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ONLINE DEFAMATION AND FREE SPEECH IN INDIA

- *Ishti Singhal*

INTRODUCTION

With the advancement of technology in the form of social media, blogs, messaging apps, digital news etc., speech is faster wider and more durable than ever across platforms. That transformation in India has led to tensions regarding protecting reputation without curbing genuine criticisms, legitimate journalism, satire or dissent by people. Online defamation forms this intersection and the Indian law mainly works to maintain the balance between constitutional free speech protections and defamation provisions under Criminal and Civil law. Article 19 (1)(a) of the constitution guarantees freedom of speech and expression to all the citizens subject to certain reasonable restrictions under clause (2), which includes defamation. Moreover, the Supreme Court has expanded the scope of Article 21 to include right to reputation as well. Comprehensively, we see Indian law treat defamation not merely as an exception to free speech casually but as a serious constitutional limit on speech.

LEGAL FRAMEWORK

Under India's criminal law framework, defamation is criminalised under Section 356 of the BNS, corresponding to the former Section 499 of the IPC. The ingredients to prove defamation includes imputation by words, signs, visible representations and with the intention, knowledge or reason to believe it will cause harm to reputation. Section 357 of the BNS penalises with imprisonment of up to two years, fine or both.¹

On the other side, Civil defamation can be claimed as a tort remedy and the plaintiff may seek damages, injunctions and takedown orders in the case of online publishment of defamed content. This dual framework of law allows for deterrence through criminal defamation as well

¹ Shantanu Garg, *Online Defamation Law in India Explained*, (Dec. 1, 2025), <https://www.maheshwariandco.com/blog/online-defamation-law-in-india/>.

as get compensation and removal of content through the civil route which is often better suited in online defamation cases.²

KEY JUDICIAL PRECEDENTS

The landmark decision of *Subramanian Swamy v. UOI (2016)*³ is vital as here the Supreme Court upheld the constitutionality of criminal defamation. The Court upheld that criminal defamation is a reasonable restriction under Article 19(2) and declared reputation as part of right to life under Article 21. Hence this judgment becomes important when discussing online defamation in India as it reaffirms that reputational injury is an equally relevant concern under the Indian constitutional law.

Another significant judgment for the purview of free speech is of *Shreya Singhal v. UOI (2015)*⁴ where the Court struck down Section 66A of the IT Act as unconstitutional for its arbitrariness and chilling effect on free speech under Article 19. This decision strongly shaped online speech jurisprudence by cautioning against unclear, vague and arbitrary restrictions on legitimate speech and expression.⁵

In the case of *M.J. Akbar v. Priya Ramani*⁶, the Delhi High Court acquitted Priya of criminal defamation and held that a woman can't be punished for raising grievances related to sexual harassment and the right to reputation cannot suppress truthful disclosures made in public interest. This decision shows that courts balance rights and restrictions on speech by considering lived experiences, public accountability and broader social interest.⁷

ONLINE SPEECH AND INTERMEDIARIES

Online defamation differs from classical defamation cases as it deals with quick dissemination of digital statements, easy duplication and long term availability despite removal of the original post. This creates unique problems for the courts to tackle with as even if the original perpetrator is ordered to delete the post, the reposts, screenshots etc continue to cause harm.

² Sneha Raval, *Defamation In The Digital Age (Cyber Defamation): Legal And Ethical Dimension.*, White Black Legal Law Journal <https://www.whiteblacklegal.co.in/details/defamation-in-the-digital-age-cyber-defamation-legal-and-ethical-dimension-by---samiksha-nikam-sneha-raval-arpita-pal>.

³ *Subramanian Swamy v. Union of India*, (2016) 7 S.C.C. 221 (India).

⁴ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

⁵ *Shreya Singhal v. Union of India*, Global Freedom of Expression (Sept. 11, 2014), <https://globalfreedomofexpression.columbia.edu/cases/shreya-singhal-v-union-of-india/>.

⁶ *Mobashar Jawed Akbar v. Priya Ramani*, Complaint Case No. 570632/2019 (A.C.M.M., Rouse Avenue Dist. Cts., New Delhi Feb. 17, 2021) (India)

⁷ Nirnimesh Kumar, *M.J. Akbar files defamation suit against journalist Priya Ramani*, The Hindu (Oct. 15, 2018), <https://www.thehindu.com/news/national/metoo-mj-akbar-slaps-defamation-case-on-journalist-priya-ramani/article61523594.ece>.

Therefore, questions about removal of identical content by platforms, how quick they should take action and what constitutes sufficient notice are developing.⁸

Section 79 of the IT Act becomes relevant as it provides safe harbour protection to intermediaries who complied with legal requirements but their platforms were used for harmful acts. Courts have clarified through their decisions that intermediaries are not expected to take down content merely upon private complaint and a court order or lawful government action is need before attaching liability. This acts as a shield for free expression by preventing unnecessary private censorship through mere platform pressure.

DEFAMATION DEFENCES AND FREE SPEECH

Indian defamation law provides multiple defences, including truth, public good, fair comment, and good faith under the traditional legal framework under BNS. Accordingly, not every harsh, embarrassing, or unpopular statement made online is defamatory; rather, the claimant must demonstrate that the statement is false and has caused legally cognizable harm.⁹

A free-speech concern emerges when defamation law is deployed strategically to intimidate journalists, activists, students, or whistleblowers. Indian courts have shown growing awareness of this danger, especially when the speech relates to matters of public interest. At the same time, the law still safeguards individuals from malicious falsehoods that undermine dignity, livelihood, or social standing.

PRACTICAL TAKEAWAYS

For someone affected by online defamation, the immediate priority is to preserve evidence: screenshots, URLs, timestamps, and account information should be collected right away. A legal notice, a complaint to the relevant platform, and a request for removal may resolve the issue without resorting to litigation, particularly when the content is plainly false. Where the harm is serious or ongoing, both civil injunctions and criminal complaints can be pursued.

For defendants, the central question is whether the statement is true, whether it was made in the public interest, and whether it fits within an established exception. For platforms, the focus is on a lawful, transparent moderation procedure that balances users' expression with legitimate

⁸ Lloyd Law College, *Understanding Defamation Law in the Age of Social Media*, (May 14, 2025), <https://www.lloydlawcollege.edu.in/blog/social-media-defamation-india.html>.

⁹ *Mentoassociates.com – Legal Articles » Blog Archive » UNDERSTANDING CYBER/ ONLINE DEFAMATION UNDER INDIAN LAW: A LEGAL PRIMER FOR THE DIGITAL AGE*, <https://articles.mentoassociates.com/2025/05/understanding-cyber-online-defamation-under-indian-law-a-legal-primer-for-the-digital-age.html>.

court directives. In India, the law is intended neither to shield falsehoods nor to punish good-faith speech, criticism, or disclosure on matters of public concern.

CONCLUSION

Indian law treats online defamation as a serious wrong, but one that does not extinguish free speech entirely. The constitutional equilibrium is determined by Article 19(1)(a), Article 19(2), and Article 21, with Subramanian Swamy, Shreya Singhal, and Priya Ramani forming the foundation of the judicial framework. The outcome is a legal system that protects reputation while still allowing room for genuine criticism, public-interest speech, and responsible digital participation.