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ONLINE DEFAMATION RECONCILING FREE SPEECH WITH THE RIGHT TO REPUTATION IN THE DIGITAL AGE

-by Khushi Thakur

Defamation, at its core, protects an interest that predates the internet by centuries: a person's reputation in the eyes of others. Section 499 of the erstwhile Indian Penal Code, and now Section 356 of the Bharatiya Nyaya Sanhita, 2023 ("BNS"), defines defamation as the making or publishing of any imputation concerning a person, by words, signs or visible representation, with the intention of harming, or with knowledge or reason to believe that it will harm, that person's reputation¹.

Defamation refers to a statement that lowers a person's reputation in the estimation of others. A defamatory statement published online can spread instantly, remain accessible for long periods, and cause damage on a scale far greater than traditional print publication. Online defamation therefore poses a serious legal challenge in India, where the law must balance the right to free speech under Article 19(1)(a) with the right to reputation, which has been recognised as part of Article 21²

What has changed is not the legal definition but the medium and consequence of publication. Online or cyber defamation refers to the publication of a false statement concerning a person, through a computer resource or communication device, that is likely to injure that person's reputation. It is not a separate offence but an application of ordinary

¹ Bharatiya Nyaya Sanhita, 2023, ss. 356.

² Constitution of India, arts. 14, 19(1)(a), 19(2), 21.

defamation principles to internet-based publication. In practice, it manifests in several recognisable forms.

The common thread across these forms is publication to a third party through an electronic medium, coupled with an intention or knowledge that the statement will cause reputational injury. The legal test for liability does not change with the medium; what changes is the speed, reach and persistence of the harm.

Section 356 of the BNS corresponds to the former Section 499 IPC and defines criminal defamation in terms identical in substance to the earlier provision. Section 357, replacing Section 500 IPC³, prescribes simple imprisonment of up to two years, a fine, or both. The ten statutory exceptions to defamation — including truth for the public good, fair comment on public conduct, and good-faith accusations to a person with lawful authority — continue to apply under the BNS and provide the principal defence available to online publishers, including journalists, reviewers and commentators.

Additionally, Section 351 of the BNS (corresponding to Section 503 IPC⁴) penalises criminal intimidation through electronic communication when the threat is directed at a person's reputation, and is frequently invoked alongside defamation charges when the online content also contains threats.

Independent of criminal prosecution, a person defamed online may bring a civil suit in tort seeking damages and, more significantly in the online context, an injunction restraining further publication or directing takedown of the offending content. Civil remedies are often the more practical route in cyber defamation cases because injunctive relief can limit the ongoing circulation of the content, whereas criminal proceedings, being slower and requiring proof beyond a reasonable doubt, offer limited real-time protection against ongoing harm.

Section 79 of the IT Act grants intermediaries — social media platforms, hosting providers and search engines — conditional immunity ('safe harbour') from liability for third-party content, provided they observe due diligence and act to remove unlawful content upon receiving actual knowledge, typically through a court order or a notification from an

³ . Indian Penal Code, 1860, ss. 499, 500 (repealed and re-enacted as the BNS, 2023).

⁴ . Indian Penal Code, 1860, ss. 503 (repealed and re-enacted as the BNS, 2023).

appropriate government agency. This provision is central to online defamation litigation because it determines whether an aggrieved party's remedy lies against the original publisher, the platform, or both⁵.

Section 66A of the IT Act, which had earlier criminalised sending 'grossly offensive' or menacing information through a communication device, was struck down in its entirety by the Supreme Court in 2015 for vagueness and overbreadth, leaving general defamation law and the intermediary framework under Section 79 as the operative statutory tools for online reputational harm⁶.

The Indian Evidence Act, 1872, as amended, and now the Bharatiya Sakshya Adhiniyam, 2023, permit electronic records to be admitted as documentary evidence, subject to compliance with the certification requirements applicable to electronic evidence. Screenshots, chat logs and archived web pages are therefore admissible in defamation proceedings if properly authenticated, though authentication itself is frequently contested given the ease with which digital content can be altered⁷.

In *Shreya Singhal v. Union of India*⁸, the Supreme Court struck down Section 66A of the IT Act as unconstitutional, holding that its use of undefined terms such as 'grossly offensive' and 'menacing character' rendered the provision vague, overbroad and susceptible to arbitrary and discriminatory application. The Court distinguished between mere discussion or advocacy of a cause, which lies at the heart of Article 19(1)(a), and incitement, which alone may justify restriction under Article 19(2), and held that Section 66A failed to draw this distinction. The judgment also read down Section 79 of the IT Act, clarifying that an intermediary's obligation to remove content arises only upon an order from a court or a notification by an appropriate government agency, rather than upon a private complaint alone. This decision remains the foundational precedent for online speech regulation in India, and its 'chilling effect' reasoning

⁵ Information Technology Act, 2000, Section 79. ijlr.iledu

⁶ Information Technology Act, 2000, ss. 66A (since struck down), 66E, 67A, 79.

⁷ Bharatiya Sakshya Adhiniyam, 2023 (provisions on electronic records, corresponding to ss. 65A, 65B, Indian Evidence Act, 1872).

⁸ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

continues to inform how courts assess subsequent restrictions on internet expression, including those framed as defamation.

In *Subramanian Swamy v. Union of India*, several petitions were filed by individuals such as Subramanian Swamy, Rahul Gandhi, and Arvind Kejriwal. These petitions challenged the constitutional validity of criminal defamation as specified in Sections 499 and 500 of the IPC, as well as Sections 199(1) to 199(4) of the Code of Criminal Procedure, 1973. The main contention was that criminalising defamation imposed an undue and intimidating restriction on free speech, which should be addressed only through civil remedies. Nevertheless, the Supreme Court upheld the constitutionality of criminal defamation, stating that the right to free speech under Article 19(1)(a) must be balanced with the right to reputation, which is considered a fundamental component of the right to life and personal dignity under Article 21. The Court concluded that reputation is not solely a personal matter but also impacts the societal framework where free speech is exercised. It determined that the statutory exceptions to Section 499 offer sufficient protection against potential misuse. This decision is crucial for online defamation cases, as it establishes that criminal charges can still be pursued by complainants, even when a civil lawsuit is an option. This stance remains relevant to the equivalent provisions under the BNS.

In a case of criminal defamation linked to the #MeToo movement, a Delhi trial court ruled that truth and the public good can be valid defenses, even if the allegations relate to incidents from years ago and were shared on social media. The court emphasized that a woman's right to report sexual harassment, including through online channels, should not be dismissed due to delays or informal reporting. This judgment is crucial for online defamation law, as it shows the court's willingness to consider the public interest in online speech, such as survivor stories on social media, alongside the reputational concerns of those accused. The characteristics of online publication add complexity to applying defamation principles originally developed for traditional media.

Firstly, the difficulty in pinpointing the original publisher is exacerbated by the use of anonymity and pseudonymity. This often necessitates obtaining a John Doe or Ashok Kumar order to force an intermediary to reveal subscriber information before a defamation case can be initiated. Secondly, jurisdictional challenges arise when the publisher, platform, and victim are in different regions or countries. This situation leads to debates over which court has the authority to handle the case and whether a platform hosted outside India can be required to

follow an Indian takedown order. Lastly, the rapid dissemination of content through sharing, retweeting, and screenshotting means that even if a takedown order is successful, it rarely restores the original state before publication, as copies of the content often remain on other platforms or in private archives.

Fourth, distinguishing defamation from legitimate criticism is harder online because informal, conversational language and the absence of an editorial gatekeeper blur the line that traditionally existed between a professionally edited article and off-the-cuff commentary. Finally, the burden of proof in criminal defamation, which requires proof of intention or knowledge beyond reasonable doubt, is difficult to discharge where the defendant is anonymous or where intent must be inferred from the tone of a digital post rather than an explicit statement.

These challenges do not reflect a gap in the substantive law of defamation so much as a mismatch between procedural machinery designed for identifiable, geographically fixed publishers and a publication environment that is neither.

Indian law has not created a separate offence of 'online defamation'; instead, it applies the existing framework of reputational harm to a medium that amplifies both the speed of injury and the difficulty of remedy. Shreya Singhal preserved space for legitimate online speech by removing a vague and easily misused provision, while Subramanian Swamy affirmed that reputational harm remains a constitutionally cognisable injury even in the age of unrestrained digital expression. The doctrinal balance between Article 19(1)(a) and Article 21 is, on the whole, settled.

What remains unsettled is enforcement: identifying anonymous publishers, securing timely injunctive relief, and holding intermediaries accountable without incentivising over-removal of legitimate speech. Addressing these gaps, rather than rewriting the substantive definition of defamation, is the more pressing task for Indian law in the years ahead.

Secondary Sources

1. LawBhoomi, 'Cyber Defamation' <<https://lawbhoomi.com/cyber-defamation/>> accessed 21 July 2026.
2. iPleaders Blog, 'Cyber Defamation in India: Laws and Challenges' <<https://blog.ipleaders.in/cyber-defamation-india-issues/>> accessed 21 July 2026.
3. Legal Service India, 'Dimensions of Cyber Defamation: A Critical Study' <<https://www.legalserviceindia.com/legal/article-1278-dimensions-of-cyber-defamation-critical-study.html>> accessed 21 July 2026.

4. Mento Associates, '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>> accessed 21 July 2026.
5. Global Freedom of Expression, Columbia University, 'Shreya Singhal v. Union of India' <<https://globalfreedomofexpression.columbia.edu/cases/shreya-singhal-v-union-of-india/>> accessed 21 July 2026.
6. Legal Vidhiya, 'Case Analysis – Subramanian Swamy v. Union of India, Ministry of Law & Ors., (2016) 7 SCC 221' <<https://legalvidhiya.com/case-analysis-subramanian-swamy-v-union-of-india-ministry-of-law-ors-2016-7-scc-221/>> accessed 21 July 2026.