

## DEFAMATION LAWS OF INDIA: A STUDY OF CYBER DEFAMATION AND LEGAL CONSEQUENCES

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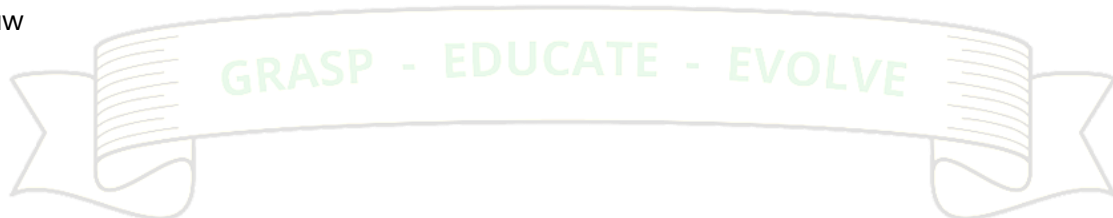
### ABSTRACT :

This paper provides an in-depth analysis of defamation laws in India, examining the shift from the Indian Penal Code (IPC) of 1860 to the new Bharatiya Nyaya Sanhita (BNS), 2023. The central theme is the constitutional tension between the fundamental right to freedom of speech and expression and the right to reputation, with a particular focus on the growing challenge of cyber defamation.

The paper argues that the BNS, under Section 356<sup>1590</sup>, follows the same definition of criminalizing defamation as the old IPC but follows the contemporary procedural model applicable in the digital environment. Defamation is the act of imputation that is intended to injure an individual's reputation and is done in the form of oral, written, or visible communication. The BNS maintains the ten established exceptions to defamation from the IPC, which protect expressions made in good faith or for the public good, thereby ensuring a balance with free speech.

A significant portion of the paper is dedicated to The term cyber defamation refers to the posting of defamatory information online, which emphasizes the immediate, boundaryless, and long-lasting consequences of online defamation. The legal approach to cyber defamation is based on the Bhartiya nayaya sanhita (BNS) and the Information Technology Act, 2000. In the analysis, the focus is on the landmark cases that have set the course of jurisprudence, such as SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra and Subramanian Swamy v. Union of India<sup>1591</sup>, which upheld the constitutionality of criminal defamation. The paper concludes by stating that even though the Bodily? No–BNS, which refers to the legal framework (assuming "BNS" stands for some legal regime), has a strong framework, the test of effectiveness in the real world will depend upon the proactive application of the law and the ability of the judiciary to keep adapting to the changing reality of digital communications and individual dignity in the cyber space.

**Keywords:** Defamation, Cyber Defamation, Bharatiya Nyaya Sanhita, Free Speech, Right to Reputation, Indian Law



<sup>1590</sup> Bharatiya Nyaya Sanhita, 2023, § 356

<sup>1591</sup> SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra, (2014) S.B.C. No. 1279/2001 (Del.)

## INTRODUCTION: THE TENSION BETWEEN FREE SPEECH AND REPUTATION RIGHTS

Freedom of speech and expression in a democratic nation like India is not just a legal right it's a bedrock value that equips citizens to engage actively in the public sphere. Article 19(1)(a)<sup>1592</sup> of the Indian Constitution ensures this freedom, but it is subject to limitations. Article 19(2) places reasonable limitations on such freedom for the protection of sovereignty, public order, decency, morality, and in particular, the reputation of others<sup>1593</sup>. The law of defamation, therefore, comes to occupy a very important legal position to prevent the dignity and reputation of an individual from being tarnished by malicious and false reports. In the age of social media, going viral, and online anonymity, the character of defamatory acts has spread exponentially, creating cyber defamation a world where reputation can be ruined in minutes with the click of a button. The Bharatiya Nyaya Sanhita (BNS), 2023, which substituted the Indian Penal Code (IPC) of 1860, still identifies defamation as a criminal offense and adds contemporary procedural paradigms to address its expanding digital facet.<sup>1594</sup>

## DEFINING DEFAMATION UNDER THE BHARATIYA NYAYA SANHITA, 2023

The Bharatiya Nyaya Sanhita, 2023, through Section 356, criminalizes defamation in almost the same words as the previous Section 499 of the IPC. It states that defamation is any act of publication or making of an imputation whether oral, written, or by visible representation about any person, with intent to harm, or with knowledge or reason to believe that such imputation would cause harm, to the reputation of the person. The ambit of this provision is wide enough to encompass defamatory materials communicated through electronic and digital platforms. Section 356, thus, still treats both

conventional defamation and cyber defamation under the same legal umbrella.<sup>1595</sup>

The ten established exceptions to defamation under the IPC have been maintained in the BNS. These include cases where the imputation is for the public good and true, or expressions made in good faith with regard to public servants in performance of their duty, or opinions in regard to public performances. These exceptions are used to ensure a constitutional balance keeping criticism and satire acceptable exercises of free speech while also protecting individual dignity. Interestingly, although the content of defamation law has not changed, the BNS provides a new and clarified text that reflects more accurately current jurisprudential and technological advancements.

## CYBER DEFAMATION: A NEW AGE LEGAL CHALLENGE

Cyber defamation is the publication of defamatory content through the internet or online communication platforms like emails, websites, blogs, social media sites (such as Twitter, Facebook, Instagram), and messaging apps (like WhatsApp and Telegram). While ordinary defamation is usually localized in its damage in terms of space and geography, cyber defamation is immediate, frontier-less, and potentially permanent. One defamatory post or message can be sent worldwide, persist on online records forever, and cause irreversible damage to one's reputation.<sup>1596</sup>

Even though the BNS does not explicitly use the term "cyber defamation," its very general wording in Section 356 covers such behavior. And more importantly, cyber defamation is even regulated by the Information Technology Act, 2000. Section 66A (now repealed in *Shreya Singhal v. Union of India*) had earlier controversially dealt with criminalizing offensive messages through communication service. After *Shreya Singhal*, the dependence now lies on Section 66 (offences relating to computers)

<sup>1592</sup> India Const. art. 19, cl. 1(a).

<sup>1593</sup> India Const. art. 19, cl. 2.

<sup>1594</sup> Indian Penal Code, No. 45 of 1860

<sup>1595</sup> Bharatiya Nyaya Sanhita, 2023, § 356

<sup>1596</sup> Daniel J. Solove, *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet* (Yale Univ. Press 2007).

and Section 67 (publication or transmission of obscene or harmful material) of the IT Act, based on the content's nature. Thus, cyber defamation cases are prosecuted through a mix of BNS and IT Act provisions, providing both substantive criminal liability and technological enforcement.<sup>1597</sup>

### JUDICIAL INTERPRETATION AND RECOGNITION OF CYBER DEFAMATION

The Indian courts have been proactive in identifying and correcting cyber defamation. The leading case of SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra (2004)<sup>1598</sup> was the first case where a court in India held defamatory emails and cyber harassment to be actionable offences. The Delhi High Court issued a permanent injunction against the defendant not to defame the plaintiff through email, creating a vital precedent for future digital defamation cases.

Judicial pronouncements have since adapted to keep pace with the realities of the net. In Tata Sons Ltd. v. Greenpeace International (2011)<sup>1599</sup>, the Delhi High Court emphasized that satirical matter or parody, even digital one, can be protected under right to expression, as long as it does not breach the limit of hurt to reputation. Courts have therefore walked a tightrope, balancing the freedom of speech with the right to reputation, especially where the platform is used for viral tweets, memes, posts, and influencer comments.<sup>1600</sup>

### LEGAL REMEDIES AND PROCEDURAL INNOVATIONS UNDER BNS

One of the most enlightened areas of the BNS, 2023 is procedural modernization and time-bound delivery of justice. For example, all offences of defamation included have to be tried within a set duration, with charges being formulated within 60 days of the charge sheet

being filed and trial being concluded within 45 days after that. This is noteworthy given the fact that cyber defamation cases tend to linger due to forensic and digital evidence gathering.

Also, technology is now institutionalized as part of investigation. Search and seizure on video, due requirement of forensic teams in serious cases, computerized filing of FIRs and complaints are integral to the criminal justice process now. In cyber defamation, where metadata, IP logs, and social media records are of paramount importance, this procedural reform is a necessity.

In addition, the BNS enables courts to use community service as a sentence for minor offenses, such as defamation. This reformist approach has two reasons behind it: it decongests prisons and encourages restorative justice by committing offenders to socially useful work, particularly in first-time or maliciously unrelated defamation offenses.<sup>1601</sup>

### REDEFINING DEFAMATION UNDER THE BNS, 2023

The crime of defamation, earlier regulated by Sections 499 and 500 of the Indian Penal Code, is currently enacted in Section 356 of the Bharatiya Nyaya Sanhita, 2023. The provision keeps the substance of the original law intact, explaining defamation as any statement spoken, written, or by visible representation that imputes something offensive to a person's reputation with the intent to cause harm, or with knowledge or reason to believe that the harm will ensue. Notably, Section 356 still encompasses libel (written) and slander (oral) within one legislative framework.<sup>1602</sup>

As in the earlier regime, the new legislation exempts statements made in good faith e.g., regarding public interest, fair comment on public servants, or opinions on public performances. The exemptions are important to the guarantee that the legislation does not unnecessarily inhibit constitutionally guaranteed speech as well as press freedom.

<sup>1597</sup> The Information Technology Act, 2000, §§ 66, 67, No. 21, Acts of Parliament, 2000

<sup>1598</sup> SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra, Suit No. 1279/2001 (Dist. Ct. Delhi Oct. 7, 2004)

<sup>1599</sup> Tata Sons Ltd. v. Greenpeace Int'l, (2011) 178 DLT 705

<sup>1600</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (Feb. 25, 2021)

<sup>1601</sup> B.N. Srikrishna, ed., *Information Technology Law in India* (Universal Law Publishing 2019).

<sup>1602</sup> Bharatiya Nyaya Sanhita, 2023, § 356

But whereas under BNS, terminology has been revised for easier understanding and some terms updated to reflect modern-day digital realities.

The penalty for defamation is the same still two years imprisonment, or fine, or both. But under BNS, courts have more flexibility to order community service as an alternative sentence in situations where imprisonment might not be in the interests of justice. This is consistent with the BNS's wider reformatory strategy towards petty offences.

### **CYBER DEFAMATION: A DIGITAL THREAT TO REPUTATION**

In the internet era, with online communication having become an integral part of personal, professional, and public life, reputation has gained a heightened importance. An individual's online footprint anything from social networking websites to search engine listings almost always creates the initial and enduring impression on others. Hence, the advent of cyber defamation as a new legal issue has prompted reconsideration of age-old defamation laws. Cyber defamation is the publication or transmission of defamatory material through electronic media such as emails, blogs, social networking websites, WhatsApp messages, YouTube videos, and other digital media. Unlike traditional defamation that can be localized and slow in spread, cyber defamation is instant, borderless, and frequently irreversible, making it far more dangerous to an individual's reputation and dignity.<sup>1603</sup>

One notable thing about cyber defamation is how quickly it spreads and how extensive its reach can be. In other words, it is quite easy for defamatory content, such as a single post on Twitter or Facebook, to go viral almost instantly, spanning across borders and millions of screens, before the defamed person has even had time to react and take action against it. This is further complicated by how easily online

content persists, where once it is published, it is easily duplicated, screenshotted, archived, or cached even after it has been deleted. Therefore, the enduring nature of online harm differentiates cyber defamation from its offline equivalent, requiring a more pressing and subtle response in law.

Another exasperating feature of cyber defamation is the anonymity that the internet sometimes provides to the offender. In print media, the person liable is usually the editor or the publisher, but in the case of cyber defamation, it could be a troll, an email, or a blog with a false identity. This makes it a complex and intricate process to trace the source of the offending material, sometimes requiring the assistance of internet service providers, authorities, and other agencies. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 attempt to plug this gap by requiring intermediaries to ensure traceability and act on takedown notices, but enforcement is patchy and judicial intervention varies greatly.<sup>1604</sup>

Notably, cyber defamation targets not just individuals. Corporates, institutions, and governments are also regular targets of defamatory posts on the Internet. Malicious comments, false reports, Photoshopped photos, or doctored videos can harm brand equity, destroy consumer confidence, and even affect stock prices. In these contexts, cyber defamation is not only a personal harm but an economic and public policy issue as well. In the context of public persons politicians, reporters, film stars cyber defamation can also deter freedom of expression since they are most often the targets of disinformation and character assassination. The emotional impact of cyber defamation, such as stress, social withdrawal, depression, and reputational trauma, only serves to emphasize the gravity of this offence.

Legally, the Bharatiya Nyaya Sanhita (BNS), 2023, Section 356 includes cyber defamation

<sup>1603</sup> Sourav Das, Cyber Defamation and Free Speech in the Indian Legal Context, 13 NUJS L. Rev. 1 (2021).

<sup>1604</sup> Shreya Sahi, *Conflict between Freedom of Speech and Expression and Right to Reputation in the Light of Media Trials*, 4 Int'l J.L. Mgmt. & Human. 5259 (2021).

within the general definition of criminal defamation. Although it does not specifically propose a distinct offence of "cyber defamation," the medium of publication print or electronic is irrelevant if imputations result in reputational damage. This inclusion provides the same remedies and protection to victims of online defamation as criminal law. Concurrently, the Information Technology Act, 2000, fills in this framework by considering the digital context. Sections 66 and 67 of the IT Act, while aimed principally at hacking and obscene matter respectively, have from time to time been used in cyber defamation cases, particularly when the defamatory material coincides with abuse, harassment, or breach of privacy.<sup>1605</sup>

Nevertheless, the existing legal reaction, although substantial, is not without its drawbacks. Jurisdictional issues, intermediary takedown delays, poor infrastructure for cybercrime, and victim ignorance tend to cause underreporting and poor redress. Lack of specialized cyber defamation tribunals, and the non-recognition of the offence under civil law as a discrete digital tort, are lacunae that are still unfilled. In addition, although remedies like apology, injunction, or damages exist in theory through civil suits, the time-consuming process of defamation suits in India makes these remedies practically ineffective in today's fast-paced online world.

The issue of cyber defamation, indeed, presents itself as an imposing challenge in our rapidly changing online world, where speech is said to outpace the law. As the private and professional worlds increasingly merge with the internet, the concern for reputation takes on an extremely high sense of urgency. While the Bharatiya Nyaya Sanhita, 2023, sets out the legal framework for tackling the criminal aspect of defamation, the key lies in its proper implementation, enhanced online literacy, and timely intervention. There is an urgent need for legal reform specially dealing with cyber

defamation as a standalone offence, including faster resolution mechanisms, and harmonizing the twin constitutional values of free speech and reputation protection in the digital era.<sup>1606</sup>

### FREEDOM OF EXPRESSION VS. RIGHT OF REPUTATION – THE CONSTITUTIONAL DEBATE

The defamation laws in India are codified under Section 356 of the Bharatiya Nyaya Sanhita (BNS), 2023. Despite this, the approach remains informed by the nuanced constitutional tension between the right to freedom of speech and expression under Article 19(1)(a) and the protection of reputation, which has been firmly entrenched in Article 21 of the Constitution as part of the right to life and liberty. Courts have uniformly recognized that although the Indian Constitution provides strong room for free expression, such freedom is not absolute and has to give way when it enters into the domain of honour, dignity, and reputation of others. In cyber defamation, such constitutional conflict becomes more prominent because cyberspace ensures that robust public discussion as well as damage to reputations are strengthened manifold.

The Supreme Court has, however, over the years, developed a balanced jurisprudence on this conflict. In the seminal case of *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221, the constitutional validity of criminal defamation under Sections 499 and 500 of the Indian Penal Code, 1860 was questioned as violative of Article 19(1)(a).<sup>1607</sup> The petitioners contended that the presence of a criminal penalty for defamation had a chilling effect upon free speech and was at variance with the culture of a liberal democracy. The Court did not accept that, affirming the constitutionality of criminal defamation, holding that the right to reputation is an integral component of Article 21 and thus a reasonable restriction upon free speech under Article 19(2).

In this landmark ruling, the Court noted:

<sup>1606</sup> Chinmayi Arun, *Hate Speech Laws in India*, in *The Oxford Handbook of Online Speech Law* (Jack M. Balkin ed., Oxford Univ. Press 2022).

<sup>1607</sup> India Const. art. 19, cl. 1(a).

<sup>1605</sup> Bharatiya Nyaya Sanhita, 2023, § 356

*"Reputation is the most precious property of a human being. It is a fundamental ingredient of the right to life with dignity under Article 21. The defamation law seeks to achieve a balance between personal dignity and the wider right of the citizenry to freedom of speech."<sup>1608</sup>*

The Court also emphasized judicial restraint and context-balancing, with the proviso that there is no constitutional right which is supreme in the abstract but is to be balanced against other competing rights on a case-by-case basis. The interpretation now becomes the constitutional basis on which Section 356 of the BNS rests. Significantly, the BNS maintains the core components of Section 499 IPC, showing that the legislature is in conformity with the Court's opinion that criminal defamation is an indispensable constitutional measure to protect personal dignity.<sup>1609</sup>

This balancing act has been further established in subsequent judicial pronouncements, particularly in the cyber realm. In *Shreya Singhal v. Union of India*, (2015) 5 SCC 1<sup>1610</sup>, the Supreme Court invalidated Section 66A of the Information Technology Act, 2000, criminalizing sending "offensive messages" on the internet. Although the Court invalidated Section 66A as it was too vague and overbroad, the Court did make a significant point: free speech on the internet is equally entitled to constitutional protection as ordinary speech. But the verdict left intact the defamation laws as they stand, marking the judiciary's steady perception that online speech continues to have to defer to the right of reputation.

Another instructive case is *Khushboo v. Kanniammal*, (2010) 5 SCC 600<sup>1611</sup>, in which actress Khushboo was subjected to several criminal defamation complaints for her comments on premarital sex. The Supreme Court struck down the complaints and ruled that public figures had to be accorded greater latitude in being able to voice opinions. The

Court reaffirmed that only a direct and intentional imputation that injures reputation can constitute defamation, and a generalized or academic discourse no matter how provocative is protected speech. This case reflects the Court's developing sense of contextual speech and its attendant potential to cause reputational harm.

In like manner, in *Tata Sons Ltd. v. Greenpeace International*, 178 (2011) DLT 705<sup>1612</sup>, the Delhi High Court addressed defamation in the realm of online satire. Tata Sons wanted an injunction against a YouTube video that mocked their activities in the vulnerable turtle nesting site in Orissa. The Court declined to grant the injunction, ruling that the video was a satirical criticism entitled to protection under Article 19(1)(a).<sup>1613</sup> This case highlights the judiciary's desire to protect political and artistic expression, even in digital modes, from the excesses of defamation claims so long as it does not pass the threshold of malice or factuality of falsehood.<sup>1614</sup>

The courts have also been proactive in striking a balance between enforcement of defamation law and the procedural and technological imperatives of the internet. In *SMC Pneumatics India Pvt. Ltd. v. Jogesh Kwatra*, (2004)<sup>1615</sup>, the Delhi High Court issued the first Indian injunction against cyber defamation by preventing the defendant from sending defamatory e-mails. It was a watershed moment in court recognition of online platforms as channels with a potential for reputational harm equivalent to offline media.

With the introduction of the BNS, enforcement procedures have been proceduralized to the point of being modern. While the material definition of defamation is left undisturbed in Section 356, the BNS adds provisions for expedited trial timelines, digital evidence collection, and video recording of witness depositions. These are direct responses to the

<sup>1608</sup> *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221

<sup>1609</sup> *Bharatiya Nyaya Sanhita*, 2023, § 356

<sup>1610</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1

<sup>1611</sup> *Khushboo v. Kanniammal*, (2010) 5 SCC 600

<sup>1612</sup> *Tata Sons Ltd. v. Greenpeace Int'l*, (2011) 178 D.L.T. 705 (Del. H.C.)

<sup>1613</sup> M.P. Jain, *Indian Constitutional Law* (8th ed. LexisNexis 2021).

<sup>1614</sup> India Const. art. 19, cl. 2.

<sup>1615</sup> *SMC Pneumatics India Pvt. Ltd. v. Jogesh Kwatra*, (2004)

evidentiary logistical challenges involved in prosecuting cyber defamation cases where evidence trails may consist of metadata, IP logs, and fleeting content. The courts now possess both the legislative power and technological mandate to dispose of such cases with greater efficiency and equity.

Nevertheless, the constitutional discussion remains ongoing. Its critics contend that criminal defamation is disproportionate and abused per se, especially by influential persons and institutions to quell dissent and investigative reporting. Reformists habitually refer to the principle of proportionality and the chilling effect on investigative reporting. Nevertheless, the courts have invariably refuted them by upholding that criminal measures are justified for heinous instances and fall within Article 19(2) protection.<sup>1616</sup>

In brief, the Indian courts continue to hold fast to the right to free expression, but have unmistakably acknowledged the need for this right to coexist with the equally essential right to the protection of reputation. The constitutional validity of defamation laws, as settled in Subramanian Swamy, provides the foundation for the continued viability of Section 356 of the Bharatiya Nyaya Sanhita, 2023, as a means of protecting personal dignity in the real world and the cyber world. The judiciary's changing mindset characterized by constitutional sensitivity, contextual finesse, and awareness of technology is a reflection of its determination to ensure the internet remains both a hotbed of substantive debate and reputation integrity.

### INTERMEDIARY LIABILITY AND PLATFORM REGULATION

While the BNS regulates the substantive offence of defamation, the liability of social media platforms and intermediaries is regulated by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules mandate the platforms to act fast in cases of complaints against defamatory

and damaging content. They must maintain records of the content, determine who published the content, and comply with court orders to remove the content.

In the case of victims of online slander, especially for people like celebrities and professionals, the rules for intermediaries provide procedural remedies for victims, who can request the removal of the content without the need to go to court in a hurry. However, questions of due diligence, traceability, and neutrality of platforms remain contentious and subject to judicial interpretation and constitutional review.

### CONCLUSION

In summary, the Bharatiya Nyaya Sanhita, 2023, is a major milestone in the development of India's criminal justice system. By keeping defamation as an offence and modifying its procedural structure to respond to digital realities, it makes sure that online reputation injuries are neither diminished nor unregulated. Cyber defamation, as a modern legal issue, is no longer an intangible or unusual phenomenon it is an urgent matter that impacts journalists, influencers, corporations, and regular citizens as well.

The BNS, together with the IT Act and intermediary guidelines, constitutes a well-rounded legal framework for confronting this burgeoning problem. Much will still rest on judicial clarity, enforcement effectiveness, and public legal sensitization. As we negotiate the complex line between criticism and calumny, between expression and exploitation, the law needs to keep developing anchored in constitutional principles but taking cognizance of technological advancement.

<sup>1616</sup> The Constitution of India, arts. 19, cl. 1(a)