



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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CROSS-BORDER ONLINE DEFAMATION AND JURISDICTIONAL CHALLENGES: A STUDY UNDER PRIVATE INTERNATIONAL LAW.

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Abstract

The increasing use of digital platforms has significantly transformed the way information is created, distributed, and accessed across national boundaries. While the internet has enabled rapid global communication, it has also created complex legal challenges relating to defamation, jurisdiction, and the protection of individual reputation. One of the emerging issues in this context is the regulation of cross-border online defamation and the applicability of domestic legal remedies to disputes involving foreign parties and internationally accessible digital content.

This research paper examines the jurisdictional challenges arising from cross-border online defamation through the recent writ petition filed before the Karnataka High Court in Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others. The petitioner, a sitting Judge of the Supreme Court of Sri Lanka, approached the Indian court seeking the removal of allegedly defamatory online content and invoked the Right to be Forgotten under the Constitution of India. The petition also sought directions against digital intermediaries, including Google India, to block access to certain online content and prevent further dissemination of the material.

The dispute raises significant questions within the domain of Private International Law, particularly regarding the jurisdiction of domestic courts over cross-border internet publications, the regulation of foreign online content, and the liability of global digital intermediaries. The involvement of Sri Lankan news portals and an Indian court highlight the transnational nature of modern defamation disputes and the difficulty of applying territorially based legal frameworks to borderless digital environments.

By analysing the legal principles governing jurisdiction, online defamation, and the Right to be Forgotten, this paper explores how courts address the challenges posed by cross-border digital publications. The study also evaluates the broader implications of such cases for Private International Law and suggests the need for clearer legal standards and international cooperation in regulating transnational online disputes.

Keywords: Private International Law; Cross-Border Dispute; Online Defamation; Technology;

Table of Content

- 1. Introduction**
- 2. Private International Law and Cross-Border Disputes**
 - 2.1 Meaning and Scope of Private International Law
 - 2.2 Jurisdiction in Cross-Border Disputes
 - 2.3 Choice of Law and Enforcement of Judgments
- 3. Online Defamation and Technology**
 - 3.1 Concept and Elements of Defamation
 - 3.2 Online Defamation and Social Media Platforms
 - 3.3 Internet Jurisdiction and Cross-Border Publication
- 4. Case Analysis: Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others**
 - 4.1 Background and Facts of the Case
 - 4.2 Legal Issues Raised
 - 4.3 Jurisdictional Questions in the Case
 - 4.4 Role of Private International Law in the Dispute
- 5. Legal Challenges in Cross-Border Online Defamation**
 - 5.1 Jurisdictional Conflicts between States
 - 5.2 Regulation of Global Online Platforms
 - 5.3 Balancing Freedom of Expression and Protection of Reputation
- 6. Recommendations and Future Legal Framework**
- 7. Conclusion**
- 8. Bibliography**

1. Introduction

The rapid expansion of digital communication technologies has significantly transformed the nature of information dissemination across national borders. Social media platforms, online news portals, and search engines have created a global information environment where content published in one jurisdiction can instantly be accessed in multiple countries. While this development has strengthened the free flow of information and freedom of expression, it has also created complex legal challenges concerning reputation, privacy, and jurisdiction. One of the most prominent challenges emerging in this digital environment is cross-border online defamation.¹

Defamation law traditionally developed within territorial legal systems where harmful statements were published and circulated within a particular jurisdiction. However, the internet has fundamentally altered this framework by enabling online content to transcend national borders. As a result, defamatory material published in one country can affect the reputation of an individual located in another country, thereby creating significant jurisdictional and conflict-of-law issues. Courts are increasingly confronted with the question of whether they possess jurisdiction to adjudicate disputes arising from such globally accessible digital publications. Scholars have observed that the ubiquity of the internet has increased the frequency and complexity of cross-border defamation disputes.²

In India, defamation is recognised both as a civil wrong under the law of torts and as a criminal offence under Sections 499 and 500 of the Indian Penal Code. The essential elements of defamation include the existence of a defamatory statement, its publication to a third party, and its reference to the person whose reputation is allegedly harmed.³ These principles were historically designed to regulate statements published within identifiable territorial boundaries. However, when defamatory material is published on the internet, the question arises as to where the publication actually occurs and which court has the authority to adjudicate the dispute.

The growing number of online defamation disputes has also raised concerns regarding the balance between freedom of speech and the protection of individual reputation. The Constitution of India guarantees freedom of speech and expression under Article 19(1)(a), but this right is subject to reasonable restrictions, including defamation, under Article 19(2).⁴

Courts therefore face the challenging task of balancing the constitutional protection of free expression with the equally important right to reputation.

A recent dispute illustrating these challenges arose in Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others, where a sitting judge of the Supreme Court of Sri Lanka approached the Karnataka High Court seeking the removal of allegedly defamatory online content. The petitioner invoked the Right to be Forgotten and sought directions against digital intermediaries, including Google, to remove search results relating to certain online publications. The petition also sought directions against two Sri Lankan news portals Colombo Telegraph and Lanka e- News which allegedly published the defamatory material. The petitioner argued that initiating proceedings in Sri Lanka could raise concerns of judicial bias due to his position as a sitting judge of the Supreme Court of Sri Lanka.

The case presents a unique example of cross-border litigation involving a foreign constitutional authority seeking relief before an Indian constitutional court for reputational harm caused by globally accessible online content. The dispute therefore raises important questions relating to Private International Law, cross-border jurisdiction, intermediary liability, and the emerging recognition of digital reputation rights such as the Right to be Forgotten.

Against this background, the present research paper examines the jurisdictional and legal challenges arising from cross-border online defamation disputes through the lens of the Karnataka High Court petition filed by Justice A.H.M.D Nawaz. The study further analyses how traditional principles of Private International Law interact with modern technological developments in addressing transnational defamation disputes in the digital age.

2. Private International Law and Cross-Border Disputes

2.1 Meaning and Scope of Private International Law

Private International Law, commonly referred to as the conflict of laws, governs legal disputes that involve a foreign element. Such disputes arise when the parties belong to different countries, when the subject matter of the dispute spans multiple jurisdictions, or when the legal consequences of an action affect more than one legal system. The principal objective of Private International Law is to determine which court has jurisdiction, which legal system should be

applied, and how foreign judgments should be recognized and enforced.⁵

Traditionally, Private International Law developed to address disputes relating to contracts, marriage, property, and commercial transactions involving parties from different jurisdictions. However, with the rapid growth of digital technology and internet communication, cross-border disputes have increasingly arisen in areas such as data protection, intellectual property, privacy and defamation. The internet has effectively reduced the relevance of geographical boundaries, enabling information to be transmitted globally within seconds. As a result, harmful or defamatory content published online in one country can instantly affect individuals located in another jurisdiction.⁶

The increasing prevalence of digital communication has therefore expanded the scope of Private International Law beyond traditional transnational commercial disputes to include complex internet-based conflicts. Scholars have observed that cross-border online defamation disputes have become more frequent and legally complex because internet publications can simultaneously reach audiences in multiple jurisdictions.⁷ This creates uncertainty regarding which legal system should regulate the dispute and which court should adjudicate the claim.

In addition, the global flow of digital data has significantly intensified cross-border legal interactions. Modern digital economies rely heavily on international data transfers and cross-border communication networks. However, the absence of uniform international regulations governing digital content and online speech often leads to inconsistencies between national legal systems.⁸ These inconsistencies complicate the application of Private International Law principles when disputes arise from globally accessible internet publications.

The case of Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others illustrates this emerging challenge. In this dispute, a sitting judge of the Supreme Court of Sri Lanka approached the Karnataka High Court seeking the removal of allegedly defamatory online content published by Sri Lankan news portals and indexed by global search engines. The case therefore involves multiple jurisdictions: the petitioner is based in Sri Lanka, the allegedly defamatory content originated from Sri Lankan publications, and the relief was sought before an Indian constitutional court against global digital intermediaries such as Google.

This combination of foreign parties, cross-border publication, and multinational digital intermediaries places the dispute squarely within the domain of Private International Law. The court must therefore consider whether it possesses jurisdiction to hear the matter and whether Indian constitutional remedies, such as the Right to be Forgotten, can be invoked in a dispute involving foreign publications accessible through global digital platforms.

2.2 Jurisdiction in Cross-Border Disputes

Jurisdiction is one of the most fundamental principles of Private International Law. It determines whether a particular court has the authority to hear and decide a dispute involving foreign elements. In cross-border disputes, courts must determine whether there is a sufficient connection between the dispute and the forum state that justifies the exercise of judicial authority. Traditionally, jurisdiction was determined based on factors such as the residence of the parties, the place where the cause of action arose, or the location of the subject matter of the dispute.⁹

However, the emergence of the internet has complicated traditional jurisdictional principles. Online content can be accessed simultaneously across multiple jurisdictions, making it difficult to determine the place where the harm occurred. In cases involving online defamation, courts must often determine whether the mere accessibility of content within a jurisdiction is sufficient to establish jurisdiction or whether additional factors are required to demonstrate a substantial connection with the forum state.¹⁰

One of the most influential decisions addressing internet jurisdiction in defamation cases is the Australian High Court judgment in *Dow Jones & Company Inc. v. Gutnick*.¹¹ This case the plaintiff, an Australian businessman, filed a defamation suit in the State of Victoria against an American publisher for an article published online by the Wall Street Journal. The defendant argued that the publication occurred in the United States where the article was uploaded. However, the High Court rejected this argument and held that the tort of defamation occurs in the place where the material is downloaded and comprehended by the reader. Since the defamatory material was accessed in Australia and caused reputational harm there, the Australian court held that it had jurisdiction over the dispute.

Indian courts have also addressed jurisdictional questions in internet-related disputes. In *Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy*, the Delhi High Court examined

whether the mere accessibility of a website in India was sufficient to confer jurisdiction on Indian courts.¹² The court held that accessibility alone is not sufficient; instead, the plaintiff must demonstrate that the defendant intentionally targeted the forum state and that the website had a commercial or purposeful interaction with users within that jurisdiction. This principle, often referred to as the purposeful targeting test, was developed to prevent courts from exercising jurisdiction in cases where the connection to the forum state is merely incidental.

Similarly, courts in other jurisdictions have struggled with the jurisdictional implications of internet- based disputes. In *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisémitisme*, French courts asserted jurisdiction over an American internet company for allowing access to Nazi memorabilia auctions that were illegal under French law.¹³ The case illustrated how national courts may attempt to regulate online activities that have effects within their territory even when the online content originates abroad.

In the context of the dispute involving *Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others*, similar jurisdictional questions arise. Although the allegedly defamatory material was published by Sri Lankan news portals, the petitioner approached the Karnataka High Court seeking relief against the continued availability of the material through online search engines accessible within India. The court must therefore consider whether the accessibility of such content within India, combined with the involvement of Indian intermediaries such as Google India, provides a sufficient basis for the exercise of jurisdiction.

The case thus reflects the broader challenge faced by courts worldwide in adapting traditional jurisdictional principles to the realities of global digital communication.

2.3 Choice of Law and Enforcement of Foreign Judgments

Another important component of Private International Law is the determination of the applicable law, commonly referred to as the choice of law. In disputes involving foreign elements, courts must determine which country's legal system should govern the dispute. This question becomes particularly complex in internet-related disputes because online content may be created in one jurisdiction, hosted on servers located in another country, and accessed by users worldwide.¹⁴

Traditionally, courts relied on territorial principles such as *lex loci delicti*, meaning the law of the place where the wrongful act occurred. However, the global nature of the internet challenges this approach because a single online publication may produce effects simultaneously in multiple jurisdictions. Consequently, courts often adopt flexible approaches that consider factors such as the location of the parties, the place where reputational harm occurred, and the jurisdiction with the most significant connection to the dispute.¹⁵

In cases involving cross-border online defamation, determining the applicable law is particularly difficult because legal standards for defamation differ significantly across jurisdictions. Some legal systems place greater emphasis on protecting reputation, while others prioritize freedom of expression. These differences may influence both the outcome of the dispute and the remedies available to the injured party. Scholars have therefore observed that cross-border internet defamation conflicts often involve competing legal values and cultural approaches to free speech and reputation.¹⁶

The enforcement of foreign judgments presents another major challenge in cross-border disputes. Even when a court successfully adjudicates a case involving foreign elements, the judgment may need to be enforced in another jurisdiction where the defendant or the relevant assets are located. In such circumstances, courts must determine whether the foreign judgment satisfies the requirements for recognition and enforcement under domestic law. These requirements generally include principles such as jurisdictional competence, compliance with due process, and consistency with public policy.

In the digital environment, the enforcement of judgments becomes particularly complicated when the dispute involves multinational technology companies and online intermediaries. Digital platforms operate across multiple jurisdictions and store data on servers located in different countries. As a result, the enforcement of judicial orders requiring the removal of online content may require cooperation between different legal systems and regulatory authorities. International cooperation mechanisms, such as Mutual Legal Assistance Treaties and cross-border information-sharing frameworks, are often necessary to facilitate such enforcement.¹⁷

The case of *Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others* highlights these challenges in a practical context. Although the allegedly defamatory

content was published by Sri Lankan news portals, the petitioner sought relief before an Indian court by requesting the removal of search results and online references indexed by digital intermediaries operating within India. If the Karnataka High Court grants such relief, the effectiveness of the order may depend on the ability of Indian authorities and digital intermediaries to ensure compliance across different jurisdictions.

Therefore, disputes involving cross-border online defamation illustrate the growing importance of international cooperation and harmonized legal standards in addressing conflicts arising from globally accessible digital publications.

3. Online Defamation and Technology

3.1 Concept and Elements of Defamation

Defamation is a legal concept designed to protect an individual's reputation from false and harmful statements made by others. Reputation has long been recognized as an important personal interest deserving legal protection, as damage to a person's reputation may lead to social exclusion, professional harm, and loss of dignity. In legal terms, defamation refers to a false statement that harms the reputation of another person by exposing them to hatred, ridicule, contempt, or avoidance by society.¹⁸

The law of defamation has developed over centuries within both civil and criminal legal systems. In many jurisdictions, including India, defamation can give rise to both civil liability and criminal prosecution. Under the law of torts, defamation is treated as a civil wrong for which the injured party may seek compensation in the form of damages. At the same time, the Indian Penal Code recognizes defamation as a criminal offence under Sections 499 and 500, which provide penalties including imprisonment, fine, or both.¹⁹

Traditionally, defamation has been classified into two categories: libel and slander. Libel refers to defamatory statements expressed in a permanent form such as writing, printed material, or images, whereas slander refers to defamatory statements made through spoken words or gestures. Because libel exists in a permanent form and has the potential to reach a wider audience, it has historically been treated as a more serious form of defamation in many legal systems.²⁰

To establish a successful claim for defamation, certain essential elements must be satisfied. First, there must be a defamatory statement, meaning a statement that tends to lower the reputation of the plaintiff in the estimation of reasonable members of society. Second, the statement must have been published, meaning that it was communicated to at least one person other than the individual who was allegedly defamed. Third, the statement must refer to the plaintiff, either explicitly or implicitly, such that readers or listeners can identify the person whose reputation is affected.

Courts have repeatedly emphasized that the mere existence of an insulting or offensive statement does not automatically constitute defamation. Instead, the statement must have the tendency to damage the reputation of the person concerned in the eyes of society. In *Sim v. Stretch*, the court held that a statement is defamatory if it tends to lower the plaintiff in the estimation of right-thinking members of society.²¹ This standard continues to influence modern defamation jurisprudence across common law jurisdictions.

In contemporary legal discourse, defamation law must also be understood in the context of constitutional rights. In democratic societies, the right to reputation must be balanced against the fundamental right to freedom of speech and expression. In India, Article 19(1)(a) of the Constitution guarantees freedom of speech, but Article 19(2) permits reasonable restrictions on this freedom, including restrictions in the interest of defamation.²² Courts therefore play an important role in balancing these competing interests when adjudicating defamation disputes.

The development of digital technology and internet communication has significantly altered the landscape of defamation law. Online platforms enable individuals to publish statements instantly to a global audience, thereby amplifying the potential harm caused by defamatory content. Unlike traditional media publications, which are limited by geographical boundaries, online publications can be accessed across multiple jurisdictions simultaneously. As a result, defamatory statements posted on websites, blogs, or social media platforms may have far-reaching consequences that extend beyond the territorial boundaries of a single legal system.

These developments have given rise to the concept of online defamation, which refers to defamatory statements communicated through digital platforms such as websites, search engines, and social media networks. The increasing prevalence of online defamation disputes has forced courts and lawmakers to reconsider traditional legal doctrines in order to address

the unique challenges posed by the digital environment.

3.2 Online Defamation and Social Media Platforms

The rapid growth of the internet and social media platforms has fundamentally transformed the way information is created, shared, and consumed. Digital platforms such as search engines, social networking websites, blogs, and online news portals allow individuals to publish information instantly to a global audience. While this technological development has enhanced communication and democratic participation, it has also increased the potential for the rapid spread of defamatory statements across multiple jurisdictions.²³

Unlike traditional forms of media such as newspapers and television, online platforms allow content to remain accessible indefinitely and to be replicated across various websites and digital services. Once defamatory material is published online, it can be shared, reposted, or indexed by search engines, making it difficult for individuals to control the dissemination of harmful information about them. Consequently, the damage caused by online defamation may be significantly greater than that caused by traditional defamatory publications.²⁴

Another distinctive feature of online defamation is the role played by digital intermediaries, such as search engines and social media platforms. These intermediaries do not usually create the content themselves but facilitate the dissemination of user-generated content to a wider audience. Search engines such as Google index information from various websites and allow users to locate specific content through keyword searches. As a result, even if defamatory material is published on a particular website, it can become widely accessible through search engine results.

The involvement of digital intermediaries has raised important legal questions regarding intermediary liability and the responsibility of online platforms to remove defamatory content. Courts in various jurisdictions have attempted to balance the need to protect individual reputation with the need to preserve the free flow of information on the internet. Excessive regulation of online platforms may create a chilling effect on freedom of speech, while insufficient regulation may leave individuals vulnerable to reputational harm caused by false or misleading online content.²⁵

Recent technological developments such as artificial intelligence and deepfake technologies

have further complicated the regulation of online defamation. Advanced digital tools now enable the creation of highly realistic manipulated images, videos, and audio recordings that may falsely portray individuals in compromising or defamatory situations. These technologies have increased the risk of reputational harm because such content can spread rapidly across digital platforms and may be difficult to distinguish from authentic media.²⁶

The dispute in *Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others* illustrates the role of digital intermediaries in online defamation disputes. In this case, the petitioner sought directions against Google India to remove search results linking to allegedly defamatory content published by Sri Lankan news portals. The petition also requested the imposition of restrictions preventing the reproduction or further circulation of the material through online searches. The involvement of a global search engine in this dispute highlights the increasingly important role played by digital intermediaries in determining how defamatory content spreads and how it may be regulated.

As online platforms continue to shape the global information ecosystem, courts must develop legal principles that effectively address the challenges posed by online defamation while simultaneously safeguarding the fundamental right to freedom of expression.

3.3 Internet Jurisdiction and Cross-Border Publication

The emergence of the internet has fundamentally transformed the traditional concept of publication in defamation law. Historically, defamatory statements were published through newspapers, books, or spoken communication, which were limited by geographical boundaries. In contrast, online publications are instantly accessible across multiple jurisdictions, making it difficult to determine where the publication occurs and which court should exercise jurisdiction over the dispute.²⁷

In traditional defamation law, the tort of defamation is considered to occur at the place where the defamatory statement is published and causes harm to the reputation of the individual concerned. However, when defamatory material is published on the internet, it may be simultaneously accessible in numerous jurisdictions. This raises the question of whether courts in every jurisdiction where the material is accessible should have the authority to hear the case. The global accessibility of internet publications therefore creates significant jurisdictional challenges in cross-border defamation disputes.²⁸

Courts across different jurisdictions have attempted to address these challenges by developing various legal tests to determine jurisdiction in internet-related disputes. One commonly applied approach is the effects doctrine, which focuses on the place where the reputational harm occurs rather than the location where the content was uploaded. Under this approach, courts may assume jurisdiction if the defamatory content has a substantial effect on the reputation of the plaintiff within the forum state.²⁹

Another approach is the targeting or purposeful direction test, which examines whether the online content was specifically directed toward the audience of a particular jurisdiction. Courts applying this test evaluate factors such as the language of the publication, the intended audience, and whether the website actively interacts with users located in the forum state. This approach aims to prevent courts from exercising jurisdiction merely because a website is technically accessible within their territory.

The global nature of internet communication has also intensified conflicts between national legal systems. Countries often adopt different legal standards regarding defamation, freedom of speech, and privacy protection. Consequently, a statement that is lawful in one jurisdiction may be considered defamatory in another. Scholars have observed that such differences can lead to competing claims of jurisdiction and inconsistent judicial outcomes in cross-border defamation disputes.³⁰

These challenges are particularly relevant in disputes involving online search engines and digital intermediaries. Search engines play a crucial role in organizing and indexing online content, enabling users to access information through keyword searches. When defamatory content appears in search results, it can significantly amplify the reputational harm suffered by the affected individual because the material becomes easily discoverable by a global audience.

The petition filed in Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others highlights the significance of internet jurisdiction in cross-border defamation disputes. In this case, the petitioner sought directions from the Karnataka High Court requiring digital intermediaries, including Google India, to remove links to allegedly defamatory content published by Sri Lankan news portals. Although the original publication occurred outside India, the petitioner argued that the continued accessibility of the material

through search engines caused reputational harm that extended beyond national borders.

The case therefore demonstrates how cross-border internet publications challenge the traditional territorial limits of defamation law. Courts must carefully balance the need to provide effective remedies to individuals whose reputations are harmed by online content with the need to avoid excessive assertions of jurisdiction that could interfere with the global flow of information. As digital communication continues to expand, the development of coherent legal standards for internet jurisdiction will remain a crucial issue in the field of Private International Law.

4. Case Analysis: Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others

4.1 Background and Facts of the Case

The dispute in Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others arose from a writ petition filed before the Karnataka High Court by Justice A.H.M.D Nawaz, a sitting judge of the Supreme Court of Sri Lanka. The petitioner sought judicial intervention for the removal of certain online content which he alleged to be defamatory and harmful to his reputation. The petition also invoked the Right to be Forgotten, requesting that digital intermediaries remove search results and prevent the continued dissemination of allegedly false or misleading information relating to the petitioner.

The petitioner filed the writ petition against multiple respondents, including the Ministry of Electronics and Information Technology of the Government of India, Google India, and two Sri Lankan online news portals—Colombo Telegraph and Lanka e-News. The petitioner argued that these online platforms had published or indexed defamatory material which continued to appear in online searches, thereby causing reputational harm. The petition sought directions from the court requiring the respondents to remove such content and to impose restrictions preventing the reproduction of similar material in future searches.³¹

The Karnataka High Court, presided over by Justice Sachin Shankar Magadam, issued notice on the petition and directed the concerned parties to respond to the allegations raised by the petitioner. The court directed the standing counsel representing the Union Government and Google to accept notice and instructed the petitioner to serve notice upon the foreign

respondents through electronic communication. The matter was subsequently listed for preliminary hearing on a later date.

An important aspect of the petition was the petitioner's decision to approach an Indian court instead of initiating legal proceedings in Sri Lanka. The petitioner stated that he refrained from filing a lawsuit in Sri Lanka on ethical grounds because such proceedings might create an apprehension of bias due to his position as a sitting judge of the Supreme Court of Sri Lanka. Consequently, the petitioner sought relief from a foreign court that he believed could adjudicate the matter without raising concerns regarding judicial impartiality.

The petition also relied upon the emerging legal recognition of the Right to be Forgotten, a concept that has gained increasing attention in digital privacy jurisprudence. The Right to be Forgotten allows individuals to request the removal of certain personal information from online platforms when such information is no longer relevant or when its continued availability infringes upon privacy or reputational interests. Courts in several jurisdictions have recognized that individuals may seek the removal of search engine links that connect users to outdated or harmful information.³²

The case therefore presents a distinctive example of cross-border litigation involving multiple jurisdictions and digital intermediaries. The petitioner is a foreign public official residing in Sri Lanka, the allegedly defamatory content was published by foreign news websites, and the relief was sought before an Indian constitutional court against global digital intermediaries. These circumstances illustrate how online publications can generate legal disputes that transcend national borders and require courts to address complex issues relating to jurisdiction, digital privacy, and reputational protection in the digital age.

4.2 Legal Issues Raised

The petition filed in Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others raises several significant legal issues relating to cross-border online defamation, jurisdiction, intermediary liability, and the emerging recognition of the Right to be Forgotten. These issues illustrate the evolving interaction between traditional defamation law and modern digital technologies that allow information to circulate globally without territorial limitations.

One of the primary legal issues in the case concerns whether defamatory online content published outside India can be challenged before an Indian constitutional court. The allegedly defamatory material in the present dispute was published by Sri Lankan online news portals, yet the petitioner sought relief from the Karnataka High Court on the ground that the continued accessibility of the material through online search engines caused reputational harm. This raises the question of whether Indian courts can exercise jurisdiction over foreign publications that are accessible through the internet within India. Courts in several jurisdictions have recognized that internet publications may produce effects in multiple jurisdictions simultaneously, thereby complicating the traditional territorial basis of defamation law.

Another significant legal issue relates to the Right to be Forgotten, which the petitioner invoked as a constitutional remedy for the removal of defamatory online content. The Right to be Forgotten has emerged as an important principle in digital privacy law, allowing individuals to request the deletion or de-indexing of personal information from search engines when such information is outdated, irrelevant, or harmful to personal reputation. Although the concept has been widely discussed in European privacy law, courts in India have increasingly begun to consider similar claims in cases involving digital privacy and reputational protection.³³

The case also raises questions regarding the liability and responsibility of digital intermediaries, particularly search engines such as Google. Digital intermediaries play a crucial role in organizing and indexing online content, thereby facilitating access to information available on the internet. While these intermediaries may not be the original publishers of defamatory content, their services enable users to locate and access such material easily. Consequently, individuals seeking the removal of defamatory content often request courts to direct search engines to remove or block links that lead to the offending material.

The legal status of intermediaries in such disputes is often determined by statutory frameworks regulating online platforms. In India, intermediary liability is addressed under the Information Technology Act, 2000, which provides conditional protection to online intermediaries for third-party content hosted or indexed on their platforms. However, such protection may be withdrawn if intermediaries fail to comply with lawful directions issued by courts or government authorities requiring the removal of unlawful content.

Another important issue arising from the case concerns the balance between freedom of speech and the protection of reputation. The Constitution of India guarantees the right to freedom of speech and expression under Article 19(1)(a), but this right is subject to reasonable restrictions, including restrictions imposed in the interest of defamation. Courts therefore face the challenge of ensuring that measures taken to protect an individual's reputation do not unduly restrict legitimate journalistic expression or public discourse.³⁴

The dispute also raises broader questions regarding the role of national courts in regulating online content that originates outside their territorial jurisdiction. The increasing prevalence of cross-border internet disputes has prompted scholars to emphasize the need for clearer legal standards and international cooperation mechanisms to address conflicts arising from globally accessible digital publications.³⁵

In this context, the petition filed by Justice A.H.M.D Nawaz presents a significant example of how modern defamation disputes can involve multiple jurisdictions, global technology companies, and emerging digital rights such as the Right to be Forgotten. The legal issues raised in the case therefore reflect broader challenges faced by courts in adapting traditional legal doctrines to the realities of the digital information age.

4.3 Jurisdictional Questions in the Case

One of the most significant aspects of Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others concerns the jurisdiction of the Karnataka High Court to entertain a dispute involving foreign parties and publications originating outside India. Jurisdiction in cross-border disputes is a central issue in Private International Law, particularly when the alleged wrongful act occurs in one jurisdiction but produces consequences in another.³⁶

In the present dispute, the allegedly defamatory content was published by Sri Lankan online news portals, while the petitioner approached the Karnataka High Court seeking directions against digital intermediaries operating within India. This raises the fundamental question of whether Indian courts may exercise jurisdiction over foreign publications merely because the material is accessible through the internet within Indian territory. The global accessibility of online content has significantly complicated traditional jurisdictional principles because internet publications may simultaneously be accessed by readers located in multiple

jurisdictions.³⁷

Courts in various jurisdictions have attempted to address this issue by focusing on the location where the reputational harm occurs. In the landmark case of *Dow Jones & Company Inc. v. Gutnick*, the High Court of Australia held that in cases involving internet defamation, the tort occurs in the jurisdiction where the defamatory material is downloaded and comprehended by readers.³⁸ The court reasoned that reputational harm occurs at the place where the plaintiff's reputation is affected rather than where the content was originally uploaded. This reasoning has influenced subsequent judicial approaches to internet jurisdiction in several common law jurisdictions.

Indian courts have also examined jurisdictional questions arising from internet publications. In *Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy*, the Delhi High Court held that the mere accessibility of a website within a jurisdiction is not sufficient to confer jurisdiction upon a court.³⁹ Instead, the plaintiff must demonstrate that the defendant's online activities were purposefully directed toward the forum state and that the website had a meaningful connection with the jurisdiction. This principle seeks to prevent courts from exercising jurisdiction in situations where the connection between the dispute and the forum state is merely incidental.

Applying these principles to the dispute involving Justice A.H.M.D Nawaz, the Karnataka High Court must consider whether the presence of digital intermediaries such as Google India provides a sufficient territorial connection to justify the exercise of jurisdiction. Although the allegedly defamatory content originated from Sri Lankan news portals, the petitioner argued that the continued availability of the material through search engine results caused reputational harm that transcended national boundaries.

Another relevant consideration in determining jurisdiction is the presence of defendants within the territorial jurisdiction of the court. Since the petition named Google India and the Ministry of Electronics and Information Technology as respondents, the court may examine whether the involvement of these entities provides a sufficient jurisdictional nexus to adjudicate the dispute. Additionally, the petitioner's reliance on constitutional remedies such as the Right to be Forgotten raises questions regarding the extraterritorial application of domestic legal principles in disputes involving foreign publications.

The jurisdictional questions raised in this case therefore illustrate the broader challenge faced by courts in adapting traditional territorial principles of law to the realities of global digital communication. As internet publications increasingly transcend national borders, courts must develop legal frameworks that balance the need to provide effective remedies for reputational harm with the need to avoid excessive assertions of jurisdiction that could disrupt the global exchange of information.

4.4 Role of Private International Law in the Dispute

The dispute in Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others provides a clear illustration of how principles of Private International Law operate in modern digital disputes involving cross-border online publications. Private International Law becomes relevant whenever a legal dispute involves multiple jurisdictions, foreign parties, or transnational activities that raise questions regarding jurisdiction, applicable law, and enforcement of judicial decisions.⁴⁰

In the present case, several elements bring the dispute within the scope of Private International Law. First, the petitioner is a Sri Lankan national and a sitting judge of the Supreme Court of Sri Lanka, while the respondents include Indian governmental authorities, global digital intermediaries, and Sri Lankan online news portals. The presence of parties from different jurisdictions immediately introduces a foreign element into the dispute, thereby triggering the application of conflict-of-law principles.

Second, the allegedly defamatory material was published by Sri Lankan news portals but was accessible globally through internet platforms and search engines. This highlights one of the central challenges of modern internet disputes: the separation between the place of origin of the publication and the place where reputational harm occurs. Online content can be accessed simultaneously in different jurisdictions, making it difficult to determine which country's legal system should regulate the dispute.⁴¹

Private International Law attempts to resolve such conflicts by establishing rules that determine which court should exercise jurisdiction and which legal system should apply to the dispute. In internet defamation cases, courts often consider factors such as the location of the parties, the place where the harm occurred, and the jurisdiction with the closest connection to the dispute. These principles aim to ensure that courts exercise jurisdiction in a manner that is

both fair to the parties and consistent with international legal cooperation.⁴²

Another dimension of Private International Law relevant to the present dispute concerns the enforcement of judicial remedies against multinational digital intermediaries. Search engines and online platforms operate across multiple jurisdictions and maintain infrastructure such as servers and data centres in different countries. Consequently, judicial orders requiring the removal of online content may involve complex questions regarding the territorial reach of domestic court orders and the willingness of digital intermediaries to comply with such directions.

International cooperation mechanisms also play an important role in addressing cross-border digital disputes. Legal systems often rely on instruments such as mutual legal assistance arrangements and international cooperation frameworks to facilitate the exchange of information and the enforcement of judicial decisions across national boundaries. Such cooperation becomes increasingly important in cases involving cross-border cyber activities and globally accessible digital content.⁴³

In the context of the Nawaz petition, the Karnataka High Court must consider whether Indian legal principles, including constitutional protections and emerging digital rights such as the Right to be Forgotten, can be applied in a dispute involving foreign publications and foreign parties. The case therefore illustrates how domestic courts may become forums for resolving disputes that arise from the global nature of internet communication.

Ultimately, the dispute highlights the growing importance of Private International Law in regulating digital environments where information flows freely across borders. As technological advancements continue to blur traditional territorial boundaries, courts and legal systems must develop coherent frameworks that address cross-border conflicts while respecting the principles of international comity and freedom of expression.

5. Legal Challenges in Cross-Border Online Defamation

5.1 Jurisdictional Conflicts between States

One of the most significant challenges in cross-border online defamation disputes arises from conflicting jurisdictional claims between different states. The internet enables information to

circulate globally without regard for territorial boundaries, meaning that a single publication may simultaneously affect individuals in multiple jurisdictions. As a result, courts in different countries may claim authority to adjudicate the same dispute, leading to overlapping jurisdiction and potential legal conflicts.⁴⁴

In traditional legal systems, jurisdiction was generally determined by territorial principles such as the location where the wrongful act occurred or where the defendant resided. However, the global accessibility of online publications complicates this framework because defamatory content may be accessed in numerous jurisdictions at the same time. Consequently, courts must determine whether the mere accessibility of online material within their territory is sufficient to establish jurisdiction or whether additional factors are required to demonstrate a meaningful connection with the forum state.⁴⁵

These jurisdictional challenges have led to concerns regarding forum shopping, a situation in which plaintiffs initiate legal proceedings in jurisdictions that offer more favourable legal standards or remedies. For example, some jurisdictions provide stronger protection for reputation, while others place greater emphasis on freedom of expression. Differences in national defamation laws may therefore encourage litigants to select forums that are most advantageous to their claims. Scholars have observed that such conflicts of law have become more frequent with the growth of internet communication and cross-border digital publications.⁴⁶

Another important issue arises when courts attempt to enforce domestic legal standards on global online platforms. National courts may issue orders requiring the removal or blocking of defamatory content within their jurisdiction, but such orders may have implications for users located in other countries where the content may be lawful. This situation creates tension between the sovereignty of individual states and the borderless nature of digital communication.

The jurisdictional conflict between states is particularly evident in cases involving multinational technology companies. Online intermediaries such as search engines and social media platforms operate across numerous jurisdictions and must comply with different legal requirements imposed by national courts. Compliance with one jurisdiction's legal order may sometimes conflict with the legal obligations imposed by another jurisdiction. As a result,

digital intermediaries are often placed in a difficult position when responding to court orders requiring the removal of online content.⁴⁷

The dispute involving Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others also reflects the complexities associated with jurisdictional conflicts. The petitioner sought relief from an Indian court against online content that originated from foreign publications, thereby raising questions regarding the territorial limits of judicial authority. If courts across different jurisdictions were to entertain similar claims relating to the same online publication, conflicting judicial decisions could potentially arise.

These challenges demonstrate that traditional jurisdictional principles are increasingly inadequate in addressing disputes arising from globally accessible digital publications. The need for clearer legal standards and enhanced international cooperation has therefore become a central issue in the regulation of cross-border online defamation disputes.

5.2 Regulation of Global Online Platforms

The regulation of global online platforms represents another major challenge in addressing cross-border online defamation disputes. Digital intermediaries such as search engines, social media networks, and online content-hosting platforms have become central actors in the modern information ecosystem. These platforms facilitate the creation, distribution, and accessibility of vast quantities of information, enabling users to communicate and share content across national borders almost instantly.

Unlike traditional media publishers, digital platforms generally do not produce the content themselves. Instead, they function as intermediaries that host or index user-generated material. This intermediary role raises complex legal questions regarding the extent to which such platforms should be held responsible for defamatory or unlawful content published by third parties. Courts and legislators around the world have struggled to develop legal frameworks that balance the need to protect individuals from reputational harm with the need to preserve open communication on digital platforms.

In India, the liability of online intermediaries is primarily governed by the Information Technology Act, 2000. The Act provides certain protections to intermediaries for third-party content hosted on their platforms, provided that they comply with due diligence requirements

and act upon receiving lawful orders directing the removal of unlawful material. These provisions recognize that holding intermediaries strictly liable for all user-generated content could hinder the functioning of digital platforms and restrict the free flow of information on the internet.

However, the global nature of digital platforms complicates the enforcement of national laws regulating online content. Platforms such as Google, Facebook, and other multinational technology companies operate across numerous jurisdictions and provide services to users located in different countries. Consequently, a court order issued in one jurisdiction requiring the removal of certain content may have implications for users in other jurisdictions where the content may not be considered unlawful. This raises important questions regarding the territorial scope of judicial orders and the ability of national courts to regulate globally accessible digital content.

Another important issue concerns the technical architecture of digital platforms, which often rely on complex global infrastructures involving servers, data centres, and content delivery networks located in multiple countries. Because digital data can be stored and transmitted across borders, enforcing national court orders against multinational platforms may require cooperation between regulatory authorities and technology companies operating in different jurisdictions. Scholars have therefore emphasized the importance of international cooperation mechanisms in addressing disputes involving cross-border digital platforms.⁴⁸

The dispute in *Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others* highlights the practical difficulties associated with regulating global online platforms. In the petition, the petitioner sought directions against Google India to remove search results linking to allegedly defamatory content published by Sri Lankan news portals. The case therefore raises questions regarding the responsibilities of search engines in controlling access to online content and the extent to which courts may direct digital intermediaries to remove or block links to allegedly unlawful material.

These challenges demonstrate that regulating global digital platforms requires a delicate balance between protecting individual rights and preserving the openness of the internet. As digital technologies continue to evolve, legal systems must develop regulatory frameworks that effectively address cross-border disputes without undermining the fundamental principles

of freedom of expression and global information exchange.

5.3 Balancing Freedom of Expression and Protection of Reputation

One of the most complex challenges in regulating online defamation involves balancing the fundamental right to freedom of expression with the equally important right to protect an individual's reputation. In democratic societies, freedom of speech and expression is considered a cornerstone of public discourse, enabling citizens to exchange ideas, criticize authority, and participate in democratic processes. However, this freedom is not absolute and must be exercised responsibly in order to prevent unjustified harm to the reputation and dignity of others.

The Constitution of India guarantees the right to freedom of speech and expression under Article 19(1)(a). At the same time, Article 19(2) permits the State to impose reasonable restrictions on this right in the interests of various considerations, including defamation. This constitutional framework recognizes that while open expression is essential for democratic governance, individuals also possess a legitimate interest in protecting their reputation from false and harmful statements. Courts are therefore required to strike a balance between these competing interests when adjudicating defamation disputes.

Judicial decisions have repeatedly emphasized that the right to reputation is closely linked with the right to dignity and personal liberty. Defamatory statements that falsely damage a person's standing in society may have serious consequences for their professional, social, and personal life. Consequently, legal systems recognize defamation law as a necessary mechanism to safeguard individuals against unjustified attacks on their reputation.⁴⁹

At the same time, courts must ensure that defamation laws are not used to suppress legitimate criticism or public debate. Excessive restrictions on speech may create a chilling effect, discouraging journalists, researchers, and ordinary citizens from expressing opinions on matters of public interest. Scholars and legal commentators have therefore emphasized the importance of maintaining a careful balance between protecting individual reputation and preserving the free flow of information in democratic societies.

The growth of digital communication has made this balancing exercise even more difficult. Online platforms enable individuals to express opinions instantly to a global audience,

increasing the potential impact of defamatory statements. At the same time, these platforms also play an important role in facilitating public discourse and enabling individuals to share information about matters of public concern. Consequently, courts must carefully evaluate whether restrictions imposed on online speech are proportionate and necessary to protect legitimate interests.

The petition in Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others reflects this tension between freedom of expression and reputational protection. While the petitioner sought the removal of allegedly defamatory content and the enforcement of the Right to be Forgotten, the court must also consider the implications of such measures for journalistic freedom and public access to information. The resolution of such disputes requires courts to balance the rights of individuals to protect their reputation against the broader societal interest in maintaining open and transparent communication in the digital age.

As online communication continues to expand across national borders, the challenge of balancing these competing rights will remain a central issue in the regulation of cross-border online defamation disputes.

6. Recommendations and Future Legal Framework

The growing number of cross-border online defamation disputes demonstrates the urgent need for legal frameworks that effectively address the challenges posed by globally accessible digital publications. Traditional legal principles based on territorial jurisdiction were developed in a period when information circulated primarily through geographically limited media. However, the rise of digital communication technologies has transformed the nature of publication, enabling information to cross national boundaries instantly. Consequently, legal systems must adapt their regulatory frameworks to respond to the realities of the digital environment.

One important step toward addressing cross-border online defamation disputes is the development of clearer jurisdictional standards. Courts should adopt consistent principles for determining jurisdiction in internet-related disputes in order to prevent conflicting judicial decisions and reduce legal uncertainty. Legal scholars have suggested that jurisdiction should

be based on factors such as the location where the reputational harm occurs, the presence of meaningful connections between the parties and the forum state, and the extent to which the online content targets a particular audience.

Such standards would help ensure that courts exercise jurisdiction in a predictable and balanced manner.

Another important reform involves strengthening the regulation of digital intermediaries while preserving the openness of the internet. Online platforms play a central role in the dissemination of information, and their cooperation is often necessary for the removal of defamatory or harmful content. At the same time, regulatory frameworks should avoid imposing excessive liability on intermediaries, as this could discourage innovation and limit the availability of online communication platforms. Instead, legal systems should encourage transparent procedures that enable individuals to request the removal of unlawful content while ensuring that platforms respect fundamental principles of freedom of expression.

International cooperation is also essential in addressing disputes involving cross-border digital publications. Because online content can circulate across multiple jurisdictions, unilateral legal actions taken by individual states may not always be effective in resolving such disputes. Governments and international organizations should therefore work toward the development of cooperative mechanisms that facilitate the exchange of information and the enforcement of judicial decisions across borders. International agreements and collaborative frameworks can play an important role in harmonizing legal standards and reducing conflicts between national legal systems.

The recognition of emerging digital rights, such as the Right to be Forgotten, may also contribute to the development of more effective legal responses to online defamation. This right allows individuals to request the removal of certain personal information from search engine results when such information is no longer relevant or when its continued availability unjustifiably harms personal reputation. Although the application of this principle must be carefully balanced against freedom of expression, it may provide an important remedy for individuals who suffer reputational harm in the digital environment.

The dispute in Justice A.H.M.D Nawaz v. Ministry of Electronics and Information

Technology & Others illustrates the importance of developing such legal frameworks. As digital communication continues to evolve, courts and lawmakers must ensure that legal systems are capable of addressing disputes involving cross-border online publications while maintaining respect for fundamental rights and international legal cooperation.

7. Conclusion

The expansion of digital communication technologies has fundamentally transformed the nature of defamation disputes by enabling information to circulate instantly across national borders. Traditional legal doctrines governing defamation were developed in an era when publications were geographically limited and jurisdiction could easily be determined based on territorial principles. However, the emergence of the internet has significantly complicated these principles because online publications may simultaneously affect individuals located in multiple jurisdictions. As a result, cross-border online defamation disputes have become increasingly complex, raising important questions regarding jurisdiction, applicable law, intermediary liability, and the enforcement of judicial remedies.⁵⁰

Private International Law plays a crucial role in addressing these challenges by providing legal mechanisms that determine which courts should exercise jurisdiction and which legal systems should apply in disputes involving foreign elements. In the context of online defamation, courts must consider factors such as the location of the parties, the place where reputational harm occurs, and the connection between the online publication and the forum state. These considerations are necessary to ensure that jurisdiction is exercised in a manner that is both fair and consistent with principles of international legal cooperation.

The case of Justice A.H.M.D Nawaz v. Ministry of Electronics and Information Technology & Others illustrates how modern defamation disputes can involve multiple jurisdictions and global digital intermediaries. In this case, a sitting judge of the Supreme Court of Sri Lanka approached the Karnataka High Court seeking the removal of allegedly defamatory online content and invoking the emerging digital right known as the Right to be Forgotten. The dispute highlights the complex interaction between domestic constitutional protections, cross-border digital publications, and the role of multinational technology companies in facilitating access to online information.

The issues raised in the Nawaz petition demonstrate the difficulties faced by courts when applying traditional legal principles to disputes arising from globally accessible digital platforms. While individuals have a legitimate interest in protecting their reputation from false and harmful online statements, courts must also ensure that regulatory measures do not unduly restrict freedom of expression or interfere with the global exchange of information. Achieving an appropriate balance between these competing interests remains one of the central challenges in the regulation of online defamation.⁵¹

In conclusion, the increasing prevalence of cross-border online defamation disputes underscores the need for clearer jurisdictional standards, enhanced international cooperation, and balanced regulatory frameworks that address the realities of digital communication. As technology continues to evolve and the internet further erodes traditional territorial boundaries, legal systems must adapt their principles to ensure that individuals have effective remedies against reputational harm while preserving the fundamental values of free expression and open communication in the digital age.

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