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ONLINE DEFAMATION AND THE ARCHITECTURE OF DIGITAL HARM: WHY INDIA MUST PRESERVE BEFORE IT ERASES

-Devika Singhal

The internet defamation can be said to be an ancient malady in a new form. That's a doctrinally handy but institutionally incomplete description. In traditional defamation law, the question is whether the person published an imputation which had the effect of injuring a reputation with fault and without a legitimate defence. The value of reputation and the constitutional significance of speech remains the same on the internet. It does, however, change the circumstances in which both are safeguarded. A statement may be copied and pasted, suggested by a computer program, taken out of context, saved indefinitely, and claimed by a fake or unknown person. The injury is thus not caused by words alone, but also by the digital architecture in which words exist and gain force.

Criminal prosecution, civil action, damages, injunctions, blocking powers, intermediary obligations and grievance procedures for platforms are already provided by Indian law. It is not a lack of legal power that is its main failing. It's the order that that power is used. The first instinct is to remove before adjudicate. This may seem like protection for the victims, but it can lead to the deletion of evidence, make it more appealing to strategically litigate, and cause private platforms to block legitimate criticism without actually assessing its falsity, context, or public interest.

This article champions an alternative argument. A preservation-first, serious-harm-screened, and adjudication-centred approach to the Indian online defamation law is desirable. The initial legal action should be to preserve the evidence and to establish the parameters of the dispute. Removal should be in lieu of only when there is a clear and compelling case of relief before a court.

THE CONSTITUTIONAL FORM OF DEFAMATION

The conflict over the constitution is a familiar one. Article 19(1)(a) guarantees freedom of speech and expression and Article 19(2) explicitly allows reasonable restrictions on defamation. The concept of reputation has also been referred to as dignity which is safeguarded by Article 21. In *Subramanian Swamy v Union of India*, the Supreme Court has again ruled that criminal defamation is constitutional and that there is no absolute right to hurt someone's reputation when it comes to freedom of speech¹. Despite any criticism that may be offered on the Court's proportionality analysis, the judgment establishes that the protection of reputation is not only a private or commercial interest but is also a constitutional concern in India.

At present the provision in the criminal codes is section 356 of the *Bharatiya Nyaya Sanhita*, 2023 which has retained the structure of the sections 499 and 500 of the Indian Penal Code, 1860, substantially. It affects “imputations made” or “published in any manner”; offers 10 statutory exceptions; and includes a potential 2-year prison term², a fine of both two years and a community service term. In general, a complaint by an aggrieved person is required to be filed before any court can take cognisance in the case of *Bharatiya Nagarik Suraksha Sanhita*, 2023³.

One exception to section 356 is significant online. An absolute defence to criminal defamation is not truth. The imputation must be true and its publication must also be for the public good. Other exceptions cover good-faith statements about public servants, public issues, judicial trials, warnings given for protection and public interest.

The common law continues to be the primary basis for civil defamation. To make a successful defamation claim, a claimant typically has to prove that a defamatory statement was made, referred to him or her and published to a third party, and that the statement was made without a defensible justification, such as truth, honest opinion, privilege and in the public interest. There is no need to create a new tort for digital publication. It calls for a more ordered remedy law. An allegation, opinion, satire, quotation, hyperlink, and third party commentary may all be included in a single post. A composite object is treated as one wrong and over-broad suppression is invited.

¹ *Subramanian Swamy v. Union of India*, (2016) 7 S.C.C. 221 (India).

² *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 356, India Code (2023). Section 356 applies to imputations published “in any manner,” retains ten exceptions, and authorises imprisonment, fine, both, or community service.

³ *Bharatiya Nagarik Suraksha Sanhita*, No. 46 of 2023, § 222, India Code (2023).

AN INTERMEDIARY IS NEITHER JUDGE NOR A MERE SPECTATOR

The issue of platform responsibility can't be avoided easily in online disputes. Intermediaries are given a conditional safe-harbour under section 79 of the Information Technology Act, 2000 for third-party information if they meet certain conditions and do not engage in the illegal activity.

The Supreme Court in *Shreya Singhal v Union of India*⁴ read down the term “actual knowledge” in section 79(3)(b). The mere existence of a private grievance is not a sufficient basis for an intermediary to decide that speech is illegal, nor does it guarantee the lawfulness of speech if it is not. The knowledge, as a rule, should stem from a judicial order or a proper notification issued by the authorities concerning an unlawful act which is related to Article 19(2)⁵.

The ruling is often referred to as a “platform immunity” decision. It has a deeper meaning which is procedural. Defamation is not obvious from the words. The truth could rely on documents which a platform moderator may not have. Rhetorical opinion can be an apparently categorical accusation. A short video could have a completely different interpretation when it's put back in its place. A complaint can relate to investigative journalism, consumer criticism, satire or political speech.

Otherwise, websites would have to be expected to cease publishing information because of the legal liability of owning it, rather than the commercial value. The complainant would then get the censorship without having to prove that the information is false, or that it caused harm, in front of an independent body. The constitutional protection in *Shreya Singhal* is not just a safe harbour, but also against the creation of a self-executing takedown order that may be based on private accusations.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 impose upon intermediaries due-diligence obligations, grievance redressal obligations, and compliance obligations. The official structure was also updated in February 2026, including in the context of synthetic information. Grievance mechanisms aren't just about

⁴ *Shreya Singhal v. Union of India*, (2015) 5 S.C.R. 963, ¶¶ 117–19 (India).

⁵ *Shreya Singhal v. Union of India*, (2015) 5 S.C.R. 963, ¶¶ 117–19 (India).

improving access for those who are injured, but also provide pressure to comply, which can lead to the delayed removal of the first⁶.

In *Google India Private Ltd. v. Visaka Industries Ltd.*⁷, it becomes evident why the concept of intermediary liability is fact-sensitive. The Supreme Court refused to drop a criminal defamation case at the very first stage of the proceedings in circumstances related to the definition of defamation under the statute at the time the impugned material was published. Judgment must not be extended to becoming a general rule that all hosts, search engines, and discussion forums are equally responsible.

A functional approach is supported by academic scholarship. Jan Oster separates out the question of fault from the factual act of publication⁸. Intermediaries serve other technological and editorial roles, as Jaani Riordan shows.⁹ The messaging conduit, search engine, forum manager and platform that suggests material do not add to publication in the same way. That should be the starting point of safe harbour principles, and responsibility should be taken up even more where an intermediary has created or adopted, materially altered or knowingly amplified the unlawful content following the receipt of authoritative notice.

THE TAKEDOWN PARADOX

The best case for quick takedown is functional. If a false story is set out, it may rip through much more quickly than can a civil court, and a subsequent decision becomes more or less useless, both commercially and in terms of personal satisfaction. But, the cure can be as deadly as the disease, as immediate deletion can actually destroy evidence of the wrong.

The URL, time, conversation, edit history, account identifiers or engagement data may be omitted from screenshots. The "evidential connection" between the statement and the speaker can be lost because of the deletion of the account. The only thing that can be relied upon are the logs or subscriber information of the cross border platforms.

The provision on preservation and retention of prescribed information in Section 67C of the Information Technology Act already applies to intermediaries¹⁰. The Bharatiya Sakshya Adhiniyam, 2023 has introduced the concept of electronic records and laid down the criteria to

⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, Extraordinary, pt. II, sec. 3(i), as amended through Feb. 2026. The official consolidated materials identify amendments concerning synthetically generated information.

⁷ *Google India Private Ltd. v. Visaka Industries Ltd.*, (2020) 4 S.C.C. 162 (India).

⁸ Jan Oster, Communication, Defamation and Liability of Intermediaries, 35 Legal Stud. 348, 348–68 (2015).

⁹ Jaani Riordan, *The Liability of Internet Intermediaries* 219–53 (Oxford Univ. Press 2016).

¹⁰ Information Technology Act, No. 21 of 2000, § 67C, India Code (2000).

establish computer output, continuing the tradition of the evidentiary discipline established in the cases of *Anvar P.V. v. P.K. Basheer* and *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*¹¹.

Such provisions should help to shape interim remedies. For any platform that is to be disabled, it should be directed to retain the original publication, associated metadata, account information, edit history, relevant logs and available reach metrics for a specified duration. This preservation should take place without compromising the evidentiary record.

Urgent protection doesn't stop a preservation first order. Where injury is still ongoing, and the injury is grave, Courts may serve a combination of preservation with narrowly tailored measures. Access to a particular URL could be temporarily denied, publication may be limited or a contextual notice may be added until a speedy hearing. The overall guiding rule is that erasure must not take place before evidential stabilisation.

SERIOUS HARM IS PROPOSED TO BE USED AS A PROCEDURAL THRESHOLD

Indian law does not recognize as a defamatory insult, criticism or offensive statement every insult, criticism or offensive statement. Reputational harm in the eyes of others is required by Section 356. But, interim proceedings can be used to draw attention to the disagreeable aspect of the words instead of the gravity and the probability of legally cognisable harm.

A practical procedural lesson is to be learned from comparative law. Section 1 of the United Kingdom Defamation Act 2013 calls for serious damage to reputation. Section 5 also provides a special defence to operators of websites in relation to statements made by users, under statutory conditions¹². Australian reforms also do include a serious harm element, with the addition of the requirement for a 'concerns notice' before the steps can be taken for defamation, which would create a chance for clarification or correction or even an offer to make amends¹³.

These models will not be mechanically transplanted. They do, however, show a lack of understanding of Indian procedure. Before issuing an interim disabling order, a court should ask the claimant to specify:

1. The specific words, image, audio or video complained of;

¹¹ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 61, 63, India Code (2023); *Anvar P.V. v. P.K. Basheer*, (2014) 10 S.C.C. 473 (India); *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1 (India).

¹² Defamation Act 2013, c. 26, §§ 1, 5 (UK).

¹³ Defamation Act 2005 (NSW) ss 10A, 12A–12B (Austl.).

2. its disparaging implication;
3. how the claimant can be identified;
4. the grounds for an allegation of prima facie falsity;
5. the audience that one expects to reach, or that one does reach;
6. the serious harm caused or likely to be caused.

If the speech relates to public affairs, the claimant should also provide the context in which the speech was made and explain why damages, correction, reply and/or targeted de-indexing would be insufficient. It is not enough for a public official or a powerful corporation to simply allege generically that he or she has experienced a loss of reputation to secure an *ex parte* injunction.

This proposed approach is what is consistent with the jurisprudence of India. The Supreme Court has rejected the doctrine of prior restraint and upheld the right to protect publication on the basis of public records in *R. Rajagopal v. State of Tamil Nadu*¹⁴, without ignoring legitimate privacy interests. While dealing with *Ashutosh Dubey v. Netflix, Inc.*¹⁵, the Delhi High Court denied the interim injunction against the web series 'Hasmukh' containing the challenged remarks which referred to an unspecified class of persons and involved "artistic expression. These decisions make it clear that suppression should only be considered after examining context, identification and public interest.

TERRITORIALITY, ANONYMITY, AND SYNTHETIC REPUTATION

The territorial jurisdiction issues are also raised in the case of online injunctions. A global takedown will subject users in other legal systems to restrictions; a court may have jurisdiction over the parties before it. In *Swami Ramdev v. Facebook Inc.*, the Delhi High Court (HC) has shown the allure and the danger of global consolidation¹⁶.

Territorial orders can seem ineffective, due to the possibility of geo-blocking. However, global deletion could spread Indian defamation standards to other jurisdictions where expression is legal. Courts should therefore choose orders with a tight geographical, temporal and limited scope of application, and which can be reviewed. Where there is an exceptional finding to be

¹⁴ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 S.C.C. 632 (India).

¹⁵ *Ashutosh Dubey v. Netflix, Inc.*, I.A. 3754/2020 in CS(OS) 120/2020 (Del. H.C. May 5, 2020).

¹⁶ *Swami Ramdev v. Facebook, Inc.*, 2019 S.C.C. OnLine Del. 10701 (India); *Glawischnig-Piesczek v. Facebook Ireland Ltd.*, Case C-18/18, ECLI:EU:C:2019:821.

made, the world-wide effect should be required, and the international comity should have been taken into consideration.

Similar calibration is necessary for anonymity. Anonymous accounts may be used to make up bogus accusations, impersonate, and orchestrate attacks. They also safeguard whistleblowers, employees, survivors and political dissidents. India has no specific statutory provision on unmasking the identity of anonymous speakers in defamation proceedings.

Disclosure must not be limited to a simple allegation. A claimant would have to pinpoint the specific statement, show a prima facie cause of action, provide for serious harm, and evidence that identification is required to obtain relief from harm. Where reasonably practicable, notice should be given to the speaker. The court should then weigh reputational, privacy, public interest and risk of retaliation factors.

Attributing synthetic media is even harder. The voice or actions of the person shown may not have been used to create the convincing audio recording or video recording. Probabilistic generation of a false biographical allegation is possible, even if the system is automated and not a direct human work. The question is thus not only who posted the content, but who created, instigated, chose, shaped, vetted, and amplified it.

The principle of "meaningful contribution" and "fault" should be observed in determining liability. Technical custody does not necessarily imply publisher liability. By contrast, a service that knowingly publishes or recommends a particular untrue defamatory statement or knowingly continues to use such a statement as a basis for a recommendation should not be afforded passive conduit status.

A REMEDIAL CONSTITUTION FOR REPUTATION

False information often dominates or circulates online without a proper correction, harming reputation. Not all of the less restrictive and most effective remedies are complete deletion. It is important that courts have the power to order correction, a right of reply, prominent linkage to the final judgment, targeted de-indexing for name-based search sites, preservation of a corrected version of the archive, apology, damages and restrained republication. The remedy ought to be proportionate to the harm.

India needs to be protected from strategic lawsuits against public participation too. Defamation lawsuits don't serve to protect reputation, but to drain journalists, researchers, consumers, ex-employees and civil society organizations. In the European Union, a directive on combating

abusive lawsuits, SLAPP Directives, has been introduced as the recognition of the impact of abusive litigation on the exercise of public rights. In the European Union, the Anti-SLAPP Directive of 2024 is merely one of a number of directives that have been introduced to combat abusive litigation, which can undermine public rights.¹⁷

Indian procedure should allow for early dismissal if the claimant fails to make a *prima facie* case, provide for realistic costs to be claimed against abusive litigants, and also ensure that parallel civil and criminal proceedings against the same publication are thrown out. In cases where the litigant is seeking to argue for a restriction in relation to public-interest speech, the claimant must have a heightened responsibility to particularise falsity and serious harm.

Criminal defamation is the most challenging question. It has been validated as constitutionally valid and the Law Commission of India had suggested keeping it in place, just prior to the enactment of section 356. However, the institution's decision when to prosecute is not determined by the law¹⁸.

Criminal prosecution should be reserved where there are deliberate and serious attempts to defame or denigrate someone and/or there has been fabricated evidence, impersonation, or repeated malicious publication. Regular complaints about journalism, political criticism, consumer reviews, academic research and meritorious complaints should be handled with proportionate civil justice. Those who are arrested and compelled to appear before court and then waited to be prosecuted should not be punished before being found guilty.

CONCLUSION

Selecting reputation over speech or speech over reputation will not fix online defamation. It demands institutions that can detect falsehood, keep evidence, defend vital interests and withstand tyrannical excess. What India has now has a huge amount of power but not enough in the way of procedure. It rushes to takedown and doesn't move fast enough to preservation, serious harm or final adjudication.

That is the opposite of a preservation first model. It would keep the digital record, alert the speaker, check identification and falsity, determine serious harm, and choose the least effective remedy. Safe-harbour would continue to be extended to innocent intermediaries and liability

¹⁷ Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on Protecting Persons Who Engage in Public Participation from Manifestly Unfounded Claims or Abusive Court Proceedings, 2024 O.J. (L 1069) 1.

¹⁸ Law Commission of India, Report No. 285, *The Law on Criminal Defamation* (2024).

would be enhanced with meaningful contribution, authoritative knowledge and deliberate amplification. Presumptive censorship would be averted in the case of anonymous and synthetic speech, to which disclosure and attribution standards would apply.

Reputation isn't insignificant in this digital world. It has made precision of procedure more important. The validity of online defamation law, however, will turn on less on its ability to expunge speech and more on its ability to come to a proper conclusion regarding what happened, who is at fault, and what justice demands.