

EVOLVING LEGAL REMEDIES FOR ONLINE DEFAMATION IN INDIA: CHALLENGES AND FUTURE DIRECTIONS

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Abstract

The phenomenon of online defamation in India has gained significant traction with the rise of digital platforms, leading to unique challenges in safeguarding individual reputations and balancing freedom of speech. Unlike traditional defamation, online defamation transcends geographical boundaries, making jurisdiction a complex issue and complicating legal remedies. The rapid dissemination of information on social media platforms, blogs, and websites exacerbates the impact of defamatory content, affecting the victims' social, professional, and personal standing almost instantaneously. Although India's Information Technology Act (ITA) and defamation laws provide some degree of redressal, they often fall short in addressing the dynamic and global nature of online defamation. Courts struggle with issues of jurisdiction, anonymity, and the fast-paced evolution of digital media, resulting in a need for legal reforms that reflect the changing digital landscape. This article examines the evolving legal framework for online defamation in India, focusing on the current challenges, legislative gaps, and judicial interpretations. It discusses the constraints of existing laws, such as the ITA and the Indian Penal Code, in effectively tackling online defamation, especially concerning anonymous perpetrators and cross-border defamation. Further, the article explores recent judicial responses and the need for robust legal mechanisms that address issues specific to the online realm. By analysing emerging international standards and comparing them with India's regulatory approach, this study aims to propose viable legal remedies and reforms to protect individual rights in an increasingly digital society. The article concludes by highlighting the future directions and reforms needed to create a comprehensive legal framework that balances free speech and reputation in the online domain.

Keywords: Online Defamation, Digital Media, Legal Framework, Digital Society, Free Speech and Reputation.

1. INTRODUCTION TO ONLINE DEFAMATION: DEFINITIONS AND CONTEXT

Online defamation has become a crucial issue in the digital age, with the widespread use of the internet as a platform for communication, news, and social interaction. The concept of defamation—whether it takes the form of libel (written) or slander (spoken)—has long existed in legal discourse. However, as the internet erases geographical boundaries and enables instantaneous dissemination of content, it has transformed the way defamation impacts individuals and institutions.

1.1. Defining Online Defamation

Defamation, in general, is understood as any statement that can harm the reputation of an individual or entity in the eyes of society. Online defamation, often referred to as "cyber defamation" or "digital defamation," extends this traditional understanding to include statements made on digital platforms. These may encompass social media posts, blog articles, comments on

websites, videos, and even forwarded messages on messaging apps. Key characteristics of online defamation include:

Unpacking Online Defamation

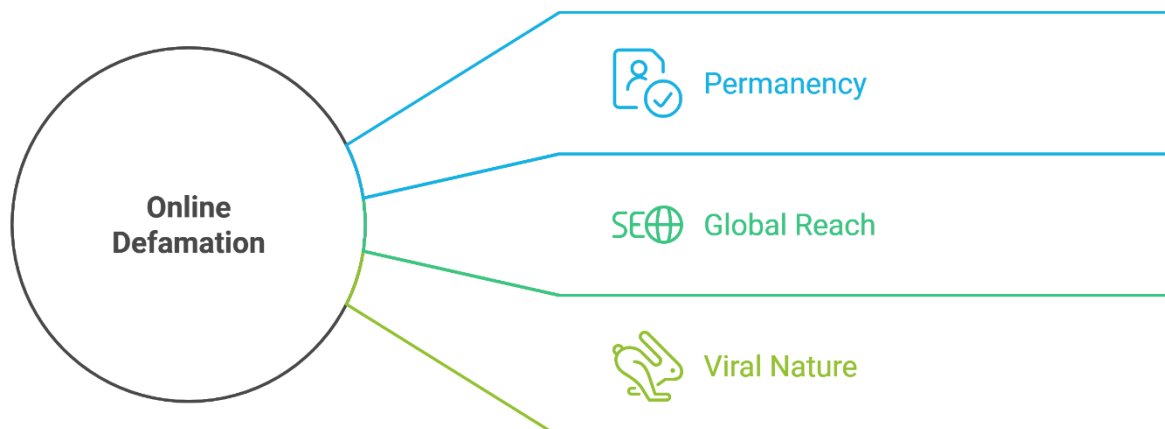


Fig: 1 Explains about Key characteristics of online defamation

- A. **Permanency:** Online content remains accessible and can be easily retrieved, giving defamatory statements a prolonged lifespan.
- B. **Global Reach:** Due to the internet's global nature, defamatory statements are visible to a much larger audience than traditional media.
- C. **Viral in nature:** Information shared online can go "viral," spreading rapidly to large audiences within minutes.

1.2. Context of Online Defamation in India

In India, the rise of social media platforms like Facebook, Twitter, and Instagram, along with the increase in blog and digital news platforms, has amplified instances of online defamation. People are more empowered than ever to voice their opinions, which can sometimes lead to defamatory content, intentionally or unintentionally, being shared widely.

1.3. The Impact of Online Defamation on Individuals and Institutions

The impact of online defamation is often much more profound than that of traditional defamation due to the viral nature of social media. Individuals who face defamation may experience emotional distress, professional setbacks, and damage to their social standing. For corporations, online defamation can impact brand value, investor confidence, and consumer trust.

1.4. Types of Online Defamation

Direct Defamation: Instances where specific individuals or entities are directly defamed, usually through identifiable statements or posts.

Indirect Defamation: Often subtler, involving insinuations or innuendo that can be interpreted as defamatory.

Third-Party Defamation: Platforms hosting user-generated content may also find themselves at the centre of defamation lawsuits. In India, platforms like Facebook or Twitter are sometimes held liable for failing to moderate defamatory content.

2. Existing Legal Framework for Defamation in India: Gaps and Limitations

India has a rich legal tradition regarding defamation, deriving mainly from the Indian Penal Code (IPC) of 1860, the Information Technology Act (ITA) of 2000, and judicial precedents. However, these legal provisions, primarily designed for traditional media, struggle to comprehensively address online defamation's complexities.

2.1. Indian Penal Code (IPC), 1860

Section 499 and 500 of the IPC provide the basic framework for defamation law in India:

- Section 499 (Defamation) defines defamation as any spoken or written words or signs that have the potential to harm a person’s reputation.
- Section 500 (Punishment for Defamation) establishes punishment for defamation, with up to two years of imprisonment or a fine, or both.
- While Section 499 can technically apply to digital content, the IPC provisions lack specificity for online defamation. For instance, online platforms and social media bring challenges related to jurisdiction, cross-border issues, and the speed at which information spreads—none of which were anticipated when these provisions were drafted.

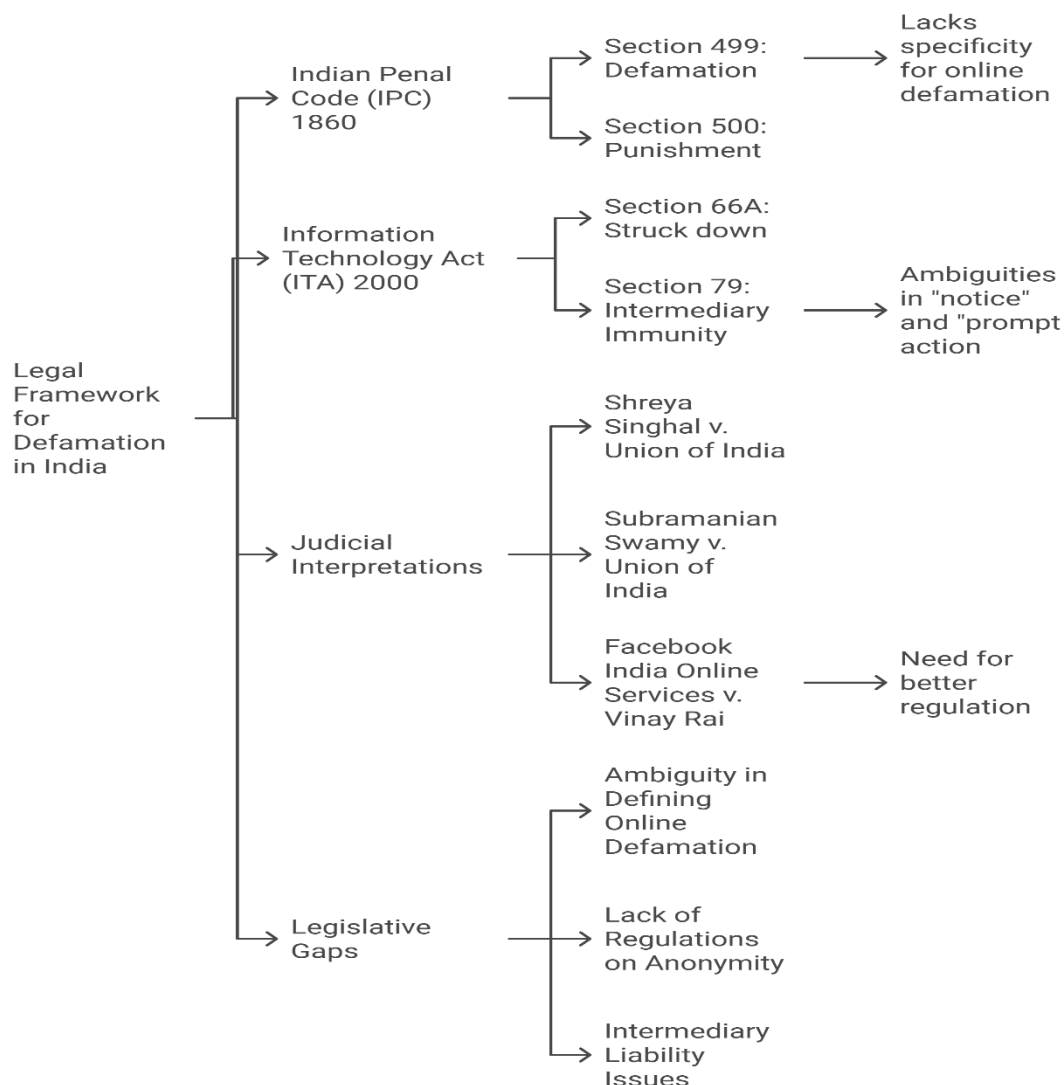


Fig 2: Explains about the Existing Legal Framework for Defamation in India: Gaps and Limitations

2.2. Information Technology Act (ITA), 2000

The ITA was enacted to regulate cyber activities and includes certain provisions relevant to online defamation:

- Section 66A (now struck down) had criminalized the sending of offensive messages through a computer or communication device. It was initially used for online defamation cases but was declared unconstitutional by the Supreme Court in *Shreya Singhal v. Union of India (2015)* due to its overreach and infringement on freedom of speech.
- Section 79 provides conditional immunity to intermediaries, such as social media platforms, from liability for third-party content on their platforms. This “safe harbor” clause is only valid if platforms take prompt action to remove defamatory content upon receiving notice. However, ambiguities in defining “notice” and “prompt action” often leave room for inconsistent enforcement.

The absence of specific provisions in the ITA to address online defamation leaves significant gaps in the legal framework, particularly concerning intermediary liability and obligations for content removal.

2.3. Role of the Supreme Court and Judicial Interpretation

Indian courts have played a critical role in interpreting defamation laws in light of technological advancements. For instance:

- In *Shreya Singhal v. Union of India*, the Supreme Court protected free speech by invalidating Section 66A of the ITA, which was frequently misused to curb online expression.
- In *Subramanian Swamy v. Union of India*, the Court upheld criminal defamation under the IPC, but this case did not address the nuances of online defamation.
- In the *Facebook India Online Services v. Vinay Rai case*, the Delhi High Court delved into intermediary liability, highlighting the need for better regulation around content moderation.

2.4. Challenges of Enforcement and Jurisdiction

Online defamation often crosses state and even national borders, complicating jurisdictional issues. Indian laws have limited reach in holding foreign entities accountable for defamatory content accessible within India. Additionally, enforcing judgments against individuals or entities outside Indian jurisdiction remains a daunting task.

2.5. Legislative Gaps and Ambiguities

Several issues hinder the effective application of defamation laws to online content:

- A. **Ambiguity in Defining Online Defamation:** Current laws fail to provide a clear, specific definition of what constitutes online defamation, leading to inconsistent interpretations.
- B. **Lack of Regulations on Anonymity:** Online defamation is often perpetrated anonymously or through pseudonyms, making it challenging for victims to identify and prosecute offenders.
- C. **Intermediary Liability:** Section 79 of the ITA limits the liability of intermediaries, but its ambiguous terms leave loopholes, making it hard to hold platforms accountable while protecting free speech rights.

2.6. The Need for Reform

Given these gaps, the legal framework needs reforms that specifically address the nuances of online defamation. This includes introducing precise definitions, establishing clearer intermediary obligations, and formulating mechanisms to handle cross-border defamation. Strengthening the right to privacy, introducing mandatory takedown policies for defamatory content, and implementing better content moderation standards for digital platforms are potential areas of reform.

3. Challenges in Addressing Online Defamation: Jurisdiction, Anonymity, and Enforcement

3.1. Jurisdictional Complexities in Online Defamation

Jurisdiction is one of the most significant challenges in online defamation cases, especially given that the internet transcends geographic boundaries. Defamatory content posted in one country can be accessed globally, making it difficult to determine the applicable jurisdiction.

Cross-Border Access: In online defamation cases, the content may be hosted on servers outside India, raising questions about which country's laws apply. India currently relies on the "effects test," where if the defamatory content has an effect within India, Indian courts may claim jurisdiction. However, enforcing such judgments on foreign entities remains problematic.



Challenges in Addressing Online Defamation

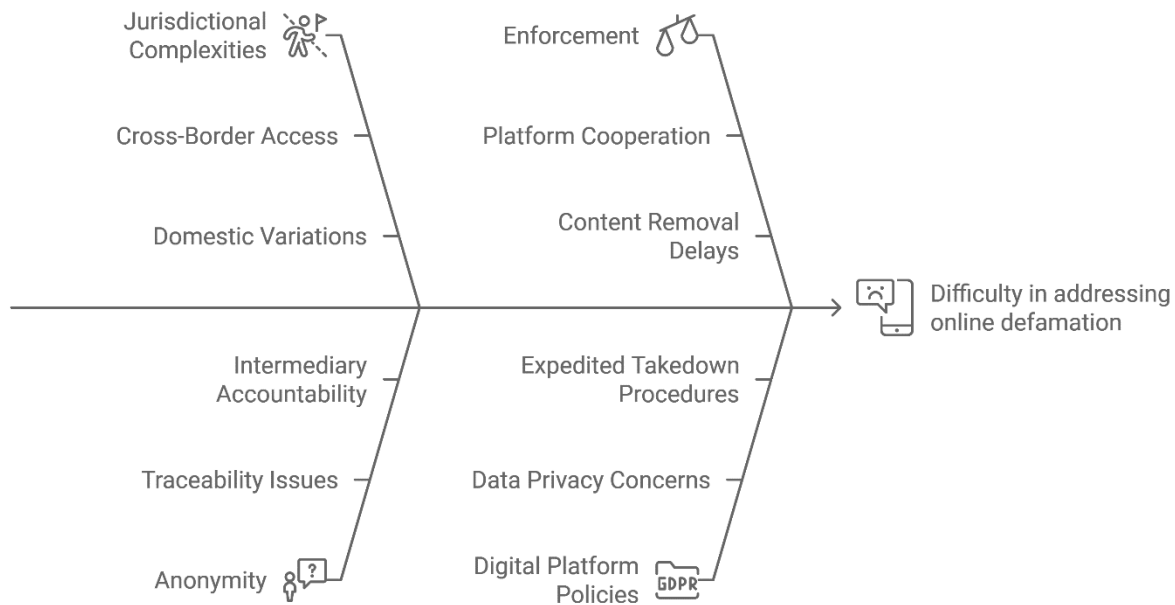


Fig 3: About the Challenges in Addressing Online Defamation: Jurisdiction, Anonymity, and Enforcement

Jurisdiction within India: Different states may have varied interpretations of defamation laws, adding complexity to domestic cases. The Supreme Court has occasionally provided guidance, but a lack of standardized rules often causes inconsistency in jurisdictional decisions across states.

3.2. The Challenge of Anonymity in Online Defamation

One of the core challenges of online defamation is the anonymity often provided by digital platforms. Individuals can create pseudonymous or anonymous accounts, making it challenging for victims to identify the perpetrator.


Traceability of Anonymity: Social media platforms, blogs, and forums allow users to post content anonymously or under aliases. Identifying such users often requires cooperation from digital platforms, which may or may not comply, depending on their own privacy policies and concerns about user data.

Intermediary Role and Accountability: Indian law under Section 79 of the ITA grants intermediaries immunity if they act promptly upon receiving complaints. However, enforcing takedown orders is challenging due to delays, platform reluctance, and varying interpretations of “prompt action.”

3.3. Enforcement and the Role of Digital Platforms

Enforcement in online defamation is a multifaceted challenge. Even when courts issue judgments, enforcing them can be complicated by platform policies, the non-cooperation of foreign-based entities, and the rapid nature of content sharing.

- **Platform Cooperation:** Some global platforms are hesitant to provide user information to Indian authorities, citing their own data privacy policies. This creates enforcement hurdles, as law enforcement may be unable to obtain identifying information on the alleged perpetrators.
- **Removal of Content and Delayed Enforcement:** Defamatory content, even if identified, can quickly go viral. By the time a legal order for takedown is issued, the content may have already caused significant reputational harm. A lack of standardized procedures for expedited takedown further complicates matters.
- **Preventive vs. Reactive Measures:** Due to these limitations, there is a need for a shift towards preventive approaches, such as promoting awareness of digital defamation laws,



encouraging responsible online behaviour, and adopting advanced algorithms to filter potentially defamatory content.

4. Judicial Responses to Online Defamation: Key Cases and Interpretations

The Indian judiciary has played an essential role in shaping the evolving landscape of online defamation through landmark judgments, addressing issues of free speech, privacy, and liability. These cases provide a framework to analyze the judiciary's stance on balancing defamation laws with the right to expression in a digital context.

4.1. Shreya Singhal v. Union of India (2015)

This landmark Supreme Court judgment struck down Section 66A of the ITA, which criminalized sending "offensive" messages online. The Court found that Section 66A was vague and overly broad, infringing on freedom of speech under Article 19(1)(a) of the Constitution.

Impact on Online Defamation: While the ruling protected online freedom of expression, it inadvertently left a legal vacuum for dealing with online defamation effectively. Without Section 66A, there are fewer avenues for addressing defamatory online content directly through the ITA, though IPC provisions still apply.

4.2. SubramanianSwamy v. Union of India (2016)

The Supreme Court upheld the constitutionality of criminal defamation under Sections 499 and 500 of the IPC, ruling that it did not violate the right to freedom of speech. The Court argued that protecting reputation is part of the right to dignity and that reasonable restrictions on free speech are permissible.

Application to Online Defamation: Although the case did not specifically address online defamation, it reinforced the idea that defamation is a criminal offense. However, implementing criminal penalties in the digital context faces challenges, such as jurisdictional issues and delays in identifying perpetrators.

4.3. Facebook India Online Services v. VinayRai

In this case, the Delhi High Court highlighted intermediary liability, holding that digital platforms could be directed to remove defamatory content if they did not act promptly upon notification. The ruling emphasized the responsibility of social media platforms to moderate content and prevent the proliferation of defamatory statements.

Significance: This case illustrated that intermediaries could be held liable for third-party content if they fail to act upon notice, promoting a level of accountability for platforms.

4.4. Dharam Raj Khatana v. State of Rajasthan (2021)

The High Court emphasized that defamatory content published on digital platforms has broader implications due to its viral nature and reach. In this case, the Court addressed the right to reputation in online spaces, further underscoring the significance of safeguarding individuals' dignity online.

Judicial Interpretation: The Court recognized that digital defamation can be more damaging than traditional defamation, stressing the need for adequate legal remedies to counter it.

4.5. The Role of Indian Judiciary in Setting Precedents

Indian courts have not yet laid down specific standards or exhaustive guidelines for handling online defamation. However, by balancing the right to freedom of speech with the right to reputation, courts continue to build case-by-case precedents that inform legal discourse in digital defamation.

5. International Standards and Comparative Perspectives on Online Defamation

India's approach to online defamation can benefit from analysing international standards and the regulatory frameworks of other jurisdictions. Comparative insights can highlight both the strengths and weaknesses of India's current legal approach and inspire reforms.



Enhancing India's Online Defamation Framework

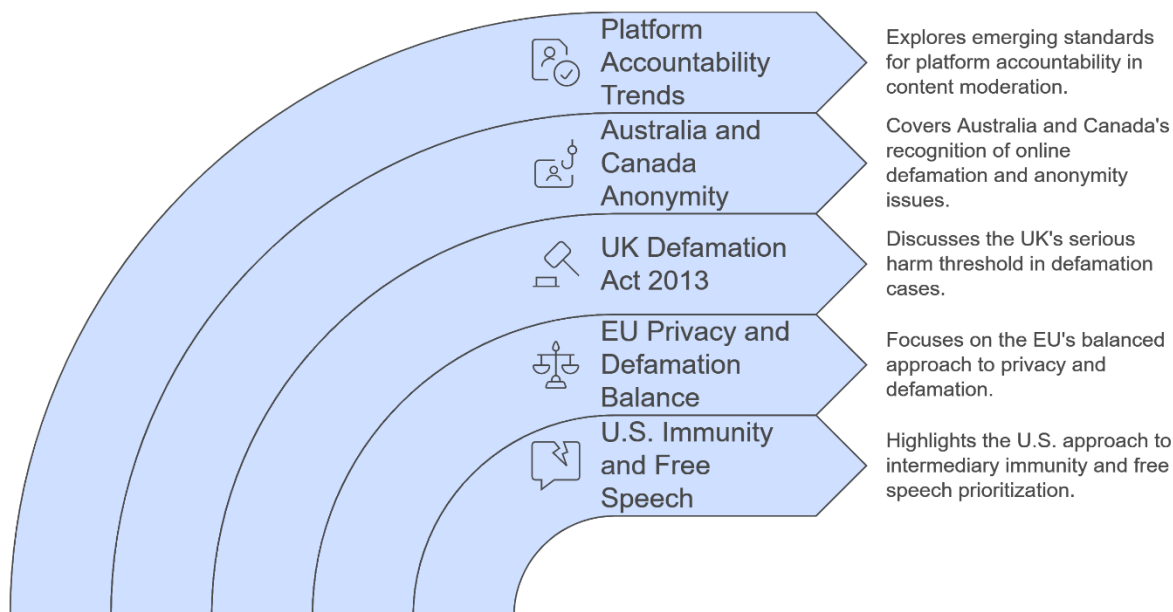


Fig 4: Explains about International Standards and Comparative Perspectives on Online Defamation.

5.1. United States: The Role of the First Amendment and Section 230

The U.S. places a high value on freedom of speech, which is protected by the First Amendment. Section 230 of the Communications Decency Act (CDA) shields intermediaries from liability for third-party content, allowing them to avoid extensive content moderation responsibilities.

Comparison: While India holds intermediaries partly accountable under Section 79 of the ITA, the U.S. approach grants intermediaries broader immunity, prioritizing free speech over potential harm to reputation.

5.2. European Union: Balancing Privacy, Defamation, and Free Speech

The EU has a balanced approach, ensuring protection for reputation and privacy while upholding free expression. The General Data Protection Regulation (GDPR) offers privacy rights that can indirectly affect defamation cases, allowing individuals to request content removal under the “right to be forgotten” if it is deemed harmful.

Relevance to India: Adopting elements of the EU’s “right to be forgotten” could be instrumental in creating a framework where individuals can seek the removal of defamatory online content without compromising freedom of expression.

5.3. United Kingdom: The Defamation Act 2013

The UK reformed its defamation laws with the Defamation Act 2013, which provides protections for both defendants and claimants in defamation cases. It introduced a “serious harm” threshold, requiring claimants to prove that the defamation caused serious harm to their reputation.

Application to Indian Context: A similar standard in India could discourage frivolous defamation claims and focus judicial resources on cases that genuinely harm reputation, especially relevant in online contexts where content is often exaggerated.

5.4. Australia and Canada: Anonymity and Jurisdiction in Digital Defamation

Australia and Canada have increasingly recognized online defamation and enacted laws that allow claimants to unmask anonymous users under specific conditions. These jurisdictions provide avenues for tracking down anonymous users who post defamatory content, balancing freedom of expression with accountability.

Lessons for India: India could adopt similar provisions to facilitate the unmasking of anonymous offenders in cases where defamatory statements have been proven harmful, assisting in the enforcement of defamation laws.

5.5. Emerging Standards for Platform Accountability

As part of international discourse, there is growing interest in holding digital platforms accountable for content moderation. The UK's proposed Online Safety Bill, and Germany's Network Enforcement Act, require platforms to take active measures to prevent harmful content, including defamation.

Global Trends: India can consider such accountability frameworks to improve intermediary responsibility and enhance takedown processes, aiming for faster content removal and greater platform transparency.

5.6. Comparative Summary: Lessons for India

Drawing from international practices, India's legal framework could be enhanced by:

- Setting a clear threshold for online defamation claims, as seen in the UK.
- Introducing the "right to be forgotten" for removing harmful content.
- Strengthening intermediary liability, akin to the EU's balanced approach.
- Establishing guidelines for unmasking anonymous users, following models in Canada and Australia.

6. Future Directions and Proposed Reforms for Addressing Online Defamation in India

6.1. Enhancing Intermediary Liability and Responsibility

One of the most pressing needs in addressing online defamation is establishing clearer guidelines around intermediary liability. While Section 79 of the *Information Technology Act (ITA)* provides safe harbour protections for intermediaries, these protections need refinement to ensure accountability for defamatory content without stifling digital expression.

Proposed Amendment to Section 79: Introducing requirements for rapid response and proactive monitoring may help limit the spread of defamatory content. A standard timeline for content takedown requests, similar to the EU's 24-hour removal guideline, could be considered.

Enhanced Content Moderation Protocols: Platforms could be required to employ artificial intelligence-driven content moderation systems to detect potentially defamatory content, followed by human review. Such technology could prioritize severe cases, such as defamation against public figures or in high-visibility platforms, for immediate review.

6.2. Introducing a "Right to be Forgotten" for Defamatory Content

India could benefit from introducing a statutory "*Right to be Forgotten*" (RTBF), particularly relevant in cases of online defamation. While RTBF has privacy implications, a limited version focused on online defamation could provide victims with relief by allowing them to seek the removal of defamatory content that is no longer relevant or true.

Definition and Scope of RTBF for Defamation: This would allow individuals to petition for the removal of defamatory content that affects their reputation. The law could include safeguards to balance free speech, ensuring that only genuinely harmful content is removed.

Implementation Mechanisms: A specialized tribunal or a dedicated body within the cyber division of Indian courts could handle RTBF applications, ensuring that cases are handled expeditiously.

6.3. Clarifying Jurisdiction for Cross-Border Online Defamation Cases

Jurisdictional issues are frequently encountered in online defamation cases, especially when the accused parties or platforms operate outside India. India could develop a clear framework to assert jurisdiction based on the location of the harm rather than the origin of the content.

Introducing a "Harm-Based" Jurisdiction Standard: India could adopt a harm-based standard, where jurisdiction is established based on the impact on the victim's reputation within the country, regardless of where the content originated.

Bilateral Agreements for Enforcement: To facilitate enforcement, India could consider entering into agreements with other countries for cooperation in defamation cases, streamlining cross-border legal processes.

6.4. Strengthening Protections for Victims through Legal Aid and Awareness Programs

Many victims of online defamation lack the resources or awareness needed to pursue legal recourse effectively. Strengthening legal aid support and awareness initiatives could empower individuals to take action against defamation.

Legal Aid for Online Defamation Victims: Establishing state-supported legal aid schemes specifically for online defamation could provide victims with the resources needed to file and pursue cases.

Awareness Campaigns: Public awareness programs about online defamation laws, preventive measures, and reporting mechanisms can encourage responsible online behavior and help victims understand their rights.

6.5. Promoting Self-Regulation and Collaborative Governance with Digital Platforms

Collaborative regulation between the government and private platforms could be instrumental in tackling online defamation more effectively. Developing clear guidelines for content removal and reporting defamatory content could foster a transparent and balanced approach.

Encouraging Platforms to Develop Self-Regulation Mechanisms: Digital platforms could be encouraged to adopt self-regulation policies that prioritize takedown of defamatory content, especially when complaints come from verified users or high-risk individuals.

Setting Up Independent Oversight Bodies: An independent body that includes legal experts, technologists, and civil society representatives could periodically review platform compliance with defamation and takedown guidelines.

6.6. Educational and Preventive Measures to Foster Responsible Online Behaviour

Preventive measures, including education and awareness programs, are essential for reducing online defamation incidents. The government and civil society organizations can collaborate on digital literacy campaigns to highlight the consequences of defamatory statements.

Educational Campaigns on Digital Etiquette and Defamation Law: Raising awareness about the legal implications of online defamation, as well as digital etiquette, can deter individuals from engaging in defamatory behaviour.

Partnerships with Educational Institutions: Schools and universities could incorporate content on online defamation into their digital literacy curricula, educating young people about responsible online conduct from an early age.

7. Conclusion

The rise of online defamation has created an unprecedented challenge for legal systems worldwide, and India is no exception. The internet's boundless reach, combined with the anonymity it offers, has amplified the risks of reputational harm, raising pressing questions about the balance between protecting reputation and upholding freedom of expression.

India's current legal framework is rooted in traditional defamation laws, which, while still relevant, require adaptation to the complexities of digital defamation. As we have seen, the unique challenges posed by jurisdiction, anonymity, and platform accountability demand specialized, nuanced solutions that go beyond conventional law.

Judicial Precedent and Progressive Interpretation: Indian courts have set crucial precedents, but a more systematic legal framework is needed to address the ever-evolving landscape of online defamation. Legislative reforms should complement judicial interpretations to provide clearer guidance.

The internet serves as a powerful platform for free expression, but with this freedom comes the potential for abuse. The need to protect individual reputation must be carefully balanced with safeguarding freedom of speech. Overly restrictive defamation laws could stifle legitimate expression and criticism, while inadequate protections leave individuals vulnerable to malicious attacks on their reputation. Constitutional Values and International Standards: Any new legal standards should reflect India's constitutional values while drawing on global best practices to ensure a balanced approach. Comparative analysis with jurisdictions like the EU and the UK, which have implemented specific measures for online defamation, can inform India's policy decisions.

In the fight against online defamation, digital intermediaries such as social media platforms, search engines, and internet service providers play a crucial role. These entities are on the front lines of content moderation, and with appropriate guidelines, they can be effective partners in limiting the spread of defamatory content. The broader solution to online defamation lies in fostering a responsible digital culture. Legal remedies, though essential, should be supplemented with preventive measures that encourage responsible behaviour and mutual respect in online interactions.

Digital Literacy and Ethical Awareness: Promoting digital literacy and ethical awareness is essential in building a digital culture that values both free expression and individual dignity. Educational institutions, civil society, and government bodies all have roles to play in this endeavour. India stands at a critical juncture where it must reform its defamation laws to address the unique challenges posed by the internet. Balancing freedom of expression with the right to reputation is a delicate task, but with careful legislative reforms, international insights, and responsible digital practices, India can achieve an approach that serves both individual dignity and the collective good.

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