



DECRIMINALISING DEFAMATION LAWS IN INDIA

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Why in News: There was a sparking debate regarding the reforms that has to be brought in for decriminalising defamation in India.

Introduction to Defamation in India

Defamation refers to the act of harming a person's reputation through false, derogatory, or malicious statements, either spoken (slander) or written (libel). In India, reputation is recognized as an intrinsic part of the right to life under Article 21 of the Constitution. Defamation is governed by both civil law and criminal law.

- **Civil Defamation** falls under the Law of Torts, where the aggrieved party can seek damages or compensation.
- **Criminal Defamation** is dealt with under Sections 499 and 500 of the Indian Penal Code (IPC), 1860, prescribing punishment of imprisonment up to two years, fine, or both.

Issues Pertaining to Defamation in India

1. Criminalisation vs. Decriminalisation Debate

- The continued existence of *criminal defamation* under Sections 499–500 IPC is frequently critiqued for its chilling effect on free speech. Many argue that speech critical of public figures gets suppressed.
- *Sameer Wankhede vs. Netflix & Red Chillies Entertainment* (2025) is a recent example where portrayal in a show is alleged to be defamatory. The case raises questions about how far artistic licence or media freedom can go when reputations are involved.

1. Abuse of Defamation Laws by Politicians

- Often used as a tool by political or powerful persons to intimidate critics, activists, journalists. The cost/delay of legal process itself becomes a deterrent against free speech.
- Example: *Medha Patkar's 23-year-old defamation case* filed by the Lt. Governor of Delhi (Vinai Kumar Saxena) resulted in her conviction in 2024. Critics say this was aimed at silencing activism.

1. Online Defamation & Social Media Amplification

- The spread of defamatory content online (videos, memes, posts) magnifies harm and speed. Also, identifying and holding accountable those behind content is challenging.
- Example: The *Bengaluru court ordering the deletion of ~8,842 online links* (YouTube, Instagram and other platforms) over alleged defamatory claims involving Dharamshala.

1. Balancing Freedom of Speech vs. Right to Reputation

- Constitutional tension: Article 19(1)(a) (freedom of speech/expression) vs Article 21 (life, which includes reputation). Courts have upheld that reputation is part of right to life; but also have said restrictions must be reasonable.

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2. Delay, Costs, and Judicial Process

- Defamation suits can drag on for years, which means that even if a person eventually wins, the damage to reputation (and resources spent) might already have been done.
- Example: Medha Patkar's case filed in ~2000 ended in 2024.

1. Prevention of Moot or Frivolous Complaints / Misuse of Law

- Some cases are filed even when the allegations are weak, unverified, or clearly opinion. This raises concern about frivolous or vexatious litigation.
- Example: A court in Bengaluru ordered removal of thousands of online posts (many unverified) because continued circulation could harm the institution's reputation.

1. Intermediary Liability and Platform Regulation

- How much liability do platforms (YouTube, Instagram, etc.) or social media sites bear for defamatory content? What is the role and responsibility of hosting providers / intermediaries?
- The Dharmasthala case (removal of thousands of links) shows courts ordering platforms to take down content even if posted by third parties.

1. Defamation in Fiction / Media / Artistic Expression

- Tension over representation in films, series, documentaries. What counts as defamatory depiction vs freedom of expression.

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2. Pre-trial Injunctions / Gag Orders

- Courts sometimes issue orders restraining publication of alleged defamatory content before trial. Critics argue this may lead to overbroad censorship or gagging legitimate speech.

Arguments in favor of Decriminalizing defamation in India

1. Chilling Effect on Free Speech

- Criminal defamation laws deter citizens, journalists, and activists from speaking against powerful individuals or institutions.
- The *threat of imprisonment* often forces self-censorship, weakening democratic debate.

2. Disproportionate Punishment

- Defamation, being a private wrong, is more appropriately a civil issue than a criminal offence.
- Imprisonment up to two years (IPC Sec. 500) is excessive compared to the harm caused, which is usually reputational and compensable in monetary terms.

3. Civil Remedies are Adequate

- Damages, injunctions, and apologies under tort law already provide sufficient recourse for aggrieved parties.
- Criminalisation adds an unnecessary punitive dimension without substantially improving redress.

4. Misuse by Powerful Persons

- Politicians, corporations, and influential figures often file criminal defamation cases to silence critics, including journalists, whistleblowers, and opposition leaders.
- Example: Multiple defamation cases against journalists and activists like Medha Patkar (convicted in 2024 in a decades-old case).

5. Burden on Judiciary

- Thousands of criminal defamation cases clog courts, leading to long trials (often over decades).
- Decriminalisation would reduce judicial backlog and free resources for serious crimes.

6. International Best Practices

- Many democracies, including the UK (abolished in 2009) and the USA (only civil defamation), treat defamation as a civil wrong.
- Retaining criminal defamation makes India an outlier and is often cited in global free-speech reports (e.g., *Reporters Without Borders* index).

7. Violation of Proportionality Doctrine

- As per *Modern Dental College v. State of Madhya Pradesh (2016)*, restrictions on fundamental rights must be proportionate.
- Criminal defamation is excessive compared to the objective of protecting reputation, making it disproportionate under Article 19(2).

8. Reputation vs. Liberty Balance

- While reputation is part of Article 21 (right to life), liberty (Article 21) and free speech (Article 19(1)(a)) must also be protected.
- Civil remedies preserve reputation without curtailing liberty.

9. Weapon Against Investigative Journalism

- Media houses and independent journalists face dozens of criminal defamation suits for exposing corruption or corporate malpractice.
- Fear of jail deters investigative reporting, thereby undermining accountability in governance.

10. Evolving Standards of Free Speech in Digital Age

- With the rise of online platforms, criminal defamation risks becoming an overbroad tool for censorship of criticism, memes, or satire.
- Civil remedies are more suited for addressing reputational harm in this new context.

Judicial interpretations related to Defamation in India

§Subramanian Swamy v. Union of India (2016): The Supreme Court upheld the constitutionality of criminal defamation under Sections 499 and 500 of the IPC (now Section 356 of BNS 2023). The Court determined that criminal defamation represents a reasonable restriction on free speech as per Article 19(2), affirming that the right to reputation is encompassed within the right to life under Article 21.

The judgment highlighted the necessity of balancing freedom of speech with the protection of individual reputation, underscoring that “the reputation of one cannot be allowed to be crucified at the altar of another’s right of free speech.”

§Rahul Gandhi 'Modi' Case (2019–Present): Rahul Gandhi was convicted by a Surat Magistrate Court for remarks made about the “Modi” surname, allegedly referring to the Modi community. His conviction led to temporary disqualification from Parliament, with ongoing appeals to the Supreme Court. This case raised questions on group defamation and political speech.

§Adani Gag Order & Media Injunctions (2025): A Delhi court recently lifted a gag order barring journalists from publishing alleged defamatory content against Adani Enterprises. The Supreme Court reaffirmed the “Bonnard Standard,” stating pre-trial injunctions should be rare and only when defendants cannot defend themselves. In September 2025, the Supreme Court considered decriminalizing defamation, questioning if the colonial-era law fits modern democracy. The current case involves a JNU professor and ‘The Wire’, with the bench evaluating Section 356 of BNS (formerly Section 499 IPC).

Conclusion

Defamation law in India reflects the delicate balance between **free speech and protection of reputation**. While civil remedies remain necessary to uphold dignity and provide redress, the persistence of criminal defamation has increasingly raised concerns of **misuse, chilling effect on democratic dissent, and disproportionate punishment**. Recent judicial observations, such as the Supreme Court’s indication that it may be time to **reconsider criminal defamation**, highlight the need for reform. Going forward, India must move towards a more **civil-law centric framework**, ensuring that reputations are protected without compromising the **fundamental right to free expression**, which is the lifeblood of a vibrant democracy.