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Indian Law of Defamation: Issues and Challenges Regarding its Decriminalization

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ABSTRACT: The most-costliest property of a person in his/her life is his/her reputation or honour and any act affecting it is like as Gita provides “*for a man of honour defamation is worse than death*” is a bitter truth and absolutely correct statement. Currently, defamation is considered a criminal offense in India, which often leads to the restriction of free speech and the stifling of dissenting voices as well as punishment too. However, there have been growing calls to decriminalize defamation in order to afflict a balance between protecting “reputation” and upholding “the fundamental right to freedom of expression”. The dispute on the validity of “defamation” is on a rise because of *Rahul Gandhi’s* case. In this paper, the author tries to analyze the case laws that has been advanced around discussing of the legitimacy. It requires an examination of the development of the law in the contemporary field of defamation law. So, now-a-days, it has become very important to strike an equilibrium that allows people to express themselves freely without damaging self and others reputations. The Courts have also upheld the ideology that they have discretion to weigh common knowledge, historical context, and the state of affairs at the time of legislation while deciding whether or not a statute of legislation on any law is appropriate. This move would bring India in the line with international standards which is necessary now-a-days to promote a more democratic society like the other countries of the world.

1. INTRODUCTION

In the modern time, when the world is always changing and there is a vast and varied diversity in both thoughts and actions, it has become a difficult challenge to explain the criminalization of certain behaviors. It would appear to be impossible to reach a consensus on a specific definition of crime or of what establishes criminalization. Having legal representatives ensures that a person’s most precious asset their reputation is protected even after death. The dissemination, either verbally or in writing, of a false statement with the intent to disgrace another person is known as ‘defamation’ and can be punishable by law on both the civil and criminal levels.

Among the variety of rights guaranteed by our democratic system are “the fundamental rights to freedom of expression and right to life” itself. Article 19(2) of the Constitution and Sections 499-502 of the Indian Penal Code, 1860 (Sec. 356 of Bharatiya Nyaya Sanhita, 2023) are just two examples where fundamental rights are qualified in order to protect social peace and safety. Freedom without limits could be seen harmful to society. So, our legislation includes protections for victims of defamation to provide reassurance. In India, it is both, i.e. a civil and criminal offense. Criminal defamation is covered by Indian Penal Code.

In the IPC, “defamation” is defined as “*the Act of harming another person’s reputation by making and disseminating false comments about them. It might intend to mislead, defame, or lie.*”¹

¹ The Indian Penal Code, 1860 (Act No. 45 of 1860).

*“Every punishment which does not arise from absolute necessity”*² according to **Montesquieu** is despotic. Thus, reality be expressed, no doubt but for punishing the wrongdoers Criminal Law should be opted as a final alternative and that too only the most inexcusable wrongs, because the harsh reality of today’s state is best addressed by a more restrained use of criminal law.

It can be stated further that now *“Globally, the trend is moving towards decriminalizing defamation but we need to see how best the offense can be dealt with from the Indian perspective”*. Now-a-days International observers, such as “the UN Special Rapporteur on Freedom of Opinion and Expression”, have urged state governments to enact stronger civil legislation regarding defamation in lieu of criminal laws. In 2013, the United Kingdom (the country that originally given us IPC) replaced its criminal defamation legislation with a more reasonable one. In contrast, even when they fail to provide victims of defamation with justice, the Indian legal system continues to tenaciously adhere to criminal and civil remedies for defamation. To stay up with the times, India must move in lockstep with the rest of the globe.

2. REVIEW OF LITERATURE

Prof. S.N. Misra, *Indian Penal Code*, Central Law Publication, 19th Edn., 2012: provides an in-depth analysis of the definition and punishment of defamation in India under Sections 499 and 500. It sheds light on the continued relevance of defamation in criminal law by examining its legal components, exceptions, and judicial interpretations.

K.A. Pandey, *Principles of Criminal Law in India*, Central Law Publication, (2020): This book provides a basic outline of criminal responsibility, highlighting ideas important to the discussion of criminal defamation such as harm, proportionality, and moral responsibility. Despite being based in the UK, Ashworth offers a theoretical framework that is pertinent to the decriminalisation debate in India through his critique of criminal punishments for speech-related offences. This book adds to the ongoing conversation on revising India’s defamation laws by challenging the need for punitive responses to reputational injury and advocating for less invasive alternatives.

Dr. J.N. Pandey, *Constitutional Law of India*, Central Law Agency, 62nd Edn., 2025: The Author in this book provides a comprehensive analysis of constitutional provisions relevant to freedom of speech and expression, which directly intersects with the law of defamation. The book critically explores the balance between individual reputation and public interest, highlighting judicial interpretations of Article 19(1)(a). It offers valuable insights into the constitutional challenges surrounding criminal defamation and supports scholarly debates on its decriminalization in the context of evolving democratic values and human rights jurisprudence in India.

Mayank Madhaw, *Bharatiya Nyaya Sanhita (BNS-2023)*, Singhal Law Publications, 2024: This book offers an authoritative exposition of Sections 499 and 500 dealing with defamation. The book critically examines the scope, ingredients, and exceptions of criminal defamation, providing clarity on its application and judicial interpretation. It also addresses the tension between reputation and free speech, thus contributing significantly to the discourse on decriminalization. Its detailed commentary is instrumental in understanding the legal and constitutional challenges in reforming defamation laws in India.

3. RESEARCH OBJECTIVES

The research article deals with the following objectives:

1. To examine the constitutional and legal validity of criminal defamation in light of the fundamental right to freedom of speech and expression in India.
2. To analyse the needs and implications of decriminalizing defamation and related issues and challenges.

4. RESEARCH METHODS

This article’s research methodology is predominantly analytical and doctrinal. It entails a critical analysis of legal commentaries, scholarly literature, and statutory provisions regarding the criminalisation of defamation in India. The theoretical implications of decriminalisation are investigated through the application of constitutional principles and international trends in the research. The research endeavours to evaluate the equilibrium between the preservation of reputation and the freedom of expression in a democratic society through the examination of scholarly perspectives, legal definitions, and legislative intent, employing a qualitative, interpretive approach.

² Sangoi P. and Mehta S., 2020, *“Decriminalization of Defamation: A Need of the Hour”*, PGCL Moot Court Society, Mumbai.

5. FREEDOM OF SPEECH AND EXPRESSION

It can further be stated that the right to speech and expression is often cited as the cornerstone of a free society. Because of its privileged and central place in the liberty hierarchy, the old adage that “*freedom of speech is the mother of all other liberties*”³ holds true. Unhindered speech in a public forum is ground zero for a truly liberated society. Liberty to communicate principles and notions without impediment, particularly when it comes to the growth of that culture and, in the long run, that state, the absence of punishment plays a crucial role. It is one of the most primordial rights protected against governmental interference. Article 19(1)(a) of the Constitution of India provides, “*all citizens shall have the right to freedom of speech and expression.*”⁴

Freedom of expression is a cornerstone of democratic rule. This liberty is crucial to the health of our democratic system. To be free, one must first enjoy “the right to freedom of expression”.⁵

In a “democracy”, the “rights to freedom of speech and expression” throw open the doors to unrestricted debate on a variety of subjects. The Supreme Court’s interpretation of the First Amendment’s protection of free speech has been expansive ever since the 1950s. Various terms, including “basic human right” and “natural right,” have been utilized to refer this. It includes discussions on public policy issues, debates on controversial topics, and the free flow of information and ideas that contribute to the creation of one’s own opinions and perspectives.⁶

In *Maneka Gandhi case*⁷, Bhagwati J., has emphasised on the importance of the “*freedom of speech and expression*” in these words:

“Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential” is absolutely correct.

Thus, as a conclusion, the right to information is the guiding premise here. All individuals who value public input into government should, consequently, be strong advocates for “*the right to free speech and expression*”, which is must for the healthy democracy.⁸

6. FREEDOM OF SPEECH AND DEFAMATION

Freedom of speech does not include defamatory speech. So, the spreading of incorrect information about another individual is called defamation. When this happens in print, it’s commonly called “*libel*.” Both free speech and the press have always been constrained by the fear of defamation. However, the First Amendment does not protect the dissemination of false information or ideas. It is possible to take legal action against the utterer of such falsehoods when they cause injury to another person’s reputation. People who have false, derogatory, or otherwise unwelcome information reported about them are likely to file defamation lawsuits against the media outlets who published it.

However, without First Amendment protection, the media can be excessively careful, hiding uncomfortable information for fear of legal retaliation from those who disagree with their reporting. The Supreme Court has labored to find middle ground between the rights of private citizens and those of a free press. Over time, the Supreme Court has consistently granted less rights to people who attain positions of power in American society and government. Press protection from libel suits used to be limited to particular types of reporting on public figures or the government. Statements of fact needed to be mostly accurate, and any commentary or opinions needed to be completely grounded in evidence. For libel to have occurred, someone else must have heard a defamatory statement about the plaintiff.

³ Kuma A., 2021 “*Freedom of speech : mother of all other liberties*”, online available at: <https://blog.ipleaders.in/freedom-speech-mother-liberties/>

⁴ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129.

⁵ Report of the Second Press Commission, Vol. I, Manager of Publications, Delhi 1954 at pp. 34-35.

⁶ M.P. Jain, *Indian Constitutional Law*, 18th Edn., LexisNexis, Gurgaon, Reprint 2021, at pp. 1058-1059.

⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁸ *Indian Express Newspaper v. Union of India*, (1985) 1 SCC 641.

In the case of *S. Rangarajan*⁹, the Apex Court observed that the “*The freedom of speech and expression*” safeguards an individual’s ability to think for themselves and share their thoughts without slandering another person. In a democratic society, people are free to voice their opinions on policy, but only up to a point.

Similarly, in a case of *Indirect Tax Practitioners Assn.*¹⁰, it was held by the Supreme Court that, “*Truth based on the facts should be allowed as a valid defence if courts are asked to decide contempt proceedings relating to contempt proceeding relating to a speech or an editorial or article*”. However, this line of defense should not be used to cover up an intentional attempt to scandalize the legal system.

The decision in *R. Rajagopal*¹¹, laid down that the State must provide substantial evidence to support the constitutionality of any system of prior restraints on freedom of expression. The court held that libel claims filed before publication are barred.

In the case of *Rahul Gandhi*¹², which relates with the Representation of the People Act, 1950; Section 8(3) - IPC, 1860; Sec. 499 “*Criminal defamation*” case (sec. 356 of Bharatiya Nyaya Sanhita), his statement that “*why all thieves have Modi surname*” comment. The hon’ble judge imposed the extreme possible verdict of 2 years in prison. The appellant was warned by the Supreme Court.

There is no denying that the appellant’s purported comments lack taste. There is an expectation of moderation from public figures in their public discourse. However, as the Court noted while accepting the appellant’s affidavit in the aforementioned contempt proceedings, the appellant herein should have exercised greater caution in his public comments. Perhaps the Appellant would have been more careful and restrained in delivering the alleged words, which were deemed to be “*defamatory by the Trial Judge*” and approved by the Supreme Court.

7. DECRIMINALIZATION OF DEFAMATION OVERVIEW AND IMPORTANCE

Defamation, or the spreading of false assertions that cause injury to the reputation of a person or organization, has traditionally presented a complex intersection of civil and criminal law. Because of the potential damage to reputations and trustworthiness that can result from spreading false information, the law has always provided both “*civil and criminal remedies for defamation*.”

In recent years, a discernible shift in legal paradigms has emerged, with certain jurisdictions opting to recalibrate their approach by decriminalizing defamation. This transformation reflects a nuanced re-evaluation of the delicate balance between two fundamental pillars of justice: the preservation of freedom of expression and the safeguarding of individual and institutional reputations.

The investigation into the decriminalisation of defamation is particularly relevant as societies deal with the changing dynamics of communication in the digital era, when information may be instantly and widely disseminated, increasing the risk of reputational injury.

8. ISSUES OF DECRIMINALIZATION OF DEFAMATION

Decriminalizing defamation is a multifaceted issue, and finding a middle ground that respects freedom of expression while safeguarding against false and damaging statements is a significant challenge. It has the following dimensions:-

- (i) *Protection of Reputation*: Decriminalizing defamation could potentially result into a lack of protection for individuals and organizations from false or damaging statements. Without legal consequences, there might be an increase in false, damaging, or defamatory statements that harm one’s reputation.
- (ii) *Potential Abuse of Freedom of Speech*: While the right to free speech is essential, it could be misused if people knew they could say anything they wanted without fear of retaliation. Finding an acceptable balance between people’s right to free speech and the need to protect their reputations could be challenging in such a case.

⁹ *S. Rangarajan v. P. Jagjivan Ram*, 1989 SCR (2) 204.

¹⁰ *Indirect Tax Practitioners Assn. v. R.K. Jain* (2010) 8 SCC 281.

¹¹ *R. Rajagopal v. State of Tamil Nadu*, 1994 SCC (6) 632.

¹² *Rahul Gandhi v. Purnesh Modi*, AIR 2023 SC 59.

- (iii) *Impact on Journalism and Media:* Decriminalization might impact responsible journalism. While it's essential for the press to be free, there's a risk that without defamation laws, there could be an increase in sensationalism and inaccurate reporting which will endanger the existence of the society.
- (iv) *Social and Psychological Impact:* False and damaging statements can significantly impact individuals psychologically and socially. Decriminalizing defamation might lead to an increase in mental stress and emotional harm as result of potential proliferation of false information.
- (v) *Balancing Rights:* Finding a stability between protecting the right to free speech and safeguarding individuals' reputations becomes challenging in the absence of clear defamation laws.¹³ It's crucial to consider how to protect both rights effectively, so that a proper balance may be maintained.

9. CHALLENGES OF DECRIMINALIZATION OF DEFAMATION

There are very serious challenges faced by society, judiciary and political systems of the state in decriminalizing the defamation, and there are various serious hurdles faced during the same process as the challenges are dealt in seven fold manner that are pointed below:

- (i) *Balancing Free Speech and Reputation:* The difficulty lies in balancing an individual's "*right to free expression*" with the need to safeguard their reputation. Defamation laws traditionally aim to strike this balance by penalizing false statements that harm a person's reputation. However, when considering the decriminalization of defamation, the dynamics of this balance can shift, and several implications arise.
- (ii) *Public Interest vs. Private Rights:* The challenge in decriminalizing defamation under Indian laws lies in reassessing and potentially readjusting "the balance between the protection of free speech and the safeguarding of individual reputations". Striking the right balance is essential for fostering a legal environment that respects both fundamental rights and individual dignity. Any changes in this regard should be made with careful consideration of the possible impacts on society, the legal system, and the overall safeguarding of individual rights.
- (iii) *Social Implications:* The social implications of decriminalizing defamation under Indian laws involve a complex interplay of personal relationships, community dynamics, and the overall fabric of society. Striking an equilibrium between free expression and the shield of individual reputations is crucial to maintain a healthy and constructive social environment. Policymakers must carefully consider these implications when evaluating potential changes to defamation laws.
- (iv) *Chilling Effect on Speech:* Decriminalization raises concerns about the potential removal of this deterrence. Without the fear of criminal charges, there may be a heightened risk of individuals spreading false information without considering the consequences, impacting the quality of public discourse. Maintaining a certain level of deterrence through defamation laws helps prevent an unsettling effect on free speech, fostering a more responsible and informed public discourse. The challenge lies in finding a balance that respects the "*right to freedom of expression*" while preventing the abuse of that right through false and damaging statements.
- (vi) *Misuse of Freedom of Speech:* The challenge is to find a legal framework that preserves the right to freedom of speech while preventing its misuse for malicious purposes. Striking this balance is essential for fostering a society where individuals can express their opinions without resorting to intentional harm through false statements. Policymakers must carefully consider the potential consequences of decriminalization on the responsible exercise of free speech.
- (vii) *Public Officials and Public Figures:* The unique considerations surrounding public officials and public figures require careful attention when contemplating changes to defamation laws. Decriminalization may necessitate a re-assessment of the legal protections afforded to these individuals to support a balance between safeguarding reputations and upholding democratic values.¹⁴

Few people consider that decriminalization of defamation is their victory for expressing whatever they want and in what so manner they want.

¹³ Ratanlal and Dhirajlal, *The Indian Penal Code*, 36th Edn., LexisNexis, Gurgaon 2019.

¹⁴ K.A. Pandey, *B.M. Gandhi's Indian Penal Code*, 4th Edn., Eastern Book Company, Lucknow, Reprint 2022.

Apart from the above category of persons of the society, many people consider that without fear of punishment and penalties, the freedom of expression will become an “unruly horse”, which is not good for the health of the democratic society. Further, it can be said that this is an absolute principle of law of jurisprudence the right without liability or responsibility is an inchoate or incomplete right, which cannot be permitted in the present context of society.

It is a bitter truth that now-a-days media has intruded in every sphere of public and personal life and their black-mailing has threatened the public and personal life of the State as well as individuals, which is not a good sign because misusing the right, privilege, immunities will lead into sabotage in the building of society, State and individual, which cannot be tolerated at all.

10. PUBLIC PERCEPTION ON DECRIMINALIZATION OF DEFAMATION

The decriminalization of defamation can elicit diverse reactions from the public, reflecting a complex interplay of societal values, expectations, and concerns related to freedom of expression and reputation protection. Public perception is shaped by various factors, including cultural contexts, historical perspectives, and the perceived role of media in society. The elaboration on the facets of public perception concerning the decriminalization of defamation are as follows:

Firstly, some members of the public see the legalizing of defamation as a victory for free speech because of the advocacy it provides. Some have argued that doing away with the possibility of criminal penalties will lead to more free and democratic expression of ideas. Some have voiced concern that less responsibility will be placed on those responsible for propagating misinformation if criminal penalties are removed. They argue that if people are not deterred by financial penalties alone, then legal remedies may not be an effective tool to prevent intentional defamation.

Secondly, the decriminalization of defamation is concerns about misuse of the free speech, while many support the principles of free speech, possible abuse raises concerns, especially given the absence of penal sanctions. Some fear that without the deterrent effect of criminal charges, false and damaging statements may proliferate, leading to reputational harm without sufficient legal recourse.

Thirdly, the decriminalization of defamation often prompts discussions about the responsibility of media organizations. Those in favor of this legal shift argue that it encourages responsible journalism, emphasizing the importance of accurate reporting and ethical standards without the looming threat of criminal charges. On the other hand, there is a potential for irresponsible reporting. In the same regard Critics argue that the non-existence of criminal consequences may embolden some media outlets to engage in irresponsible reporting. The fear is that, without the threat of criminal charges, there may be a reduced incentive for rigorous fact-checking and adherence to ethical standards.¹⁵

11. THE ROLE OF JUDICIARY OF DECRIMINALIZATION OF DEFAMATION

After discussing the decriminalization of the offence of defamation, it becomes relevant to analyse few cases of defamation which relates to decriminalisation of the offence and the consequences of decriminalisation. For example, in the case of *Subramanian Swamy*¹⁶, the Apex Court held that because private individuals’ defamation of others serves no public purpose, it cannot be called a “crime” under Indian law. The Court also held that Section 499 (sec. 356 of BNS), which declares that “someone who defames a private individual, violates Article 19(1)(a) of the Constitution, has no connection to that provision because Article 19(2) protects the societal concern rather than an individual, and as a result, the provision cannot be the basis for criminal defamation”. According to this interpretation, the Court ruled that “Section 499 and 500 of the IPC (sec. 356 of BNS) and Section 199 of the Cr.P.C. were unconstitutional.” The Court further ruled that “the petitioners might appeal the High Court summonses against them per Article 226 of Constitution or Section 482 of Cr.P.C.”

The Court further observed that one of the damage values i.e. “*de Minimis principle or minimalism implies that criminal remedy should be utilized as a final retreat.*”¹⁷ This idea stresses the importance of not prosecuting criminal defamation when less severe alternatives exist. The person or organization who is being sued for defamation and is seeking a remedy under tort law to

¹⁵ Acharya B., 2022 “Decriminalising Defamation in India: A Brief Statement of Issues”, available at: <https://cis-india.org/internet-governance/blog/decriminalising-defamation-in-india.pdf>

¹⁶ *Subramanian Swamy v. Union of India*, AIR 2016 SC 2728.

¹⁷ K.A. Pandey, Principles of Criminal Law in India, Central Law Publication, 2020.

safeguard their rights and those of the plaintiff. It is unnecessary to make defamation a criminal offense when civil remedies such as restitution and public apologies exist. In contrast, the accused will not be forever marked as a criminal, even after serving his sentence.

Thus, it is imperative to ascertain the extent to which Section 500 of the Indian Penal Code (IPC) may be deemed excessive, surpassing the necessary measures in the pursuit of public interest, or whether it can be considered a ‘reasonable’ course of action. If the penalty imposed by the law is disproportionate to the seriousness of the crime, then the limitation is not proportional, as was laid down in *Omkar case*.¹⁸ It would be considered discretionary and so violate the constitution if that’s the case. Imprisonment is the penalty for some crimes, such as rape and murder. Section 499-500 of IPC (sec. 356 of BNS) doesn’t establish a “reasonable restriction” is not a valid excuse for speaking, not even the truth.

Despite the fact that the exclusions listed in Section 499 (sec. 356 of BNS) yet again it escorts a clause “*the truth will only be a defense if the statement was made for the public good*”, and the court will have to decide this matter based on the facts. In addition, section 499 (section 356 of BNS) shifts “the burden of proof from the plaintiff to the accused”, who must establish that their statement was true and for the public benefit, rather than the other way around. Protecting an individual’s good name is the primary goal of defamation laws so that they can continue to contribute financially to society. So, it’s clear that defamation should not be punished by law. Hence, precedent set by the Supreme Court in the case, complaints or class action lawsuits alleging defamation cannot be entertained.

12. CONCLUSION

Therefore, it is hereby concluded that the free speech is an essential protection offered by our society. However, in today’s world, the “right to freedom of speech and expression” extends to the dissemination of ideas in any medium, includes print, broadcast media, advertising, and electronic media too. It also includes press freedom, access to public records, and other such rights. As has been discussed above that, there are numerous negative consequences that result from the over-criminalization of defamation. It is argued that India’s legal system would be gravely undermined if defamation were to remain a criminal offense. The State’s ability to execute criminal punishment in circumstances where it is truly necessary will be undermined if criminal law is used as a quick fix. Since we now live in a more developed society, it is crucial that the government should takes into account and update the legislation or IPC that was drafted during British rule. However, the provisions of Sections 499 and 500 of the IPC (sec. 356 of BNS) are anachronistic relics of British rule that have no place in a contemporary democratic India. Indians are clearly suffering from a colonial hangover by keeping criminal defamation. It is true that some laws need to be updated or rewritten because they are not relevant in the modern world. It is unnecessary to lump a defamation defendant with violent offenders. Finally, it can be said that the criminal law’s punishment for defamatory statements is excessively severe and intrusive. The onus is on the state to ensure that these laws are not abused. In reality, criminal defamation is a Band-Aid solution to a more systemic issue, and Band-Aid solutions are doomed to fail in the long run. This law has been demonstrated erroneous by many premise that has been mentioned in this paper. Thus, to protect the integrity of the criminal justice system, there is a loud push for criminal defamation to be decriminalized and it seems to be just according to the spirit of time because law should not be legged behind from those who circumvent it.

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¹⁸ *Omkar v. Union of India*, 2024. SCC OnLine SC 2860.