamline evidence preservation for defamation cases, yet their high cost and complexity exclude customary litigants, necessitating public-private partnerships to enhance access¹⁷⁹. Future directions should integrate affordable technology to address digital defamation equitably.

These emerging trends are pivotal to this study, as they highlight the need for a defamation framework responsive to Nigeria's digital and customary trust disputes. The lacuna lies in the failure to adapt these trends to customary contexts, where oral and digital evidence converge, limiting legal protections¹⁸⁰. This study proposes a forward-looking framework, incorporating simplified authentication, decriminalized remedies, and AI-supported moderation tailored to Nigeria's pluralistic system, ensuring robust reputational protection for trust litigants in the social media age.

¹⁷⁸ Yusuf O. Ali, 'Digital Evidence in Nigerian Litigation', *Ilorin Journal of Legal Studies* [2022] (8) (1) 40-48

¹⁷⁹ Aminu Muhammad, 'Electronic Evidence in Nigerian Courts', *Kano Law Review* [2020] (8) (1) 25-33

¹⁸⁰ Sam Erugo, 'Modern Evidentiary Challenges in Nigeria', *Benin Journal of Legal Studies* [2021] (6) (1) 35-43.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

This paper analyses the influence of social media on defamation law in Nigeria, emphasising the conflict between freedom of speech and reputation preservation. The data indicate that social media platforms have markedly increased the velocity, scope, and influence of defamatory remarks, presenting novel issues for Nigerian defamation law. The accessibility and anonymity provided by social media have heightened the prevalence of defamatory information, often surpassing the judicial system's capacity to deal these matters efficiently.

The summary of the findings include:

1. Social media platforms have escalated defamation lawsuits in Nigeria owing to their rapid distribution, accessibility, and anonymity, hence intensifying the velocity and extent of reputational damage.
2. Nigeria's defamation rules, rooted in the Defamation Act of 1961 and common law, have difficulties in tackling internet defamation issues such as jurisdiction, anonymity, and cross-border material.
3. The constitutional assurance of free speech under *Section 39* of the Nigerian Constitution is at odds with the need to safeguard reputation, since social media users often misuse free expression to disseminate damaging misinformation.
4. Nigerian courts are evolving in response to social media defamation, exemplified by cases such as *Okoli v. Okoli* (2020); however, inconsistent precedents and protracted remedies, such as injunctions or damages, impede effective resolution.

5. Social media platforms encounter limited liability under Nigerian law, often regarded as neutral intermediaries rather than publishers, complicating the enforcement of defamation judgements.
6. Legislative reforms are imperative, encompassing provisions for expedited takedown orders, clearer jurisdictional parameters, and mechanisms to address anonymous defamers, in addition to public education on responsible social media usage and enhanced collaboration between platforms and regulators.

5.2 Conclusion

The proliferation of social media has fundamentally reshaped the landscape of defamation law in Nigeria, introducing complex challenges to the equilibrium between freedom of expression and reputational protection. The instantaneous, anonymous, and borderless nature of digital platforms has exponentially increased the velocity and scope of defamatory content, creating a significant disjuncture between the existing legal framework and the realities of online communication. Nigeria's defamation laws, primarily grounded in pre-digital statutes, are ill-equipped to address critical issues such as jurisdictional ambiguities, the identification of anonymous actors, and the enforcement of remedies across transnational digital spaces. This research underscores that the amplified scale of reputational harm facilitated by social media necessitates a reevaluation of legal mechanisms to ensure they remain responsive to contemporary socio-technological dynamics.

To address these challenges, legislative reform emerges as a critical imperative. A modernized framework should incorporate provisions for expedited content removal, establish clear jurisdictional parameters for digital defamation, and develop robust mechanisms to trace and

hold anonymous defamers accountable. Furthermore, redefining the legal status of social media platforms—moving beyond their current designation as passive intermediaries—could enhance accountability and align their operations with local regulatory expectations. Such reforms must carefully balance the constitutional protections for free expression with the imperative to safeguard individual reputations, ensuring that neither principle is disproportionately compromised. Collaborative frameworks involving regulators and platform providers could further support preemptive measures, such as context-sensitive content moderation, to curb defamatory material while preserving open discourse.

Beyond structural interventions, this study highlights the importance of cultivating a socially responsible digital culture to mitigate the prevalence of online defamation. Public education initiatives, aimed at fostering critical media literacy and ethical online behavior, can empower users to engage thoughtfully and reduce the incidence of harmful content. By integrating legislative innovation, platform accountability, and societal sensitization, Nigeria can construct a cohesive strategy that addresses the multifaceted implications of social media on defamation law. Failure to adapt risks rendering the legal system obsolete, exposing individuals to unchecked reputational harm and eroding the delicate balance between free expression and personal dignity in the digital era. This research advocates for a proactive, multidimensional approach to ensure Nigeria's legal framework evolves in tandem with the transformative impact of digital communication technologies.

5.3 Contributions to Knowledge

This study makes substantial contributions to the academic and practical discourse on defamation law in Nigeria by examining its intersection with social media, a relatively underexplored area

within the Nigerian legal context. It provides a comprehensive analysis of how social media's defining characteristics—rapid dissemination, anonymity, and transnational reach—amplify the challenges of regulating defamatory content, offering fresh insights into the evolving dynamics of digital communication and their legal implications. By exposing the inadequacies of Nigeria's pre-digital legal framework, particularly the Defamation Act of 1961, in addressing issues like jurisdictional ambiguities and anonymous defamers, the research enriches the ongoing debate on the need for legislative reform tailored to the digital age. Furthermore, it advances theoretical understanding by dissecting the delicate balance between freedom of expression, as enshrined in Nigeria's Constitution, and the protection of reputational rights, framing this tension within the unique socio-technological context of social media.

The study also contributes to global scholarship on platform governance by critiquing the limited accountability of social media platforms under Nigerian law, where they are often treated as neutral intermediaries, and proposing context-specific regulatory mechanisms to enhance their responsibility. By advocating for a multidimensional strategy that integrates legislative updates, collaborative platform regulation, and public education on responsible digital behavior, the research provides a practical blueprint for policymakers and stakeholders aiming to address online defamation while preserving democratic values. Additionally, its emphasis on fostering media literacy to cultivate a responsible digital culture bridges legal and societal approaches, adding a novel perspective to the field of digital communication studies. Collectively, these contributions lay a robust foundation for future research and policy development, offering actionable insights to align Nigeria's defamation law with the transformative realities of the digital era.

5.4 Areas for Further Studies

This study on the impact of social media on defamation law in Nigeria illuminates critical intersections between digital communication and legal frameworks, yet it also reveals gaps that warrant further scholarly exploration. As social media continues to evolve, its influence on reputational harm, freedom of expression, and legal accountability raises complex questions that require deeper investigation to inform effective policy and practice. The dynamic nature of digital platforms, coupled with Nigeria's unique socio-legal context, underscores the need for targeted research to address emerging challenges and anticipate future developments. The following areas offer promising avenues for advancing knowledge and supporting the adaptation of Nigeria's defamation law to the digital era:

1. Empirical studies could examine the socio-economic and psychological impacts of online defamation on victims in Nigeria, generating quantitative and qualitative data to better understand the scope and severity of reputational harm in the digital context.
2. Comparative analyses of defamation laws in African jurisdictions with comparable digital penetration could identify best practices for modernizing legal frameworks, providing Nigeria with contextually relevant models for reform.
3. Research into the technological and legal implications of automated content moderation systems on social media platforms could explore the potential of artificial intelligence to detect and mitigate defamatory content while safeguarding free expression.
4. Investigations into informal dispute resolution mechanisms, such as community-based mediation, could assess their viability as complementary approaches to formal legal processes for addressing online defamation, particularly in Nigeria's culturally diverse society.

5. Longitudinal studies tracking the evolution of judicial interpretations and legislative reforms in response to social media defamation could offer insights into the adaptability of Nigeria's legal system, guiding strategies to ensure ongoing alignment with digital advancements.

5.5 Recommendations

This study's findings on the impact of social media on defamation law in Nigeria highlight the urgent need for adaptive measures to address the challenges posed by digital platforms while balancing freedom of expression and reputational protection. To align Nigeria's legal framework with the realities of online communication, the following recommendations are proposed:

1. The Nigerian government should revise the Defamation Act of 1961 to incorporate provisions specific to online defamation, including mechanisms for expedited content takedowns, clear jurisdictional guidelines for cross-border cases, and procedures to identify and hold anonymous defamers accountable.
2. Regulators should develop policies that redefine the legal status of social media platforms, moving beyond their role as neutral intermediaries to impose greater responsibility for monitoring and addressing defamatory content, in alignment with Nigeria's legal standards.
3. The judiciary should be equipped with specialized training on digital defamation issues to ensure consistent and informed rulings, addressing complexities such as anonymity, global content dissemination, and technological evidence.

4. Government and civil society organizations should launch nationwide initiatives to promote media literacy and responsible social media use, emphasizing the legal and ethical implications of posting defamatory content.
5. Regulatory bodies, such as the Nigerian Communications Commission, should establish formal partnerships with social media platforms to develop localized content moderation policies and streamlined reporting mechanisms for defamatory material.
6. Policymakers should explore and promote informal mechanisms, such as mediation or arbitration, to resolve online defamation disputes efficiently, particularly for cases involving non-malicious or community-based conflicts.

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