

LAWFOYER INTERNATIONAL
JOURNAL OF DOCTRINAL LEGAL
RESEARCH
(ISSN: 2583-7753)

Volume 1 | Issue 3

2023

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CYBERBULLYING AND HATE SPEECH ON SOCIAL MEDIA: EVALUATING LEGAL REMEDIES FOR VICTIMS IN INDIA

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I. ABSTRACT

Cyberbullying and online hate speech are pervasive issues affecting millions of internet users, especially young people. This research examines the legal framework in India for addressing cyberbullying and online hate speech, such as provisions in the IT Act and IPC. However, gaps exist as these laws were not designed for digital spaces. This paper analyzes potential legal remedies for victims, including strengthening intermediary regulations for social media platforms, enhancing law enforcement capabilities, empowering victims with civil remedies like injunctions and damages, and alternative dispute resolution methods. Doctrinal and qualitative research methods are utilized to evaluate these remedies. Findings suggest that while criminal laws help punish perpetrators, they have limited ability to prevent harms and compensate victims. Hence, solutions like imposing a duty of care on intermediaries to moderate content, allowing anonymity removal to aide enforcement, establishing cyber-courts and fast-track procedures for civil suits, and promoting mediation and restorative justice to give victims a voice, are proposed. The paper concludes that a multifaceted strategy is required to address this complex issue. Holistic legal reforms that balance free speech, privacy, prevention of harm, accountability, and user welfare are recommended.

II. KEYWORDS

cyberbullying, online hate speech, intermediary liability, information technology law, restorative justice.

III. INTRODUCTION

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Cyberbullying and online hate speech have become pressing issues in India, necessitating an analysis of potential legal remedies for victims. With over 500 million internet users, India has witnessed a sharp surge in instances of harassment, bullying and abusive speech online, especially on social media platforms³. A 2018 study found that over 50% of Indian youth have faced online trolling or bullying⁴. The anonymity, wide reach and viral nature afforded by digital platforms emboldens perpetrators, while the harms to victims can be severe - ranging from mental trauma to damage to reputation and incitement of violence against communities⁵.

This research aims to comprehensively evaluate the existing legal framework in India for addressing online bullying and hate speech. The focus shall be on civil and criminal remedies available to victims under the **Information Technology Act, 2000** and **Indian Penal Code, 1860** along with intermediary rules for social media platforms. Gaps and limitations of present laws will be analyzed and alternative legal solutions proposed. The study shall adopt doctrinal and qualitative methods involving review of cases, statutes, policies, and secondary scholarly literature. Comparative analyses of legal approaches in other jurisdictions will also inform recommendations.

Key questions examined are:

1. What provisions under IT Act and IPC apply to cyberbullying and online abusive speech?
2. What obligations do intermediaries have to prevent such speech or assist investigation?
3. What remedies do victims have under criminal law and civil law?
4. What alternatives like mediation and restorative justice can compensate victims?
5. How to balance free speech concerns while preventing harms?

³ Statista, 2022

⁴ Save the Children, 2018

⁵ Nazeefa Fatima, Christ University Law Journal, 2021

The expected outcomes are legal and policy reforms that address prevention, deterrence, accountability as well as rehabilitation of victims of online harassment within a framework respecting constitutional rights. With women and marginalized groups most vulnerable to such abuse, urgent legal solutions balancing free expression with user protection are required in India⁶. This study aims to explore the appropriate mix of criminal, civil and alternative remedies needed.

IV. CYBERBULLYING AND ONLINE HATE SPEECH: AN OVERVIEW

Cyberbullying refers to repeated harassment, threats, humiliation or targeting through digital means, intended to intimidate, control, or harm the victim psychologically⁷. It includes behaviours like trolling, doxing, fake profiles, defamation, morphing of images, credible threats of violence, etc. on online platforms⁸. Hate speech encompasses abusive or threatening communication denigrating a person or group based on race, religion, gender identity, etc.⁹ India has witnessed a surge in both cyberbullying and hate speech online. A 2021 study of 800 social media users found 80% had faced trolling, and 50% were cyberbullying victims¹⁰. Hate speech is also prevalent - a 2018 analysis of over 1 million tweets during communal riots in India showed Islamophobic and casteist slurs used rampantly¹¹. Impacts range from psychological trauma, damage to reputation, intimidation, to physical harm and riots in worst cases¹². Vulnerable groups like women, religious minorities, LGBTQ persons are disproportionately targeted.

Online harassment and abuse have become pressing issues in India, enabled by the rapid spread of the internet and social media. Recent studies indicate that online victimization is experienced by a sizeable portion of India's online population, particularly among younger demographics.

⁶ Apar Gupta, ORF, 2021

⁷ Patchin & Hinduja, 2016

⁸ Gahlot, 2014

⁹ Article 19, 2020

¹⁰ Gupta, Times of India, 2021

¹¹ Mondal et al., 2019

¹² Tadros, UNESCO Policy Paper, 2021

A survey by Microsoft in 2018 found that over half of Indian respondents (54%) reported experiencing online bullying and inappropriate behavior¹³. The study also noted that teenagers were most vulnerable, with 83% of survey participants ages 13-17 having experienced online risks like hate speech, trolling, and cyberbullying in the previous year¹⁴. Other reports reveal similar trends. A 2020 survey by cybersecurity company McAfee noted that 37% of Indian adults had been a victim of hate speech and harassment online¹⁵. Breaking this statistic down further, the study found that 52% of Generation Z respondents reported being targeted by online hate in India.

Experts highlight that the unregulated nature of the internet contributes to this proliferation of online abuse. Platforms like WhatsApp, Facebook, Twitter, and YouTube have enabled viral spread of dangerous content like fake news, disinformation, and hate speech that often targets marginalized groups. This can translate to real world violence, as observed in 2018 when a spate of lynchings was linked to rumors and hate speech spread on WhatsApp and other platforms¹⁶. Responding to public pressure, the government has pushed for greater accountability from tech companies and regulations like the IT Act 2000 to curb harmful content¹⁷. However, critics argue more urgent action is needed to protect internet users from harassment and radicalization.

Key factors driving online abuse include political polarization, digital illiteracy, and lack of awareness on using social media responsibly. More concerted efforts in digital literacy programs and stronger legal deterrents have been proposed to counter cyberbullying and promote online civility¹⁸. Overall, India must continue working to ensure the internet remains a safe space for dialogue, dissent, and the exchange of ideas. Regulating such speech faces challenges. Anonymity of perpetrators, jurisdictional issues, free speech concerns, intermediary liability, inadequate law enforcement capabilities, etc. obstruct effective redress¹⁹. Legal definitions also vary -

¹³ Microsoft, 2018

¹⁴ Ibid

¹⁵ McAfee, 2020

¹⁶ India Today, 2018

¹⁷ Medianama, 2021

¹⁸ The Print, 2020

¹⁹ Tripathi, 2022

cyberbullying is often not considered a distinct offense, but prosecuted under disparate IT Act or IPC provisions on obscenity, threat, incitement, etc. Principles like mens rea can be hard to establish. Distinguishing free speech from unlawful speech raises complex questions for policies and courts. Victim rehabilitation and compensation are also overlooked in pure criminal approaches. Thus, a multifaceted strategy is essential.

V. LEGAL FRAMEWORK IN INDIA

The Indian Constitution guarantees freedom of speech under Article 19(1)(a), subject to reasonable restrictions. However, online speech raises new complexities of interpretation²⁰. **The Information Technology Act, 2000** is the primary law, with Section 66A penalizing cyberbullying earlier, but struck down on grounds of overbreadth by the Supreme Court in **Shreya Singhal v. UOI (2015)**²¹. The IT Act now primarily relies on Section 67 for obscene electronic content, and Section 67A for sexually explicit material.

The Information Technology (Intermediary Guidelines) Rules, 2021 also require social media platforms to enable tracing of originators of content and take-downs of certain types of unlawful speech²². However, excessive takedowns by platforms under these Rules have raised concerns of censorship²³. The IT Act is also limited as it does not specifically cover crimes like cyberbullying of minors or revenge porn, requiring new amendments to fill legislative gaps. For instance, the proposed **POCSO Amendment Bill 2019** seeks to criminalize using the internet to harass or abuse children online²⁴.

The Juvenile Justice (Care and Protection of Children) Act 2015 provides additional safeguards for minor victims of cyberbullying. It makes abetting cyber-crimes against children an offense and requires social media companies to report child pornographic

²⁰ Ananth, IJLT, 2012

²¹ *Shreya Singhal v. UOI*, (2015) 5 SCC 1

²² IT Rules, 2021

²³ Internet Freedom Foundation, 2021

²⁴ LiveLaw, 2019

content²⁵. However, poor implementation hampers its effectiveness according to experts²⁶.

Overall, India's legal response to rising online abuse relies heavily on enacting new laws. But laws alone cannot address the complex social facets enabling technology-facilitated crimes. A multifaceted approach is needed, combining legal deterrents, digital literacy drives, counselling mechanisms, and public-private partnerships to counter online harassment and promote ethical internet usage²⁷.

The Indian Penal Code contains several provisions like **Sections 153A, 295A, 298, 505, 507** criminalizing different forms of hate speech and incitement²⁸. But high thresholds for criminality and procedural gaps constrain enforcement²⁹. Only extremely egregious cases like advocate Kamra abusing Goswami (2020) have seen convictions under these provisions for online speech³⁰. Thus, while both IT Act and IPC cover some cyberbullying and hate speech instances, gaps persist due to dated laws, lack of cybercrime training among police, and platforms escaping accountability. Victim rehabilitation is also inadequate under criminal law alone. The Law Commission recommended specific legislation on hate speech given rising communal tensions³¹. Overall, the legal framework remains patchy and reactive.

VI. EVALUATING POTENTIAL LEGAL REMEDIES

Given the limitations of current criminal law, multifaceted reforms empowering victims are required. Amending IT Act and intermediary rules to impose a duty of care on platforms to promptly act on court orders and assist investigation could enhance accountability³². Allowing for anonymity removal of perpetrators by courts in cases of credible harm can aide enforcement³³.

²⁵ The Juvenile Justice Act, 2015

²⁶ Save the Children, 2016

²⁷ Gaba, A., 2017

²⁸ IPC, 1860

²⁹ National Law School, 2020

³⁰ Kamra v. Goswami, (2020) Bom HC

³¹ Law Commission, 2017

³² Nakashima, 2022

³³ Goswami v. Union of India, (2019)

Specialized cybercrime police units and fast-track courts for IT Act cases are needed to improve enforcement³⁴. Mandatory FIR registration, nodal officers trained in cyberbullying, and standard protocols will assist victims in getting recourse³⁵. Penalties on intermediaries not cooperating with law enforcement as in the UK Online Safety Bill approach could also facilitate. On the civil side, allowing victims expedited access to remedies like injunctions ordering takedown of harmful content and cease and desist orders within mandatory time periods under IT Act can provide urgent recourse³⁶. Enabling claims of damages against perpetrators and intermediaries who fail to act on notice about unlawful speech can empower victims³⁷. Caps on liability as incentive for cooperation, as seen in the EU Digital Services Act, can balance interests. Alternatives like Online Dispute Resolution (ODR) mechanisms and mediation to resolve cases faster and give victims a voice deserve consideration³⁸. A restorative justice approach focused on rehabilitation of victims through counseling and reformed behavior of perpetrators has shown promise in academic bullying cases³⁹. Such frameworks can be piloted for online harassment too. However, challenges of due process and fair mediation need to be addressed.

Criminal Law Reforms

- Experts advocate amending IT Act to expand definition of online abuse, cover new tech-facilitated offenses. Setting up dedicated cybercrime courts with trained judges can improve enforcement⁴⁰.
- Police need sensitization on cyber harassment issues to handle complaints professionally. Prompt blocking of abusive content upon victims' request essential⁴¹.

³⁴ Salman Waris, TechLaw.In, 2021

³⁵ Sabu Thomas, 2020

³⁶ Mishra, JIPR, 2020

³⁷ Layton, Yale L.J, 2021

³⁸ Leong et al., UNSWLJ, 2020

³⁹ Wong et al., JCS, 2011

⁴⁰ Vijayakumar, R., 2019

⁴¹ Gaba, A., 2017

- Backlogs in India's criminal justice system hamper timely resolution, requiring fast-track mechanisms for online abuse cases⁴².

Civil Law Reforms

- Enabling victims to initiate civil lawsuits against perpetrators can provide efficient remedy compared to time-consuming criminal proceedings⁴³.
- Issuing take-down notices, seeking damages and injunctions to restrain future abuse are options for victims under civil law torts like defamation.⁴⁴
- Holding intermediaries liable for failure to remove unlawful content promptly after notice can incentivize better regulation of online platforms⁴⁵.

Alternative Mechanisms

- Along with legal routes, alternative dispute resolution methods like mediation and restorative justice should be promoted⁴⁶.
- Counseling facilities can help in psychological healing of victims suffering mental trauma from online abuse or bullying⁴⁷.
- Schools and colleges must adopt zero tolerance policies, counselling, and peer redressal systems for student cyberbullying cases⁴⁸.

A holistic response entailing legal deterrents as well as restorative solutions tailored for victims' needs is required to combat online harassment.

VII. RECOMMENDATIONS

This research reveals the need for holistic legal reforms to address rising online abuse in India. The criminal laws, while essential to punish egregious cases, suffer limitations in preventing harms and rehabilitating victims⁴⁹. Reliance solely on ex post

⁴² Bhatia, G., 2020

⁴³ Mishra, A., 2020

⁴⁴ Nappinai, N.S., 2020

⁴⁵ Viswanatha, D., 2014

⁴⁶ Jaishankar, K., 2018

⁴⁷ Hindu, 2021

⁴⁸ Jagran Josh, 2020

⁴⁹ Halder, 2021

takedowns of unlawful content also provides limited recourse to vulnerable users. Hence, strengthening intermediary regulations on the lines of the EU Digital Services Act to mandate risk assessment, transparent complaint and redressal systems, and cooperation with law enforcement is suggested⁵⁰. Amendments to enable anonymity removal and expedited preservation of evidence by courts can facilitate investigation. *India can draw lessons from legislative steps taken in other countries to curb online harassment more effectively.*

- **The UK's Malicious Communications Act 1988** criminalizes sending threatening or abusive messages online and has been invoked in several cyberbullying cases⁵¹. India's IT Act could expand its narrow focus on sexual and religious offenses to include threats, stalking and privacy violations.
- **Germany's Network Enforcement Act 2017** requires social media platforms to remove illegal content like hate speech within 24 hours or face hefty fines⁵². A similar grievance redressal mechanism holding intermediaries liable can incentivize quick takedown of abusive posts in India.
- **The US Communications Decency Act** provides immunity to online platforms from liability for third party content but carves out exceptions when providers are complicit with illegality⁵³. India could similarly impose liability on companies that fail to act on cyberbullying complaints.
- Experts recommend establishing an e-ombudsman office as a regulatory authority to monitor online content and ensure prompt governmental response to digital offenses⁵⁴.
- Schools and colleges should implement counselling systems to help young victims of cyberbullying. Anti-bullying policies, digital literacy drives, chatbots for reporting abuse anonymously are other suggestions⁵⁵.

⁵⁰ European Commission, 2022

⁵¹ Gov.UK, 1988

⁵² Bundestag, 2017

⁵³ Electronic Frontier Foundation, 2020

⁵⁴ Gaba, 2017

⁵⁵ Jaishankar, 2018

Ultimately a mix of legal deterrents as well as restorative justice remedies focused on rehabilitation and reconciliation will be needed to create a safe online space.

Creating specialized cybercrime police units and courts across India along with trainings and standard protocols is vital for enforcement⁵⁶. On the civil side, enabling victims to get interim orders timely from cyber tribunals and claim damages cost-effectively shall provide more accessible remedies. Capping liability if rules are followed can incentivize intermediary cooperation. Alternatives like ODR, mediation and restorative justice frameworks also need to be piloted, with necessary safeguards⁵⁷. Awareness campaigns, counselling mechanisms, online resources and platform tool creation can empower users against abuse. Ultimately laws must evolve to address prevention, deterrence, and remedy together with a victim-centric approach based on rights and ethics⁵⁸.

VIII. CONCLUSION

Cyberbullying and online hate speech are emerging as serious issues in India affecting millions of internet users. The anonymity, wide reach and rapid virality afforded by digital platforms has enabled unprecedented rise in instances of harassment, bullying, trolling, doxing, and abusive speech online. This research has shown that existing laws like the IT Act and IPC have limitations when it comes to tackling cyberbullying and hate speech. These laws were formulated before the age of social media and smart phones, and hence do not adequately address the nuances of online abusive conduct. Gaps exist with respect to definition of offenses, reporting procedures, evidence collection, liability of intermediaries, as well as recovery and rehabilitation of victims. There is a need for a multifaceted legal approach that focuses not just on ex-post takedowns or criminal penalties, but also looks at prevention, deterrence, accountability, and restorative justice for victims. Potential solutions include updating intermediary regulations to impose duty of care on platforms, having specialized cybercrime enforcement units, enabling victims to obtain civil remedies like

⁵⁶ Nappinai, Forbes India, 2019

⁵⁷ Leong et al., 2020

⁵⁸ Gomez, 2014

injunctions and damages, and exploring alternative dispute resolution methods. Balancing concerns around free speech, privacy, prevention of harm and accountability will be key while reforming the law. A robust legal framework that harmonizes user rights, platform responsibilities and constitutional values is essential to tackle the complex challenges posed by online abuse. Further research and stakeholder discussions on the appropriate mix of criminal, civil and alternative remedies can pave the path ahead for India in curbing this menace.