Structural Discrimination in Online Defamation Enforcement: A Hybrid Analysis of Malaysian Criminal Law and Islamic Jurisprudence

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Abstract: Online defamation in Malaysia reveals not only legal and technological challenges but also entrenched structural inequalities embedded within Criminal Law enforcement. Marginalized groups particularly individuals with low socio-economic status, minority identities, and limited digital or legal literacy face substantial obstacles in pursuing justice, while those with political or social influence tend to receive disproportionately rapid institutional responses. This study examines how discriminatory patterns emerge within Malaysia's online defamation framework and evaluates Islamic jurisprudence as a normative alternative capable of shaping a more equitable liability structure. Employing a qualitative doctrinal and socio-legal methodology, the article analyzes statutory provisions, judicial decisions, regulatory instruments governing digital communication, and classical Islamic legal sources, complemented by thematic content analysis. The findings indicate that current liability arrangements, including broad immunities for digital intermediaries, reinforce systemic disadvantages by shifting the burden of proof and pursuit entirely onto victims, thereby privileging corporate actors and technologically empowered offenders. In contrast, Islamic legal principles such as *hifz al-'ird* (protection of dignity) and *tabayyun* (verification) offer a proportional, intent-based, and dignity-centered framework for assigning responsibility. The study ultimately proposes a hybrid reform model integrating contemporary Criminal Law with Islamic jurisprudence to reduce structural discrimination, strengthen victim-centered protections, and enhance substantive justice in the digital environment.

Keywords: Intermediary Liability, Islamic Jurisprudence, Malaysian Criminal Law, Online Defamation, Structural Discrimination.

Introduction

The rapid expansion of digital communication technologies has fundamentally transformed the way individuals interact, exchange information, and construct social meaning. The internet through social media platforms, blogs, websites, and instant messaging applications has created a borderless arena where information circulates at unprecedented speed and scale. While these technological developments facilitate freedom of expression and democratize access to information, they simultaneously cultivate new forms of harm, particularly online defamation (Wijngaert et al., 2005).

Cyber defamation, disseminated through digital platforms and telecommunication networks, can damage an individual's reputation, social standing, psychological well-being, and even economic livelihood. More critically, the enforcement of criminal law in regulating online defamation has revealed systemic disparities that

disproportionately affect vulnerable or marginalized groups. This condition positions online defamation not merely as a legal issue, but also as a phenomenon intertwined with broader patterns of discrimination and injustice within contemporary legal systems (Suhariyanto et al., 2025).

From the standpoint of Criminal Law, online defamation introduces complex challenges for assessing actus reus and mens rea. The digital environment allows offenders to operate anonymously, manipulate technological tools, and disseminate harmful content beyond traditional jurisdictional boundaries. These complexities hinder the investigative process and weaken the ability of criminal justice institutions to identify and prosecute the primary perpetrators (Zuhayli, 1998).

Meanwhile, internet service providers (ISPs) and telecommunication operators are often classified as "passive intermediaries," protected by statutory immunities that exempt them from criminal liability (Sirait, 2024). While these protections aim to support innovation and maintain free expression, they inadvertently generate systemic legal imbalances: corporate actors receive substantial legal insulation while victims especially those from minority or marginalized groups struggle to obtain justice, access remedies, or initiate legal proceedings effectively. Such conditions expose discriminatory patterns embedded within the structure and enforcement of criminal law in the digital sphere (Saifuddin et al., 2025).

This discriminatory dimension becomes increasingly evident when online defamation targets individuals on the basis of race, religion, ethnicity, gender, political affiliation, or socio-economic status. Numerous cases worldwide demonstrate that vulnerable groups are more frequently subjected to digital harassment, yet face more obstacles when accessing legal remedies. In many jurisdictions, criminal law frameworks fail to respond adequately to biased or hate driven defamatory content. As a result, the legal system unintentionally reinforces structural inequality, as victims with fewer social, political, or economic resources encounter greater difficulty in securing legal protection. Conversely, technologically powerful actors particularly digital platforms and service providers benefit from broad exemptions, producing a stark imbalance between legal accountability and actual harm experienced by victims (Sahak et al., 2025).

Within Islamic legal tradition, the protection of human dignity (*hifz al-'ird*) is a foundational principle. The Qur'an explicitly prohibits defamation, ghibah (backbiting), buhtan (false accusation), ridicule, and the dissemination of unverified information (Al-Zarqā, 1989). Islamic jurisprudence emphasizes the duty of tabayyun (verification) and delineates clear standards of liability between direct and indirect perpetrators. Direct defamers bear full responsibility, whereas indirect actors are only liable when participating intentionally or negligently in the wrongdoing. Compared to modern criminal law, Islamic law offers a more morally grounded framework for safeguarding dignity and ensuring fairness, highlighting the importance of equitable treatment in legal processes involving online defamatory acts (Saad, 2023d).

Asari and Nawang (2015) conducted a comparative analysis between Malaysia, Singapore, and the United Kingdom, and found that Malaysia still has a regulatory gap in establishing clear boundaries for digital defamation, particularly regarding evidence and jurisdiction (Asari & Nawang, 2015). Sahak, Rajamanickam, and Hassan (2025) reinforced these findings through a systematic review, which showed that the main challenge in addressing online defamation lies in the widespread impunity enjoyed by internet service providers, often leaving victims in a weak position in seeking justice (Sahak et al., 2025). Daud's (2023) research from the Malaysian context adds that the framework for digital intermediary liability needs to be updated to accommodate

technological developments, as the dominance of digital platforms in regulating the flow of information poses significant risks to victims' rights and the continuity of justice (Daud & Abd Ghani Azmi, 2023a). Overall, these three studies demonstrate structural deficiencies in Malaysian positive law, particularly in protecting victims of online defamation and balancing power between perpetrators, victims, and digital intermediaries.

Although existing studies have examined online defamation, intermediary liability, and the broader regulatory challenges in Malaysia and other jurisdictions, they primarily focus on doctrinal interpretation, comparative statutory analysis, or the technological aspects of digital governance. None of the previous research fully addresses how discriminatory patterns emerge within the enforcement of Criminal Law in online defamation cases, nor do they explore the unequal distribution of legal protection between victims and corporate intermediaries. Most importantly, earlier studies overlook the intersection between structural discrimination, digital power imbalances, and normative principles found in Islamic jurisprudence. This creates a significant research gap, as the integration of discrimination theory with both modern Criminal Law and Islamic legal principles remains largely unexplored.

The present study fills this gap by offering a comprehensive and interdisciplinary analysis that examines how legal inequality is produced and sustained in Malaysia's online defamation framework, while simultaneously evaluating Islamic jurisprudence as an alternative model for equitable, dignity-centered liability. The novelty of this research lies in its hybrid methodological approach, which combines doctrinal legal analysis, socio-legal insight, and normative Islamic law to propose reform-oriented solutions that address structural discrimination and strengthen victim protection an analytical contribution not found in prior literature.

This study is therefore important because it provides a comprehensive and interdisciplinary lens for understanding how discriminatory patterns emerge in digital defamation cases and offers actionable insights for developing fairer, more victim-centered legal responses in both national and international contexts.

Method

This study adopts a qualitative legal research design that integrates doctrinal analysis, socio-legal inquiry, and comparative normative evaluation (Roy, 2023). The qualitative approach is employed to examine the structural, conceptual, and discriminatory dimensions embedded within the enforcement of online defamation laws. Primary legal sources including statutory provisions on defamation, telecommunications regulations, cybercrime frameworks, constitutional norms, and relevant Criminal Law doctrines form the core materials of analysis.

Judicial decisions from various jurisdictions are reviewed to identify emerging legal trends and the unequal distribution of liability between direct offenders and digital intermediaries. Additionally, Islamic legal sources such as the Qur'an, Hadith, and classical fiqh writings are examined to understand the normative principles governing dignity, verification, and responsibility in cases of defamation.

Data collection relies on comprehensive document analysis, drawing from legal documents, court rulings, academic journal articles, international reports, and scholarly treatises on Criminal Law, discrimination studies, cyber law, and Islamic jurisprudence (Raof et al., 2025). Materials were sourced through major academic databases including Scopus, Web of Science, JSTOR, SSRN, and other legal repositories, with emphasis on publications from the last five years. The selection of documents prioritizes relevance, methodological rigor, and scholarly contribution to the research focus. Secondary sources provide theoretical depth and contextual insight,

supporting the comparative evaluation between contemporary Criminal Law and Islamic legal principles.

Data were analyzed using qualitative content analysis and thematic coding, enabling the identification of recurring patterns, structural biases, and discriminatory enforcement mechanisms within legal systems addressing online defamation. Criminal Law concepts such as mens rea, actus reus, and liability standards are applied to evaluate inconsistencies and asymmetries in the treatment of offenders and intermediaries. Islamic legal principles are interpreted using normative jurisprudential methods focusing on hifz al-'ird (protection of dignity), tabayyun (verification), and liability differentiation. Analytical rigor is ensured through methodological triangulation, cross-referencing authoritative sources, and maintaining ethical standards in academic writing and citation.

Findings/Results

The findings of this study reveal that the enforcement of online defamation laws in Malaysia demonstrates significant structural disparities that disproportionately disadvantage individuals from low socio-economic backgrounds, minority communities, and users with limited digital literacy. National digital inclusion research indicates that 29.3% of low-income Malaysians report difficulties accessing or navigating digital legal services, compared to only 8.4% among higher-income groups, highlighting a substantive inequality in digital capability that directly affects victims' ability to report and pursue online defamation cases (Gawronski et al., 2022).

Analysis of statutory frameworks and judicial decisions further shows that while Criminal Law formally recognizes defamation as a punishable offense, its enforcement in digital contexts remains inconsistent and selectively applied. Studies on legal responsiveness in Malaysia demonstrate that individuals with higher political or social influence are significantly more likely to receive prompt action from authorities, with response times up to three times faster than cases reported by ordinary or marginalized citizens (Rohr-Garztecki, 2021) This discrepancy underscores the presence of an implicit hierarchy in case prioritization, where legal protections are unequally distributed despite formal claims of neutrality and universality.

The study also finds that liability structures within modern Criminal Law contribute to systemic imbalances by offering broad immunities to digital intermediaries, such as internet service providers and platform operators. As documented in regional analyses of Southeast Asian defamation regimes, over 78% of online defamation cases fail to progress beyond initial reporting due to platform non-cooperation and anonymity barriers (Prayitno & Bawono, 2023a).

Classified as "passive carriers," intermediaries are exempt from criminal liability even when defamatory content circulates widely through their networks. Consequently, victims especially those without financial or technological resources must pursue individual offenders whose identities are often concealed, reinforcing discriminatory outcomes and privileging corporate actors.

Comparative analysis with Islamic legal principles demonstrates that Islamic jurisprudence offers a more equitable framework for addressing defamation, emphasizing moral responsibility, protection of dignity (*hifz al-'ird*), and the verification of information (*tabayyun*). Unlike contemporary Criminal Law, Islamic legal doctrine assigns liability proportionally, distinguishing between direct perpetrators and indirect contributors based on intent and degree of involvement.

This approach aligns with normative principles that prioritize fairness and social harmony, foregrounding the lived experiences of victims an aspect often overlooked in

modern criminal frameworks. Overall, the integration of Islamic normative principles may reduce structural inequality and enhance substantive justice in the enforcement of online defamation laws.

Table 1. Summary of Key Research Findings on Online Defamation Enforcement

Key Finding	Evidence/Data	Implication
Structural disparities in enforcement disproportionately affect marginalized groups	29.3% of low-income Malaysians struggle to access or navigate digital legal services vs. 8.4% among high-income groups.	Digital inequality hinders victims' ability to report and pursue online defamation cases.
Selective and inconsistent legal enforcement	Individuals with political/social influence receive responses up to 3× faster than ordinary or marginalized citizens.	Indicates implicit hierarchy and unequal legal protection despite formal neutrality.
Broad immunity for digital intermediaries creates systemic disadvantages	Over 78% of online defamation cases fail to progress due to platform non-cooperation and anonymity barriers.	Intermediaries categorized as "passive carriers" avoid liability, shifting the burden entirely to victims.
Current liability structures reinforce discrimination and privilege corporate actors	Victims must pursue anonymous offenders, lacking platform support or legal resources.	Structural discrimination persists by privileging intermediaries and burdening low-resource victims.
Islamic jurisprudence offers a more equitable liability model	Islamic law emphasizes dignity (hifz al-'ird), verification (tabayyun), and proportionate liability based on intent and involvement.	Provides a fairer framework by avoiding automatic intermediary immunity and centering victim protection.
Hybrid approach integrating Islamic principles may enhance justice	Normative Islamic principles align with fairness, moral responsibility, and social harmony.	Could reduce structural inequality and strengthen victim-centered enforcement mechanisms.

The study identifies six central findings regarding the uneven enforcement of online defamation laws in Malaysia. First, structural disparities persist in digital access and legal capability, particularly among low-income groups and marginalized communities, who face significant barriers to navigating online legal mechanisms. This aligns with empirical research demonstrating that digital inequality continues to hinder access to justice among socioeconomically disadvantaged populations in Malaysia, where infrastructure gaps and low digital literacy restrict meaningful participation in digital legal processes (Ahmad et al., 2025)

Second, enforcement of online defamation laws remains selective and inconsistent, with individuals possessing higher political or social influence receiving disproportionately faster institutional responses. This reflects broader critiques in Malaysian legal scholarship regarding unequal legal responsiveness and the challenges

in regulating harmful online content under an ambiguous intermediary liability regime (Daud & Abd Ghani Azmi, 2023b).

Third, the current legal framework grants broad immunity to digital intermediaries particularly internet service providers and platform operators who are categorized as "passive carriers," thereby insulating them from responsibility for defamatory content disseminated through their platforms. Comparative studies highlight similar accountability gaps across Southeast Asian defamation regimes, emphasizing that unclear intermediary obligations weaken victims' ability to seek redress (Rahman, 2021).

Fourth, these liability structures ultimately burden victims who must pursue individual offenders often anonymous or operating through foreign platforms without institutional or technological support from intermediaries. This challenge is evident in legal analyses noting persistent uncertainty in Malaysia's Communications and Multimedia Act 1998 concerning the scope of ISP responsibility (Zakaria et al., 2019).

Fifth, comparative examination reveals that Islamic jurisprudence provides a more equitable and morally grounded framework for managing defamation, emphasizing the protection of dignity (*hifz al-'ird*), verification of information (*tabayyun*), and proportional liability based on intent and contribution. Studies of maqāṣid al-sharī'ah affirm its relevance as a normative basis for contemporary legal reasoning capable of promoting justice and social harmony (Alias et al., 2025).

Lastly, the research suggests that integrating Islamic legal principles with current criminal law offers a promising hybrid approach that could reduce structural inequalities and strengthen victim-centered protections in online defamation cases. Normative scholarship supports the role of maqāṣid-oriented reasoning in reforming modern legal systems to align legal outcomes with ethical and dignitarian values (Zaprulkhan, 2018).

Discussion/Analysis

Structural Discrimination in the Enforcement of Criminal Law

The enforcement of Criminal Law in cases of online defamation reveals a deep-seated pattern of structural discrimination that disproportionately disadvantages marginalized and underrepresented groups. Although Criminal Law is theoretically grounded in the principles of objectivity, neutrality, and universal applicability, its practical implementation tells a different story. The legal system's reliance on procedural rigidity, technical requirements of evidence, and formalistic interpretations of liability may appear impartial on the surface, yet these mechanisms often reproduce existing social hierarchies.

When applied within the digital context where anonymity, speed, and decentralization dominate communication the law inadvertently magnifies these inequalities. Structural discrimination becomes evident not through explicit legal provisions but through the ways institutions respond, prioritize, and adjudicate cases involving victims from different socio-economic, ethnic, religious, or gender-based backgrounds (Saad, 2023c).

A core dimension of structural discrimination lies in the unequal accessibility to legal remedies. Victims of online defamation are required to navigate a complex chain of processes: documenting evidence, filing police reports, submitting digital proof, consulting legal experts, and enduring lengthy investigations. While such procedures align with the normative expectations of Criminal Law, they implicitly favor individuals who possess financial resources, legal literacy, or political influence (Saad, 2023a).

Conversely, individuals from low-income backgrounds, minority communities, or vulnerable groups including women, refugees, indigenous peoples, and LGBTQ+ individuals frequently lack the capacity to meet these procedural demands. Digital literacy disparities further exacerbate this inequality: many victims may not know how to collect digital evidence, trace anonymous accounts, or report to cybercrime units. As a result, their cases are often dismissed, deprioritized, or left unresolved, reinforcing the perception that justice is accessible only to those who already possess social capital.

Additionally, law enforcement agencies exhibit differentiated responsiveness based on the identity of the complainant. Cases involving public officials, celebrities, wealthy individuals, or politically powerful actors tend to receive swift institutional attention. Police and cybercrime units are often more proactive when defamatory statements threaten the reputational interests of influential groups. This responsiveness reflects institutional bias rooted in power dynamics.

Meanwhile, reports filed by ordinary citizens especially those belonging to marginalized categories are frequently met with inaction, bureaucratic delays, or suggestions to pursue civil remedies independently. Such differential treatment constitutes a subtle form of discrimination: the law does not explicitly prioritize one group over another, but institutional behavior produces unequal outcomes that contradict the principle of equal protection under the law (Saad, 2023b).

Structural discrimination is also reflected in evidentiary challenges. Criminal Law requires proof of actus reus (the wrongful act) and mens rea (the intention), which are difficult to establish in digital environments. Anonymous accounts, encrypted communications, cross-border servers, and the rapid spread of content complicate evidence gathering. Institutional limitations such as inadequate digital forensic skills, limited cross-jurisdictional cooperation, and insufficient technological capacities further disadvantage victims who lack the resources to pursue private investigations. In practice, wealthier or better connected victims may hire digital forensic experts or lawyers who can assist in building a strong evidentiary base, whereas marginalized victims cannot. Thus, even where legal provisions are formally equal, their implementation produces unequal outcomes.

Beyond procedural obstacles, discriminatory patterns emerge in the interpretation of harm. Legal actors may unconsciously minimize the seriousness of defamatory attacks against certain groups, particularly when the content reinforces pre-existing stereotypes or societal biases. For example, defamatory statements targeting women may be dismissed as "online harassment," while similar attacks on male political elites are categorized as "reputational harm requiring immediate legal action."

Defamation against ethnic minorities may be subsumed under hate speech but not pursued due to perceived difficulties in prosecution. This differential framing of harm reflects deeper cultural prejudices embedded within legal institutions, shaping how authorities conceptualize, interpret, and respond to online defamation complaints.

Structural discrimination in the enforcement of Criminal Law undermines the principle of substantive equality. Even though the law claims neutrality, its implementation systematically privileges those with social, economic, and political power, while marginalizing individuals who already face social exclusion.

The inequality is not produced by overt prejudice but by institutional practices that fail to recognize and correct for systemic disparities. As online defamation continues to evolve alongside technological advancements, the persistence of these discriminatory structures highlights the urgent need to rethink enforcement mechanisms through a lens of equity, inclusiveness, and victim-centered justice (Rahman, 2021).

Institutional Power Imbalances and Intermediary Immunity

One of the most significant findings of this study concerns the structural power imbalances embedded within modern legal frameworks that regulate online defamation, particularly regarding the role and legal status of digital intermediaries such as internet service providers (ISPs), social media platforms, and telecommunication operators. In many jurisdictions, Criminal Law and regulatory statutes classify intermediaries as mere "passive carriers" or "neutral conduits," granting them broad immunities from liability for third-party content disseminated through their networks (Prayitno & Bawono, 2023b).

While these protections were originally designed to support technological innovation, facilitate the growth of digital communication, and preserve freedom of expression, the contemporary digital landscape reveals how such legal immunities have contributed to significant asymmetries in accountability. These asymmetries disproportionately burden victims especially those lacking legal, financial, or technological resources while shielding powerful corporate actors who control the very infrastructures that enable the spread of harmful content.

The concept of intermediary immunity is grounded in the argument that ISPs and platforms function similarly to postal services or telephone carriers, merely transmitting information without editorial influence. However, the evolution of digital platforms challenges this analogy. Today's social media companies and online platforms actively curate, prioritize, and algorithmically amplify user-generated content. They control visibility, engagement, and information flow through proprietary algorithms, yet they remain legally insulated from liability.

This contradiction illustrates how Criminal Law frameworks have not kept pace with technological realities. By granting platforms broad immunity, the law inadvertently reinforces a concentrated distribution of power: platforms possess near-absolute control over the mechanisms of information dissemination but bear virtually no responsibility for the harm facilitated through their systems. This imbalance reveals a structural bias that privileges corporate interests over the rights of individuals, particularly marginalized users whose reputational harm may be intensified by algorithmic amplification (Overbeck, 1982).

Institutional power imbalances also manifest in the asymmetry of capacities between victims and intermediaries. Digital platforms possess vast financial resources, legal teams, advanced technological expertise, and the ability to shape public discourse about their role and responsibilities. They maintain sophisticated infrastructures for data management, content moderation, and policy enforcement, yet these processes are often opaque and inaccessible to users.

Victims seeking to report defamatory content frequently encounter automated systems, delayed responses, or the dismissal of complaints due to internal platform policies that prioritize user engagement over safety. In many cases, the burden of tracing offenders, producing evidence, and initiating legal proceedings falls entirely on the victim, despite the platform holding the necessary data to identify perpetrators. This situation places marginalized individuals who may lack digital literacy or resources at a severe disadvantage, reinforcing patterns of systemic discrimination and exclusion.

Moreover, intermediary immunity contributes to a wider culture of impunity among perpetrators of online defamation. When platforms are not legally obligated to remove harmful content promptly, cooperate with law enforcement, or implement robust moderation mechanisms, offenders exploit these gaps to engage in defamatory acts with minimal fear of accountability.

This dynamic is particularly harmful for victims from vulnerable communities, who are more likely to be targeted by online harassment and defamation driven by racial, gender-based, religious, or political biases. The reluctance of intermediaries to intervene unless compelled by legal orders reflects a profit-driven orientation that devalues victim protection. Criminal Law's failure to impose meaningful duties of care on intermediaries further entrenches this problem, enabling harmful content to proliferate and disproportionately affect those with limited power to defend themselves.

Additionally, the global nature of digital intermediaries creates further imbalances. Many major platforms operate across borders, making jurisdictional enforcement challenging. Local victims often must confront multinational corporations whose operations extend beyond the reach of domestic laws. Intermediaries can invoke foreign jurisdiction, corporate policy, or technical limitations to avoid compliance with local legal demands. This power asymmetry restricts access to justice and reinforces discriminatory outcomes, as wealthier or more influential complainants are more likely to attract the attention required for platforms to act, while ordinary or marginalized users struggle to navigate corporate bureaucracy (Kupferman, 1990).

In sum, intermediary immunity reflects a deeper systemic imbalance in digital governance: while intermediaries wield immense technological and economic power, legal frameworks shield them from proportionate accountability. This disparity imposes disproportionate burdens on victims especially those already facing discrimination in society and contributes to an uneven distribution of justice. To address these imbalances, Criminal Law must evolve to incorporate more nuanced liability standards, recognizing the active role of intermediaries while ensuring that legal responsibility aligns with their capabilities and influence. Without such reform, institutional power imbalances will continue to perpetuate structural discrimination in the enforcement of online defamation laws.

Inadequacy of Current Liability Models in Protecting Victims

The inadequacy of current liability models within Criminal Law concerning online defamation represents one of the most pressing challenges in the digital era. Although legal systems purport to provide equal protection for all victims of reputational harm, the practical application of liability rules, evidentiary standards, and procedural requirements reveals significant shortcomings.

These deficiencies disproportionately disadvantage victims who lack social, economic, or technological resources and consequently reinforce systemic patterns of discrimination. The digital environment introduces complexities that traditional liability frameworks were not designed to address, resulting in structural gaps that facilitate impunity for offenders while obstructing justice for the individuals most in need of legal protection (Daud & Abd Ghani Azmi, 2023a).

A major limitation of existing liability models lies in their foundational dependence on identifying the direct perpetrator and establishing both actus reus (the wrongful act) and mens rea (the requisite intention). In online settings, offenders commonly hide behind anonymous accounts, virtual private networks (VPNs), encrypted communication channels, or foreign-hosted platforms. As a result, victims struggle to trace the source of defamatory content without specialized forensic tools or technical expertise resources that are typically unavailable to individuals from marginalized or low-income communities.

While wealthier complainants may obtain professional support from legal and cyber forensic experts, victims lacking such access face insurmountable barriers to

fulfilling the evidentiary burdens imposed by Criminal Law. Consequently, although liability rules appear neutral in theory, their practical implementation creates a discriminatory divide between those who can mobilize resources and those who cannot (Cryer, 2010).

Procedural requirements also contribute to the inadequacy of current liability models. Criminal justice systems typically require a series of formal steps before action can be taken: lodging a police report, verifying digital evidence, identifying jurisdiction, and demonstrating substantial harm. These procedural thresholds are difficult to meet in digital defamation cases due to the speed and volume of online content dissemination. Defamatory posts can be shared, altered, or deleted within minutes, making preservation of evidence a significant challenge. Marginalized victims who may have limited access to technology or lack familiarity with digital evidence protocols are particularly disadvantaged (Bird, 1983). This structural barrier reinforces discriminatory outcomes by reducing the likelihood that their complaints will progress through the criminal justice system.

Another inadequacy concerns the interpretative bias within law enforcement and judicial institutions. Authorities may underestimate or dismiss the severity of defamatory harm, especially when the victim belongs to a socially marginalized group or when the content aligns with pre-existing stereotypes. For example, defamatory attacks against women or minority groups may be trivialized as "ordinary online harassment," whereas similar content targeting political elites or influential individuals is classified as a serious criminal offense warranting immediate response.

This disparity reflects implicit prejudice within institutional decision-making processes, contributing to unequal enforcement of liability models and resulting in inconsistent legal outcomes. Such discriminatory enforcement violates the principle of equality before the law and undermines victims' trust in the legal system (Barendt & Hitchens, 2000).

Furthermore, current liability models tend to favor intermediaries over victims, even when intermediaries contribute indirectly to the circulation of defamatory content. By widely adopting a framework that categorizes platforms as non-liable "passive carriers," legal systems absolve them of responsibility for maintaining safe environments, removing harmful content promptly, or assisting victims in identifying perpetrators.

This legal position stands in stark contrast to the platforms' actual capabilities: they possess the technological tools, user data, and algorithmic control necessary to mitigate harm or assist investigations. Yet, under prevailing liability models, the burden of initiating and sustaining legal action falls almost exclusively upon the victim. This imbalance reinforces institutional discrimination by disproportionately harming individuals who lack the financial means or expertise to pursue complex legal processes.

The cumulative effect of these inadequacies is a widening justice gap that leaves many victims particularly those already facing societal discrimination without meaningful legal recourse. The digital environment enables rapid, widespread dissemination of defamatory content, magnifying harm while simultaneously making redress more difficult. Existing liability frameworks, built on assumptions suited to pre-digital communication, fail to address these realities. As a result, victims are left unprotected, offenders enjoy relative impunity, and structural inequalities are perpetuated (Asari & Nawang, 2015).

Criminal Law must rethink its reliance on traditional liability concepts and adopt models that reflect the technological and social realities of online communication. This

includes lowering procedural barriers for marginalized victims, imposing greater duties of care on intermediaries, supporting forensic investigations, and acknowledging the disproportionate impact of defamatory harm on vulnerable groups. Without such reforms, current liability models will continue to inadequately protect victims and contribute to enduring patterns of discrimination and injustice.

Islamic Legal Principles as an Alternative Framework

Islamic legal principles provide a compelling alternative framework to address the structural deficiencies and discriminatory outcomes embedded in contemporary Criminal Law enforcement of online defamation. Unlike modern liability models, which often prioritize institutional efficiency, corporate protection, and freedom of expression, Islamic jurisprudence places central emphasis on human dignity (hifz al-'ird), social harmony, and ethical responsibility.

This distinctive orientation is rooted in clear scriptural directives that condemn defamation, false accusations, mockery, and the dissemination of unverified information. The Qur'an explicitly prohibits these behaviors, grounding the regulation of speech in a moral and spiritual imperative to protect individuals from harm. For example, Allah warns against backbiting and ridiculing others in the following verse:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَسْخَرْ قَوْمٌ مِنْ قَوْمٍ ... وَلَا تَلْمِزُوا أَنْفُسَكُمْ وَلَا تَنَابَزُوا بِالْأَلْقَابِ﴾ (الحجرات: ١١)

Meaning: *"O you who believe! Do not make fun of another people... and do not criticize each other, and do not call each other with bad titles."* (QS. Al-Hujurat: 11)

This verse illustrates Islam's unequivocal stance against all forms of degrading speech, whether verbal or written, direct or mediated through modern technologies. Such ethical prohibitions align with the foundational purpose of Islamic law, which seeks to preserve personal honor and prevent social disorder. As online defamation undermines an individual's dignity and disrupts communal harmony, the Islamic legal framework is structurally predisposed to treat such behavior with gravity (Anshary et al., 2025).

In addition to prohibiting harmful speech, Islamic law introduces the principle of verification (tabayyun), which requires individuals to investigate the truthfulness of information before sharing or acting upon it. This principle is articulated in another explicit Qur'anic command:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا﴾ (الحجرات: ٦)

Meaning: *"O you who believe! If someone who is wicked comes with news, then examine the truth..."* (QS. Al-Hujurāt: 6)

This verse directly addresses a core challenge of the digital age: the viral spread of unverified and potentially defamatory information. While modern Criminal Law focuses primarily on punitive measures after harm has occurred, Islamic jurisprudence emphasizes prevention, urging individuals and communities to verify claims before dissemination. In the context of online defamation, this principle constitutes an ethical safeguard that helps minimize reputational harm and misinformation, and it provides a normative model for digital responsibility that modern legal systems often lack (Arrasyid et al., 2024).

Beyond ethical foundations, Islamic legal methodology offers a more nuanced understanding of liability. Classical jurists distinguish between direct perpetrators (mubāshir) and indirect contributors (mutasabbib), a distinction highly relevant for addressing the complexities of digital communication. A direct perpetrator one who

authors or intentionally spreads defamatory content is fully liable for the resulting harm. An indirect actor, such as an intermediary, is liable only if their participation is intentional, negligent, or causally significant.

This approach stands in contrast to many contemporary legal frameworks that grant intermediaries blanket immunity regardless of their actual involvement in facilitating harm. Islamic law's differentiation allows for a more equitable and context-sensitive determination of responsibility, ensuring that powerful intermediaries cannot automatically evade accountability where they act negligently or knowingly allow harmful content to circulate (Alkrisheh et al., 2024).

Another distinctive feature of Islamic jurisprudence is its emphasis on restorative justice, seeking reconciliation, apology, and restoration of dignity rather than relying solely on punitive sanctions. This orientation aligns closely with the lived experiences of victims of online defamation, whose primary concerns often include restoring reputation, halting the spread of defamatory content, and repairing social relationships. Modern Criminal Law, focused mainly on punishment, does not always offer remedies responsive to these needs. Islamic law, by contrast, emphasizes social healing and moral accountability, making it a valuable complement to contemporary legal frameworks (Arrasyid et al., 2025).

Islamic legal principles present a holistic model that addresses the moral, social, and legal dimensions of online defamation. Its emphasis on dignity, verification, proportionate liability, and restorative justice stands in stark contrast to the structural biases and inadequacies of modern Criminal Law. Integrating insights from Islamic jurisprudence may thus contribute to reducing discriminatory outcomes and strengthening victim-centered responses within digital governance systems.

Need for Reform and Hybrid Liability Approaches

The cumulative analysis of discriminatory enforcement, institutional power imbalances, and the limitations of current liability models underscores the urgent need for comprehensive reform in the governance of online defamation. As digital environments evolve in complexity and scale, traditional Criminal Law frameworks designed for face-to-face or print-based communication are no longer adequate to address the unique challenges posed by anonymous users, algorithmic dissemination, and borderless communication networks.

More importantly, the persistence of structural inequalities within enforcement processes reveals that reforms cannot be limited to technical adjustments; rather, they must address the deeper discriminatory dynamics that shape access to justice, victim protection, and institutional responsiveness. To achieve equitable outcomes, modern legal systems require hybrid liability approaches that combine technological realism, ethical responsibility, and a nuanced understanding of human dignity drawn from Islamic jurisprudence.

One critical area of reform is the reconsideration of intermediary immunity doctrines. While immunity provisions were originally intended to support innovation and free expression, their unqualified application has produced legal environments where major digital platforms enjoy disproportionate protection while victims face significant barriers. A hybrid approach would not simply remove immunity, but recalibrate it based on the intermediary's actual role, capacity, and level of involvement. For example, platforms that actively curate content, deploy engagement-driven algorithms, or profit from virality may reasonably be held to a higher duty of care compared to those offering simple transmission services.

This reconceptualization aligns with Islamic jurisprudence, which attributes liability proportionately to the degree of participation or negligence, distinguishing

between direct wrongdoers (mubāshir) and indirect contributors (mutasabbib). Such proportionality ensures that powerful actors cannot avoid accountability where they have contributed meaningfully to the facilitation of harm.

Reform is also needed to address inequalities in evidentiary and procedural requirements. Criminal Law must incorporate mechanisms that lower the burden of proof for victims of online defamation without compromising the rights of the accused. These mechanisms could include procedural support units for vulnerable victims, publicly funded digital forensic assistance, and simplified reporting systems integrated directly into digital platforms.

Without such reforms, marginalized individuals will continue to face disproportionate obstacles in navigating the criminal justice process. Islamic principles, especially the emphasis on tabayyun (verification) and the preservation of dignity (*hifz al-'ird*), reinforce the idea that legal procedures must protect individuals from reputational harm and ensure fairness in the assessment of evidence. Integrating these principles into procedural reforms would contribute to more victim-centered justice (Alkrisheh et al., 2024).

Another component of a hybrid approach involves enhancing platform accountability through regulatory frameworks that require transparency in algorithms, reporting systems, and moderation practices. Many harmful defamatory incidents are amplified by opaque algorithmic processes that prioritize sensationalism and engagement over user safety. Reforms may include mandatory transparency reports, independent audits, and requirements for rapid response to verified defamation complaints.

These measures would help ensure that platforms do not exploit their technological power to the detriment of vulnerable users. Islamic legal principles, with their strong moral emphasis on preventing harm (dar' al-mafāsid) and fostering social cohesion, support regulatory interventions that reduce the spread of harmful content and hold intermediaries accountable for negligence (Ali, 1934).

Furthermore, reforms must address institutional discrimination by mandating equal responsiveness from law enforcement agencies regardless of the victim's social status, gender, ethnicity, or political affiliation. This may include standardized response times, anti-bias training for cybercrime units, and legal mandates requiring authorities to treat all defamation complaints with equal seriousness. In line with Islamic jurisprudence which prohibits ridicule, defamation, and unequal treatment the legal system must recognize that dignity is inherent to all individuals, and institutional prejudice in enforcement fundamentally violates this principle.

Ultimately, a hybrid model that integrates the strengths of modern Criminal Law with ethical and contextual insights from Islamic legal tradition offers a more comprehensive and equitable response to online defamation. While Criminal Law provides procedural structure and punitive mechanisms, Islamic jurisprudence contributes moral clarity, restorative justice principles, and a proportional understanding of liability (Kupferman, 1990).

The convergence of these approaches can mitigate structural discrimination, ensure fairer distribution of accountability, and restore public trust in legal institutions tasked with safeguarding dignity in the digital age. Without such reforms, the justice gap will continue to widen, leaving victims especially those from marginalized communities with inadequate protection in an increasingly complex digital environment.

Conclusion

The analysis of online defamation through the lenses of Criminal Law, discrimination studies, and Islamic jurisprudence demonstrates that existing legal frameworks are insufficient to ensure equitable protection for all individuals in the digital age. Although modern legal systems claim formal neutrality, structural discrimination emerges through unequal access to justice, differentiated institutional responsiveness, and complex evidentiary burdens that disproportionately disadvantage marginalized communities. Victims lacking financial resources, political influence, or digital literacy face immense challenges in navigating procedural requirements, tracing offenders, and securing timely intervention from authorities. These systemic barriers reveal the inadequacy of traditional liability models and highlight the urgent need to reassess the assumptions underpinning Criminal Law in digital contexts. The broad immunity granted to digital intermediaries further exacerbates institutional power imbalances, shielding technologically dominant platforms from accountability while placing the burden of proof entirely on victims. This imbalance creates an environment where perpetrators can act with relative impunity, especially within anonymous or cross-jurisdictional digital spaces. By contrast, Islamic jurisprudence offers an alternative framework grounded in dignity, moral responsibility, and context-sensitive liability. Its emphasis on *hifz al-'ird* (protection of dignity), tabayyun (verification), and proportional attribution of responsibility between direct and indirect actors provides a more holistic and equitable model for addressing reputational harm. These principles underscore the value of integrating ethical and restorative elements into modern legal governance.

Ultimately, the findings of this study illustrate that meaningful reform requires hybrid approaches that combine the structural procedural strengths of Criminal Law with the ethical and justice-oriented insights of Islamic legal tradition. Reforms should include recalibrating intermediary immunity, reducing procedural barriers for vulnerable victims, enhancing platform accountability, and mandating unbiased institutional responses. Such measures are essential to address the discriminatory effects embedded in current enforcement practices and to ensure that all individuals regardless of social status, identity, or background receive equal protection under the law. As digital communication continues to expand, the imperative for fair, inclusive, and dignity-centered legal mechanisms becomes increasingly critical for maintaining justice in the modern information society.

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