



# INDIAN LAWS ON DEFAMATION ON THE INTERNET

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## ABSTRACT

*In Indian law, defamation is a well-established tort with a complex historical and legal background.<sup>1</sup> As social and political realities changed over time, particularly the influence of the internet and social media on public discourse, so did India's legislation on defamation. The British common law that was adopted during the colonial era is where India's defamation laws got their start.<sup>2</sup> Sections 499 and 500 of the Indian Criminal Code of 1860, which was heavily influenced by English criminal law, recognised slander and libel as defamation offences.<sup>3</sup> Originally intended to safeguard the reputation of British colonial officials, the law of defamation was later expanded to include Indian residents as well.<sup>4</sup>*

## INTRODUCTION

Over the years, India's defamation legislation has undergone numerous alterations and amendments.<sup>5</sup> For instance, the Supreme Court of India emphasised in 1958 that the truth is a

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<sup>1</sup> For example, see *Berezovsky v. Michaels* [2000] 1 W.L.R. 1004 (H.L.); *King v. Lewis* [2004] E.W.C.A. (Civ. 1329). In both of these cases, Americans sued for defamation in the United Kingdom, despite having no apparent ties to the UK.

<sup>2</sup> (C68/93) European Court of Justice (hereinafter ECJ), March 7, 1995.

<sup>3</sup> *Id.*

<sup>4</sup> *Shevill v. Press Alliance S.A.*, (C68/93) ECJ, March 7, 1995; *Berezovsky v. Michaels* [2000] 1 W.L.R. 1004 (H.L.).

<sup>5</sup> *Berezovsky v. Michaels* [2000] 1 W.L.R. 1004 (H.L.).



legitimate defence to a defamation claim, but that this defence must be utilised in good faith and for the benefit of the public.<sup>6</sup>

Particularly in the context of social media and online platforms, defamation law in India has been the focus of significant discussion and examination in recent years.<sup>7</sup> The law, according to critics, is overbroad and ambiguous and is frequently employed to restrict free expression and opposition to influential people and institutions.<sup>8</sup>

The Indian government controversially amended the Indian Criminal Code in 2016 to make defamation a crime subject to both jail time and a fine. The action drew harsh criticism from many who support free speech, who contended that it would stifle dissent and public dialogue.<sup>9</sup>

In India, there is a lengthy and complicated history of defamation law. The rule against defamation was established during the British colonial era to shield British officials' reputations from criticism by Indian residents.<sup>10</sup> Yet as time went on, the rule was expanded to cover everyone in India, regardless of their socioeconomic standing or country of origin.<sup>11</sup>

Sections 499 and 500 of the Indian Criminal Code, which defines and punish both slander and libel, are principally responsible for regulating the law of defamation in India.<sup>12</sup> Libel refers to written or published defamatory words, while slander is defined as the spoken or gestured form of defamation.<sup>13</sup> The legislation offers both civil and criminal remedies for defamation, with the latter punishable by up to two years in prison and a fine.

The Supreme Court of India emphasised in the 1950s<sup>14</sup> that the truth is a legitimate defence to a defamation claim. The court did rule, however, that truth must be used honestly and for the

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<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup> King v. Lewis [2004] E.W.C.A. (Civ. 1329).

<sup>10</sup>*Id.*

<sup>11</sup> See *Dow Jones & Company Inc. v. Gutnick (2002)*, HCA 56 (provides that "[s]ome 27. States of the United States, including California, Illinois, New York, Pennsylvania and Texas" have adopted §577A of the Restatement of Torts, 2d (1977)).

<sup>12</sup> Restatement Second on Torts §577A (1977), William L. Prosser, *Interstate publication*, 51 Michigan L. Rev. 959 (1953). 25 *Id.*

<sup>13</sup>*Id.*

<sup>14</sup> *George Firth v. State of New York*, NY Int. 88 (2002), which holds the opposite from *Duke of Brunswick v. Harmer*: "Thus, a multiple publication rule would implicate an even greater potential for endless retriggering of the statute of limitations, multiplicity of suits and harassment of defendants. Inevitably, there would be a serious inhibitory effect on the open, pervasive dissemination of information and ideas over the internet, which is, of course, its greatest beneficial promise." ... "Republication, retriggering the period of limitations,



benefit of all. The defence of fair comment, which permits the expressing of thoughts or criticisms on issues of public interest, was also acknowledged by the court.<sup>15</sup>

Defamation law in India has been under fire recently for being extremely broad and ambiguous, which has stifled free expression and prompted criticism of influential people and institutions.<sup>16</sup> With the ease of distribution and anonymity of online content, the growing use of social media and online platforms has also brought forth new difficulties for the application of defamation legislation, making it challenging to identify and prosecute offenders.

### **Defamation types recognised by Indian law include:**

Libel and slander are the two categories of defamation recognised by Indian law. Libel is the term for untrue remarks that are written down or made public that harm someone's reputation.<sup>17</sup> False spoken words that harm someone's reputation are referred to as slander.

Defamation is a criminal offence in India in addition to being subject to civil responsibility. Defamation is defined as any imputation that damages another person's reputation in Section 499 of the Indian Criminal Code, and Defamation is a crime punishable by imprisonment and a fine in Section 500.<sup>18</sup>

The two categories of defamation that Indian law recognises are libel and slander.<sup>19</sup> Libel is the term for untrue remarks that are written down or made public that harm someone's reputation. This can include claims made in articles published in periodicals, newspapers, books, websites, blogs, social media, or other written forms of communication. Conversely, slander describes verbal assertions that are untrue and harm someone's reputation.<sup>20</sup> Statements made in speeches, interviews, or other spoken communications are examples of this.

According to Section 499 of the Indian Criminal Code, libel also constitutes a criminal offence in India. This section defines defamation as any imputation that damages someone

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occurs upon a separate aggregate publication from the original, on a different occasion, which is not merely a delayed circulation of the original edition." *Rinaldi v. Viking Penguin, Inc.*, 52 NY 2d at 435.

<sup>15</sup> Restatement of Torts §577A 2d (1977); *Berezovsky v. Michaels* .

<sup>16</sup> 376 U.S. 254 (1964).

<sup>17</sup> *Harrods Ltd. v. Dow Jones & Co. Inc.* [2003] (E.W.H.C.) 1162 (Q.B.).

<sup>18</sup> *Tolstoy Miloslavsky v. United Kingdom*, 20 EHRR 442 (1995), *John v. MGN Ltd*, 2 All ER 35 (1996). However, the costs may be higher too. *Geoffrey Robertson & Andrew Nicol, Media Law* 76 (Penguin Books 2002).

<sup>19</sup> Restatement (Third) of Foreign Relations Law of the United States § 401 (1987).

<sup>20</sup> And torts in general are guided by the *lex loci delicti commissi* principle.

else's reputation.<sup>21</sup> For anyone convicted guilty of defamation under Section 500 of the Indian Criminal Code, there is a penalty of both imprisonment and a fine.

The criminalization of defamation has, nevertheless, generated discussion and controversy in India in recent years. Criminal defamation is frequently used to restrict free expression and quiet criticism, according to critics. The Indian government controversially amended the Indian Criminal Code in 2016 to make defamation a crime subject to both jail time and a fine.

<sup>22</sup> Free speech proponents fiercely denounced this action, claiming that it would stifle criticism and public conversation. Criminal defamation nonetheless continues to be covered by Indian law.<sup>23</sup>

### **The Criminal and civil ramifications of online defamation:**

In India, defamation over the internet is punishable by both civil and criminal law. The Information Technology Act of 2000 offers damages and injunctive relief as civil remedies for online defamation.<sup>24</sup>

The Indian Penal Code governs the criminal liability for internet defamation and imposes fines and imprisonment on those found guilty of doing so. The rule has, however, come under fire for being overbroad and ambiguous as well as for stifling free speech and criticism on social media and other online forums.

India is concerned about jurisdictional concerns in internet defamation lawsuits, particularly when the alleged perpetrator is headquartered outside.<sup>25</sup> Concerns regarding the effect on free speech and the capacity of individuals and organisations to express themselves freely online have been raised as a result of the Indian courts' sometimes asserted extraterritorial jurisdiction in such instances.<sup>26</sup>

The Information Technology Act of 2000 in India addresses civil responsibility for online defamation. Under certain conditions, intermediaries, including internet service providers, social media sites, and search engines, are exempt from liability for third-party content

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<sup>21</sup> This can be difficult when a website is stored on more than one server, and when there are mirror websites.

<sup>22</sup> Gutnick v. Dow Jones & Co. Inc. [2002] H.C.A. 56 (H.C. (Aus.)), settled in 2004.

<sup>23</sup> Id.

<sup>24</sup> *Terms of Use*, supra note 4

<sup>25</sup> Darrel C. Menche, *Jurisdiction in Cyberspace: A Theory of International Spaces*, 4 Mich. Telecomm. Tech. L. Rev. 69 (1998).

<sup>26</sup> Forum shopping has been defined as trying to have an "action tried in a particular court or jurisdiction where [the litigant] feels he will receive the most favorable judgement or verdict." Bryan A. Garner, editor in chief, *Black's Law Dictionary*, abridged (8th ed, St. Paul, MN: Thomson/West, 2005). The line between legitimately choosing a forum and forum shopping is blurry. See *Forum Shopping Reconsidered*, Notes, 103 Harvard Law Review, 7 1677-96 (May, 1990).



uploaded on their platforms under Section 79 of the Act. They include not intentionally permitting content that contravenes Indian law to be placed on their platforms, removing objectionable information in a timely manner, and informing users of such takedown requests.<sup>27</sup>

The Indian Criminal Code, however, also establishes criminal responsibility for online defamation. Defamation is defined by Section 499 as any imputation that damages another person's reputation, and Section 500 imposes jail time and a fine on individuals found guilty of the crime. The rule has drawn criticism for being overly inclusive and ambiguous as well as for being applied to limit free speech and criticism on social media and other online forums.

There have been several high-profile incidents of people and organisations being accused of online defamation in India in recent years. For instance, a cartoonist was detained and accused of defamation over a drawing that attacked the legal system in 2015.<sup>28</sup> A journalist was accused of defamation in 2016 for insulting a politician in a tweet. These cases have sparked questions about how the law may affect free speech and the capacity of people and groups to express themselves without restriction online<sup>29</sup>.

India is also concerned about jurisdictional difficulties in situations of online libel.<sup>30</sup> The Indian courts have occasionally claimed extraterritorial jurisdiction in cases when the alleged offender is based outside, raising questions about the effect on free speech and the capacity of people and groups to express themselves freely online.<sup>31</sup>

## **Criminal and civil liability for defamation on the internet**

### **The legal and civil ramifications of online defamation:**

Online defamation is punishable by both civil and criminal laws. When someone initiates a civil lawsuit for damages against the author of the defamatory comment, civil responsibility

<sup>27</sup> Private International Law (Miscellaneous Provisions) Act, 42 HL, § 11-13 (1995)

<sup>28</sup> Peter North & J.J. Fawcett, Cheshire and North's Private International Law, (Butterworths, Thirteenth Ed, 1999) pg. 660.

<sup>29</sup> (C68/93) ECJ, March 7, 1995

<sup>30</sup> Option (ii) is also more intuitive because this is the principle that is often used in contract conflicts of law. See Rome Convention article 4, Restatement (Second) of Conflict of Laws § 188 (1971).

<sup>31</sup> This can be seen as either an advantage or a disadvantage. Some do not believe such judicial discretion should exist. See Dworkin Ronald, Taking Rights Seriously, (Ed: 7<sup>th</sup> impression. Publisher: London, Duckworth, 1994, c1977). On the other hand, legal realists believe in ample judicial discretion. "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." Oliver Wendell Holmes, Jr., The Path of the Law, 10 Harvard Law Review 457 (1897). An economic analysis of judicial discretion can be found in: Richard S. Higgins & Paul H. Rubin, *Judicial Discretion*, 9 The Journal of Legal Studies, 1 129-38 (January, 1980).



results.<sup>32</sup> The claimant must demonstrate that the comment was untrue and damaged their reputation. In these situations, the individual who was defamed may ask for restitution, an order to have the offensive comment taken down, and an apology<sup>33</sup>.

When a defamatory statement is made with the purpose to hurt or knowledge that it would harm the reputation of the person being defamed, criminal culpability results.<sup>34</sup> Section 499 of the Indian Criminal Code provides a definition of criminal defamation. Criminal defamation has a maximum two-year prison sentence, a fine, or both.<sup>35</sup>

### Defamation in the Information Technology Act

Indian lawmakers passed the Information Technology Act (IT Act) in 2000 to create a regulatory framework for electronic transactions and communications.<sup>36</sup> Online defamation, which is defined as the posting of any incorrect information that damages another person's reputation, is also covered by the act's provisions.<sup>37</sup>

Sending offensive messages via electronic communication, such as email, instant messaging, and social media, was made illegal under Section 66A of the IT Act.<sup>38</sup> However, the Indian Supreme Court invalidated this clause in 2015 after determining that it violated the right to free speech and was unconstitutional.<sup>39</sup>

The IT Act's Section 79 establishes the intermediaries' responsibility for user-posted content on social media platforms and internet service providers. In accordance with this clause, intermediaries must remove any illegal or offensive content after being notified by the

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<sup>32</sup>Para 1.16 of the British Law Commission Report on Defamation and the Internet, cited from (visited on 7th August, 2010)

<sup>33</sup> 1996 US Dist LEXIS 8435 (SDNY 19 June, 1996), cited from R. Matthan: The Law Relating to Computers & the Internet, p. 2 (New Delhi: Butterworths, 2000). In this case, the defendant was an Italian, who had, using an Italian server, set up a website, under the name "Playmen". The court had earlier issued a permanent injunction against the defendant from using that name in any magazine sold, published or distributed in USA. The court accepted that it could not order the website to be shut down as that would amount to asserting that every court in the world had jurisdiction over all information providers on the internet.

<sup>34</sup>Gutnick v. Dow Jones & Co. Inc., 2002 HCA 56, 73 Hereinafter Gutnick.

<sup>35</sup> No Bad Puns: A Different Approach to the Problem of Personal Jurisdiction on the Internet, 116 HARV. L. REV. 1821, 1821-22. (Hereinafter "No Bad Puns")

<sup>36</sup> Supra note 6, at p. 1824.

<sup>37</sup> 1997 WL 835442 (C.D. Cal.).

<sup>38</sup> 465 US 783. In this case, the Court found jurisdiction to have been properly asserted in California when the libellous material was produced in Florida because the subject of the defendant's article was in California and it injured the plaintiff's reputation in California.

<sup>39</sup> 631 F. Supp. 1356 (C.D. Cal. 1986).

offended party or the authorities. Inaction may lead to legal activity being taken against the middleman.<sup>40</sup>

The IT Act also calls for the formation of the Cyber Appellate Tribunal and the Cyber Regulation Advisory Council, which will oversee the law's implementation and counsel the government on matters pertaining to cyber security and electronic communication<sup>41</sup>.

Nevertheless, the IT Act offers a legal framework for dealing with online defamation in India, notwithstanding the fact that certain of its provisions have come under fire. The statute, in particular in relation to political opposition and criticism of the government, has been criticised for being used to stifle free speech and expression<sup>42</sup>. In order to properly balance the protection of individual rights and freedoms with the need for cybersecurity and control of electronic communication, there have been continuing discussions and debates about the need to reform and revise the act.

### **Issues with jurisdiction in situations of online libel:**

If a defamatory statement is made over the internet in one nation but affects the reputation of a person in another, there may be questions of jurisdiction<sup>43</sup>. The determination of which nation's laws will be used can be complicated and include potential legal issues.<sup>44</sup>

The Information Technology Act, 2000 in India establishes a process for resolving disagreements over e-contracts, e-governance, and cybercrime. A person may submit a complaint under this Act with the police's cybercrime unit or go to a court with jurisdiction over the location of the offence or the individual's residence.<sup>45</sup>

The concepts of private international law may be applicable in international cases. In situations when there are conflicting laws, these principles determine which country's laws will take precedence.<sup>46</sup> Choosing the appropriate jurisdiction in internet defamation cases can be difficult, so consulting a legal professional is advised.

### **Defamation as a Criminal Offence**

<sup>40</sup> 2002 US App. LEXIS 25535 (4th Cir.).

<sup>41</sup> Laid down in *Keeton v. Hustler Magazine, Inc.*, 465 US 770 (1984).

<sup>42</sup> 977 F. Supp. 404 (E.D. Va. 1997), cited from D.L. Kidd, *Casting the Net: Another Confusing Analysis of Personal Jurisdiction and Internet Contacts in TELCO Communications v. An Apple A Day*, 32 U.RICH.L.REV. 505, 509.

<sup>43</sup> Adrian Briggs, *The Duke of Brunswick and Defamation by Internet*, 119 Law Quarterly Review 119, 210-15

<sup>44</sup> B.P. Werley, *Aussie Rules: Universal Jurisdiction over the Internet*, 18 Temp.Int'l&Comp.L.J. 199, 219-20.

<sup>45</sup> *Supra* note 5, at p. 80; *Berezovsky v. Michaels*, (2000) 1 WLR 1004 (HL), at p. 1008.

<sup>46</sup> 952 F. Supp. 1119 (W.D. Pa. 1997).

Defamation is a crime in several jurisdictions, which means that anyone who makes false claims that damage another person's reputation could face prosecution, penalties, and/or jail time.<sup>47</sup> Defamation is not always made a crime, and it varies greatly between various nations and regions.

Those who support criminalising defamation contend that doing so is vital to shield people from malicious attacks on their reputation, which have the potential to do serious hurt and damage. They contend that making defamation illegal sends a clear message that such behaviour won't be tolerated and can discourage others from using hurtful remarks.<sup>48</sup>

Detractors of criminalising defamation contend that doing so can limit free speech and expression because people may be reluctant to speak out on contentious or delicate subjects for fear of being accused of defamation<sup>49</sup>. Additionally, they contend that making defamation illegal might be used to stifle political opponents and other opposing groups.<sup>50</sup>

Determining what constitutes defamation and establishing that someone acted maliciously can be challenging, so the criminalization of defamation might make it more difficult to enforce the law. This may result in the law being applied arbitrarily and may cause those who are accused of defamation to be treated unfairly.

There is disagreement about whether criminalising defamation is an effective way to shield people from harm or an infringement on the right to free speech and expression in general. Many jurisdictions have quite diverse approaches to defamation as a crime, which is influenced by cultural, legal, and political reasons.<sup>51</sup>

### **Necessity to strike a balance between free speech and reputation rights:**

In defamation proceedings, it is important to strike a balance between free speech and reputation rights. Indian courts have underlined the significance of upholding the right to reputational privacy while upholding the freedom of speech and expression.

### **Social media and online platforms' effects on libel:**

Defamation in India has been significantly impacted by social media and online platforms. On these sites, defamatory words can spread swiftly, causing reputation damage that spreads quickly and widely. It has become simpler for people to make defamatory claims

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<sup>47</sup>Braintech Inc. v. Kostiuk, (1999), 63 B.C.L. R 3d, 156 cited from [www.lawsonlundell.com](http://www.lawsonlundell.com)

<sup>48</sup> (1815) 1 Stark 49

<sup>49</sup> AIR 1941 Mad 860.

<sup>50</sup> AIR 1957 Nag 19

<sup>51</sup>1973 SCC (Cri) 944





anonymously thanks to social media and online platforms, which makes it challenging to hold them accountable.

The difficulties brought by social media and online platforms have been addressed by Indian courts in recent years. In defamation cases, for instance, the Delhi High Court has published instructions for identifying anonymous online users.

One of the main challenges posed by social media and online platforms is the speed at which defamatory content can spread. A single post or comment can be shared or re-tweeted thousands of times, causing reputational damage that spreads quickly and widely. Moreover, social media and online platforms make it easy for people to make defamatory claims anonymously or pseudonymously, which can make it difficult to identify the person responsible for the defamation.

To address these challenges, Indian courts have begun to develop guidelines for identifying anonymous online users who make defamatory claims. For instance, in a 2018 case, the Delhi High Court issued guidelines that require online platforms to provide information about anonymous users who are accused of making defamatory statements. The guidelines require platforms to provide information about the IP address and other identifying information of the user, as well as any information that may help identify the user, such as email addresses, phone numbers, or social media profiles.

In addition to these guidelines, Indian courts have also recognized the importance of balancing freedom of speech with the need to protect against defamation. In a landmark 2015 case, the Supreme Court of India ruled that freedom of speech and expression must be balanced with the right to reputation, and that individuals have a right to protect their reputation from false and defamatory statements.

Overall, while social media and online platforms have made it more challenging to hold people accountable for defamation, Indian courts have taken steps to develop guidelines and legal principles that help balance freedom of speech with the need to protect against defamation.

### **Free expression and reputational rights must be balanced:**

The goal of defamation law in India is to strike a balance between the right to free speech and expression and the right to reputation protection. In a number of significant rulings, the Supreme Court of India has stressed the significance of this balancing.

But in actuality, striking this balance can be challenging. Particularly in the context of social media and online platforms, defamation legislation is frequently employed to limit free speech and criticism. Defamation law requires a comprehensive strategy that protects

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reputation rights while also taking into account the particular difficulties provided by social media and internet platforms.

Defamation law in India aims to balance the right to free speech and expression with the right to reputation protection. The Supreme Court of India has emphasized this balance in several landmark cases, recognizing that freedom of speech and expression are fundamental rights that must be protected. However, in practice, striking this balance can be challenging, particularly in the context of social media and online platforms.

One of the main challenges is that defamation law can be used to restrict free speech and criticism. Critics argue that defamation suits are often used as a tool to silence dissent and intimidate individuals who speak out against powerful interests. In the digital age, social media and online platforms have made it easier for individuals to share their views and opinions, but they have also created new opportunities for individuals to be defamed.

To address these challenges, defamation law needs to be carefully crafted to protect both reputation rights and free speech. This requires a comprehensive approach that takes into account the unique challenges posed by social media and online platforms.

One potential solution is to encourage the use of alternative dispute resolution mechanisms, such as mediation and arbitration, to resolve defamation disputes. These mechanisms can be faster, less expensive, and less adversarial than traditional litigation, and they can provide a more flexible and nuanced approach to balancing reputation rights and free speech.

Another approach is to encourage online platforms to develop better tools and policies for identifying and removing defamatory content. This can include better content moderation policies, improved reporting mechanisms, and more effective use of technology to detect and remove defamatory content.

Ultimately, striking a balance between reputation rights and free speech requires a nuanced approach that takes into account the particular challenges posed by social media and online platforms. By developing comprehensive strategies that protect both reputation rights and free speech, India can create a legal framework that promotes open and robust debate while also protecting individuals from harmful and defamatory speech.

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