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Kerala High Court Clarifies Limits of Intermediary Liability and Writ Jurisdiction in Online Defamation Cases

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Background and Context

The proliferation of online content platforms has generated persistent tension between the rights of individuals to seek redress for reputational harm and the statutory protections afforded to digital intermediaries operating in India. A judgment delivered by the Kerala High Court on 22 May 2026 squarely addresses this tension, setting out with considerable clarity the boundaries of a High Court's writ jurisdiction in online defamation disputes and affirming that intermediaries cannot be compelled to remove allegedly defamatory content absent a prior judicial declaration of its unlawful character.

The petitioners, managerial employees of a private broadcasting company, sought relief under Article 226 of the Constitution of India against the Union of India (through the Ministries of Electronics and Information Technology, and Information and Broadcasting), Google LLC and its Indian subsidiaries, as well as Tidings Digital Publications Pvt. Ltd. and its director, who operated an online channel named "Marunadan Malayali." The petitioners alleged that the channel had repeatedly published false and defamatory content through YouTube, causing reputational and professional harm, and that despite legal notices demanding content removal and compensation of Rs. 10 crores each, neither the platform nor the government authorities took remedial action.

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Key Issues Before the Court

The Court was called upon to address three interconnected issues. First, whether a writ of mandamus could lie directing the intermediary (Google/YouTube) to remove content alleged to be defamatory. Second, whether the official respondents (the Union of India) could be directed to enforce the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("IT Rules 2021") against non-compliant platforms. Third, whether compensation could be awarded in writ proceedings for harm caused by third-party online content.

The Court's Holding

The writ petition was dismissed in its entirety. The Court held that:

1. An intermediary cannot be directed by a court to remove content on grounds of alleged defamation without a prior judicial finding that the content is, in fact, defamatory.
2. A writ petition under Article 226 is not the appropriate forum for adjudication of whether specific online content constitutes defamation, as this is a question of fact requiring evidence.
3. The petitioners had failed to exhaust statutory remedies or approach the competent authorities under the first and second respondents before seeking a writ of mandamus.
4. The claim for monetary compensation in the writ petition was misconceived in the circumstances.

The Court clarified expressly that its dismissal would not preclude the petitioners from pursuing civil or criminal remedies against the publisher-respondents.

The Court's Reasoning

Intermediaries and the Limits of Due Diligence

The judgment provides a thorough analysis of Section 2(w) and Section 79 of the Information Technology Act, 2000. The Court affirmed that YouTube, functioning as a platform on which third-party users upload and publish content without editorial control by the platform, squarely qualifies as an “intermediary” within the meaning of Section 2(w). It does not generate or modify uploaded content and therefore is not an “originator” under Section 2(za).

The safe harbour protection under Section 79 is qualified by Section 79(3)(b), which withdraws the exemption if an intermediary, upon receiving “actual knowledge” of unlawful content, fails to expeditiously remove or disable access to it. However, the Court applied the reading-down of this provision by the Supreme Court in *Shreya Singhal v. Union of India* [(2015) 5 SCC 1], which held that “actual knowledge” in this context crystallises only upon receipt of a court order directing removal, and not merely upon receipt of a private complaint or legal notice. This interpretation has since been codified in Rule 3(1)(d) of the IT Rules 2021, amended by G.S.R. 120(E) dated 10 February 2026, which requires intermediaries to act upon actual knowledge arising from an order of a court of competent jurisdiction or a reasoned written intimation from an authorised government officer of prescribed rank.

The Court further noted that the IT Rules 2021, as originally enacted, included “defamatory” content within the categories of prohibited information under Rule 3(1)(b)(ii). This term was consciously removed by the legislature through an amendment vide G.S.R. 794(E) dated 28 October 2022. The legislative intent, the Court reasoned, reflects an acknowledgment that intermediaries as private entities are institutionally incapable of adjudicating whether content is defamatory, a determination that involves nuanced legal and factual assessment appropriately reserved for courts. Rule 3(1)(b)(xi), which covers content violating “any law for the time being in force,” does not fill this gap because content cannot be treated as violating the law on account of defamation until a competent court so declares.

The Writ Jurisdiction Limitation

The Court reiterated the well-established principle that Article 226 proceedings are not suited to fact-intensive adjudication. Questions of whether specific statements are false, whether they were published maliciously, and whether they caused the specific harm alleged, cannot be resolved on affidavits and documents alone. The petitioners had an efficacious civil remedy available to them, including a suit for defamation seeking injunctive relief and damages before a competent civil court, as illustrated by the Delhi High Court’s judgment in *Yusuffali Musaliam Veettil Abdul Kader v. Shajan Skariah* [2023 SCC OnLine Del 8643], which was decided in exercise of civil original jurisdiction rather than writ jurisdiction. The Court drew this distinction explicitly to explain why the Delhi precedent, while persuasive in its outcome, was procedurally distinguishable.

The Court’s reasoning was reinforced by the Orissa High Court’s decision in *Varsha Priyadarshini v. Government of India* [W.P. (C) No. 13508 of 2022] and a coordinate bench of the Kerala High Court’s own ruling in *Aneesh K Thankachan v. Union of India* [2024 KHC OnLine 1616], both of which emphasised that defamation-based content removal claims must first be adjudicated before a court of competent jurisdiction before a writ court intervenes.

Free Speech Considerations

The Court engaged carefully with the constitutional dimension raised by the content publisher’s right to free speech under Article 19(1)(a) and the freedom to practice a profession under Article 19(1)(g). Relying on the Constitution Bench decision in *Kaushal Kishor v. State of Uttar Pradesh* [(2023) 4 SCC 1], the Court observed that while defamatory speech lies outside the protected core of Article 19(1)(a) and may be restrained, the determination of whether given speech is defamatory requires a prior finding by a competent authority. The State’s power to impose restrictions under Article 19(2) and the duty of government intermediary-regulators to act arise only once that threshold question is answered.

Mandamus and the Exhaustion of Remedies

A writ of mandamus is available only to compel a public authority to perform a legal duty it has failed to discharge. The Court found that the petitioners had never formally approached the competent authorities within the Union Ministries to raise specific allegations of non-compliance by the platform respondents under the IT Rules 2021, such as failure to appoint a Chief Compliance Officer or establish grievance redressal mechanisms under Rules 4(1)(a) and 4(1)(c). The only communication addressed to the government respondents was a demand for Rs. 10 crores in compensation, which is not a relief that the

Ministries have power to grant. The Court held that mandamus cannot issue against authorities who have not been moved in the manner and for the purpose contemplated by law.

Practical Implications for Stakeholders

For individuals and entities aggrieved by online content: This judgment underscores that private legal action before a competent civil court remains the primary route for addressing defamatory online publications. A civil suit for defamation can produce an injunction directing content removal, following which intermediaries are obligated under both Section 79 of the IT Act and Rule 3(1)(d) of the IT Rules 2021 to comply expeditiously. Attempting to bypass civil litigation through writ proceedings in defamation matters is likely to result in dismissal on jurisdictional grounds.

For digital intermediaries and platforms: The judgment affirms and strengthens the safe harbour framework. Platforms operating as intermediaries are not required to adjudicate the veracity or defamatory character of user-generated content on receipt of a private complaint. Their obligation to remove content on defamation grounds is triggered exclusively by a court order or an authorised government notification. Platforms should, however, ensure that their grievance redressal mechanisms, compliance appointments, and due diligence obligations under the IT Rules 2021 are fully operational, as non-compliance in those respects remains independently actionable.

For regulators: The Court has signalled that writ courts will not substitute for the Ministry's regulatory function. Industry stakeholders expecting the High Court to direct regulatory enforcement against non-compliant platforms must first engage the Ministry formally and await a statutory response before approaching the courts.

Concluding Observations

The Kerala High Court's ruling in *Anto Augustine v. Union of India* represents a measured and jurisprudentially sound consolidation of the intermediary liability framework in the context of online defamation. It resists the temptation to expand writ jurisdiction into the domain of contested factual determinations, and it fortifies the principle, first enunciated in *Shreya Singhal* and now codified in the IT Rules 2021, that intermediary safe harbour protections can only be displaced by judicial or authorised governmental action, not by unilateral private complaint.

For practitioners advising clients aggrieved by defamatory online content, the judgment is a clear call to pursue the civil courts in the first instance, armed with specific pleadings and a prayer for interim injunctive relief. The writ route, while constitutionally available in appropriate cases, is an inadequate substitute where the foundational question, whether the content is defamatory, remains unadjudicated.

Anto Augustine & Ors. v. Union of India & Ors., WP(C) No. 9839 of 2024, High Court of Kerala at Ernakulam, decided 22 May 2026 (Justice Ziyad Rahman A.A.)

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