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DECriminalIZATION OF THE OFFENCE OF DEFAMATION UNDER INDIAN LAWS: EMERGING ISSUES AND CHALLENGES

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ABSTRACT

The most expensive asset a person possesses throughout their life is their reputation or honour. Any action that impacts can be likened to the assertion in the Bhagwad Gita that “*For a Man of honor, Defamation is worse than death*”. Despite the Supreme Court’s affirmation, criminalisation is criticized for stifling free speech and being used against those who disagree. It is crucial to reevaluate criminal measures and strengthen civil remedies in order to strike a equilibrium between reputation and democratic liberties. As it stands, defamation is a crime in India, which means that people can be punished for their words and that dissenting opinions are silenced. Striking a balance between “*preserving reputations and promoting the fundamental right to freedom of expression,*” is necessary and vital in nature. However, there have been increasing demands to decriminalize defamation. The definition of “defamation” is becoming more contentious. Critics contend that criminal prosecution and imprisonment are inappropriate punishments, particularly in cases when civil remedies can sufficiently compensate the wronged party, even though the Supreme Court maintained the legitimacy of criminal defamation in the *Subramanian Swamy* case. Case laws that have been offered in discussions of legitimacy are attempted to be analysed in this research. It maintains that while the right to one’s reputation is important, a more equitable way to safeguard individual dignity and promote free expression in a democratic society would be to decriminalize the practice, along with more robust civil remedies and reforms to the relevant procedures.

Keywords: *Defamation, Freedom of Speech, Fundamental Rights, Criminalized, Decriminalization.*

1. INTRODUCTION:

It has become more challenging to provide an explanation for the criminalisation of specific behaviours in today's society due to the constant change in the world and the wide variety of opinions and activities. It seems like no one can agree on what constitutes criminalisation or even what constitutes a precise definition of crime. A person's most valuable asset, their reputation, can be safeguarded even after death with the help of legal representatives. Defamation is the practice of making and spreading false statements about another person in order to bring shame on them. It can be punished at the criminal and civil levels.

The various fundamental rights are among the many liberties upheld by our democratic society. A few instances of provisions that qualify fundamental rights to ensure social peace and safety include Art. 19(2) and Sec. 499-502 of the IPC (Sect. 356 of Bharatiya Nyaya Sanhita). Society could be negatively impacted by unrestrained freedom. Thus, to reassure, our laws have safeguards for defamation victims. There is a criminal and a civil offence for this in India. The criminal code of India addresses the crime of defamation. The Constitution under Art. 19(1)(a) ensures unrestricted speech, although Art. 19(2) allows for limitations, such as defamation.¹ Free speech concerns have prompted discussions regarding decriminalisation, judicial scrutiny, comparative global norms, and the necessity for balanced civil remedies in response to the growing chorus of voices criticising the criminalisation of defamation.

2. REVIEW OF LITERATURE:

T. Bhattacharyya, *Bharatiya Nyaya Sanhita, 2023*, 12th ed., Central Law Agency, 2025 This book authoritatively explains new BNS, 2023 defamation Sections 356 and 356(1)(2)(3). The book critically investigates criminal defamation's scope, elements, and exclusions, clarifying its application and judicial interpretation. It also addresses the reputation-free expression conflict, helping to decriminalisation discourse. Its extensive discussion helps explain India's legal and constitutional defamation reform difficulties.

J.N. Pandey, *Constitutional Law of India*, 61st ed, Central Law Agency, 2024. The author in this book presents a detailed examination of constitutional provisions pertinent to Art. 19(1)(a), which directly relates to the law of defamation. The book examines the intricate relationship between individual reputation and public interest, emphasising judicial interpretations of

¹ J.N. Pandey, *Constitutional Law of India*, 61st ed. Central Law Agency, 2024.

Article 19(1)(a). This provides important perspectives on the constitutional issues related to criminal defamation and contributes to academic discussions regarding its decriminalisation, particularly in light of changing democratic principles and human rights law in India.

K.A. Pandey, “*O.P. Srivastava’s Principles of Criminal Law*,” Eastern Book Company, 2023. This book introduces criminal responsibility, featuring harm, proportionality, and morality in criminal defamation. Through his criticism of speech-related criminal sanctions, it is relevant to the Indian decriminalisation debate. This book challenges punitive reactions to reputational loss and advocates for less invasive options in India’s defamation law reform.

B.M. Gandhi’s *Indian Penal Code*, 4th ed., Eastern Book Company, 2022, examines India’s Sections 499 and 500 defamation definition and punishment. It examines defamation’s legal components, exceptions, and judicial interpretations to show its continuous importance in criminal law. The book also critically examines decriminalisation arguments, underlining the conflict between reputation and free expression in a constitutional democracy.

3. OBJECTIVES:

The following research article deals with the following objectives:

1. To critically examine the constitutionality and practical effects of criminal defamation under Indian law on “freedom of speech and expression.”
2. To analyze the emerging issues, challenges and judgements relating to the decriminalization of defamation, and to suggest reforms for strengthening civil remedies in India.

4. RESEARCH METHODS:

This research paper is mostly analytical and doctrinal. It involves a critical analysis of legal comments, scholarly literature, and Indian defamation laws. Constitutional principles and judicial trends are used to study decriminalization’s theoretical and practical effects. A qualitative, interpretive study examines scholarly perspectives, legal definitions, and legislative intent to assess the balance between reputation preservation and expression in a society.

5. THE FREEDOM OF SPEECH AND EXPRESSION:

Another point to make is that people often say that free speech is the most important thing in a free society. An ancient proverb states that “freedom of speech is the mother of all other liberties” and this couldn’t be more accurate given the elevated status of unrestricted speech. The very basis of a free society is the right to freely express oneself in public. The freedom to freely express ideas and ideals is essential for the development of that culture and, ultimately, that state, and the absence of punishment is a key component in this. As a fundamental right, it is shielded from overreach by the State. Art. 19(1)(a) is an integral part of democratic governance. For our democratic system to thrive, this freedom is essential.²

6. THE FREEDOM OF SPEECH OF DEFAMATION:

Freedom of speech excludes defamation. So, defamation is disseminating false information about someone. This is called “libel” in print. Fear of defamation has always limited free speech and the press. Fake news is not protected under the First Amendment. Falsehoods that damage someone’s reputation can be prosecuted. Media outlets that publish inaccurate, disparaging, or otherwise undesirable information are often sued for defamation.

In a case of *Rahul Gandhi*³, the remark regarding all thieves possessing the Modi surname was deemed defamatory under the “Representation of the People Act, 1950”, Section 8(3) of IPC and Section 499 of the Criminal Defamation (Section 356 of the Bharatiya Nyaya Sanhita). The judge imposed a severe punishment of 2 years in prison. The Apex Court stated that individuals in public life should demonstrate restraint during public utterances, noting that the Petitioner's comments were in poor taste. The Petitioner, however, could not participate since the maximum term for the conviction was too high. Since this appeal would have far-reaching consequences for the electorate's right to representation and the Appellant's right to continue participating in public life, the Supreme Court stayed the decree of conviction while it was being investigated.

In *R. Rajagopal* case⁴, the State must offer substantial evidence to establish any previous constraint on free expression to be constitutional. The court disallowed pre-publication libel lawsuits.

² Universal Declaration of Human Rights, 1948, Art. 19.

³ *Rahul Gandhi v. Purnesh Modi*, AIR 2023 SC 59 (India).

⁴ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632 (India).

In a case of *S. Rangarajan*⁵, the Apex Court held that the free speech and expression to protect an individual's right to think and speak without slandering others. People can express policy opinions in a democracy, but only so far.

7. ISSUES AND CHALLENGES OF DECRIMINALIZATION OF DEFAMATION IN INDIA:

7.1-Issues: Decriminalizing defamation is complicated, and achieving a balance between free speech and defamation is difficult. These are its dimensions:-

- (i) *Protection of Reputation:* Defamation decriminalisation could leave people and organisations vulnerable to false or damaging remarks. Without legal penalties, misleading, harmful, or defamatory statements may increase.
- (ii) *Illegal Abuse of Free Speech:* Free speech is important, but if individuals thought they could say anything without repercussions, it may be abused. Finding a balance between free expression and reputation protection could be difficult.
- (iii) *Effect on Journalism and Media:* Responsible journalism may suffer from decriminalisation. The press must be free, but without defamation rules, sensationalism and false reporting could threaten society.
- (iv) *Psychological and social impact:* False and destructive statements can harm people psychologically and socially. Decriminalizing defamation may raise mental stress and emotional distress due to misleading information.
- (v) *Balancing Rights:* Lack of defamation laws makes it difficult to balance free expression with reputation. To maintain balance, both rights must be protected efficiently.

7.2-Challenges: The state's culture, judiciary, and political institutions face many major obstacles in decriminalizing defamation, as listed in the few difficulties below:

- (i) *Balancing Free Speech and Reputation:* The challenge is balancing the "right to free expression" with reputation protection. Defamation laws punish false remarks that injure a person's reputation to achieve this balance. However, decriminalizing defamation changes this equilibrium and has various repercussions.
- (ii) *Public Interest vs. Private Rights:* The challenge with decriminalising defamation in India is finding a balance between protecting free expression and protecting people's

⁵ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCR 204 (India).

reputations, which may require some reevaluating and maybe readjusting. Creating a legal framework that protects fundamental rights and individual dignity requires a balance. Such modifications should take into account the effects on society, the legal system, and individual rights.

- (iii) *Social Implications:* Decriminalizing defamation in India affects personal relationships, community dynamics, and society as a whole. Free expression and reputation protection must be balanced to preserve a healthy and constructive social environment. Policymakers must weigh these ramifications when considering defamation law amendments.
- (v) *Alarming Effect on Speech:* This deterrence may be lost with decriminalisation. Without the threat of criminal prosecution, people may circulate incorrect information without thinking, lowering public conversation. Defamation laws dissuade troublemakers and promote responsible, informed public discourse. The difficulty is to balance the right of unrestrained expression with the prevention of misleading and destructive comments.
- (vi) *Misuse Free Speech:* The challenge is to find a legal framework that protects free expression against malicious exploitation. This balance is necessary to create a society where people can express their thoughts without harming others through lies. Decriminalisation may affect responsible free expression, thus policymakers must evaluate the effects.
- (vii) *Public figures and officials:* Defamation law modifications must take into account public authorities and figures. To strike a balance between reputation protection and democratic norms, decriminalisation may require reassessing these persons' legal safeguards.⁶

Besides the people already mentioned, a lot of people think that if people aren't scared of getting in trouble, freedom of speech would become an "unruly horse" and ruin democracy. Furthermore, it can be argued that this is a fundamental concept of legal theory: a right that does not include any form of accountability or responsibility is incomplete and cannot be upheld in the society as it is right now.

⁶ T. Bhattacharyya, *Bharatiya Nyaya Sanhita*, 2023, 12th ed., Central Law Agency, 2025.

8. JUDICIAL VERDICT:

Examining a handful of defamation cases that pertain to the decriminalisation of the offence and its effects becomes pertinent after addressing the decriminalisation of the offence. For instance, the Apex Court ruled in the *Subramanian Swamy v. Union of India*⁷, case that defamation by private persons cannot be considered a “crime” under India’s legal system since it does not benefit the public interest. According to the Court, Section 499 (section 356 of BNS) stating that “someone who defames a private individual, violates Art. 19(1)(a)” does not apply because Art. 19(2) safeguards society as a whole rather than any one person. Consequently, this provision cannot be used as a basis for criminal defamation. This reading of the legal precedents suggests that the court found “Section 499 and 500 of the IPC (sec. 356 of BNS) and Section 199 of the Cr.P.C. were unconstitutional.” “The petitioners might appeal the High Court summonses against them per Article 226 or Section 482 of Cr.P.C.” the Court added in its ruling.

In the case of *Vijay & Rajendra Darda v. Ravindra Ghisulal Gupta*⁸, the High Court dismissed the criminal defamation accusations levelled against Vijay Darda and Rejendra Darda. News of the police's First Information Report (FIR) against the complainant and his relatives appeared in the Lokmat newspaper. The court agreed that the FIR was legitimately registered because publishers are not required to conduct their own investigations or verify the accuracy of the FIR (itself) prior to publishing the news item. Furthermore, the court emphasised that actions that defame honest and trustworthy journalism are detrimental to a democratic system.

The case of *Aroon Purie v. State of Nct of Delhi*⁹ involved a 2007 report that had been published in India Today. The editor-in-chief, Aroon Purie, was acquitted of criminal defamation charges, but the journalist responsible for the piece, Saurabh Shukla, was not. The court reasoned that editor-in-chief Purie could not be held accountable for the author’s activities because the complaint did not name him specifically. The court acknowledged that an editor-in-chief can be held accountable if the claims were sufficient and precise. The court stated that the justification of journalist Shukla’s actions would be addressed only during the trial, stating that it was “a question of fact.”

⁷ *Subramanian Swamy v. Union of India*, AIR 2016 SC 2728 (India).

⁸ *Vijay & Rajendra Darda v. Ravindra Ghisulal Gupta*, (2022) SCC Online Bom 1315 (India).

⁹ *Aroon Purie v. State of NCT of Delhi*, (2022) 15 Scale 541 (India).

*D.P. Chowdhery v. K.M. Manjulata*¹⁰, this case shows that careless publication of defamatory comments can lead to legal liability, even if no intent or knowledge of harm was intended. The plaintiff in *D.P. Chowdhery* was a 17-year-old girl who was falsely reported to have eloped with her lover in a local newspaper story. The newspaper employees on trial denied any wrongdoing, stating that they were unaware of the plaintiff's identity and had no malicious intent to publish false material. Additionally, they claimed to have relied on a reliable source, a reporter who had gotten the information from a police station. The plaintiff's reputation took a hit due to the article, and the Rajasthan High Court found the employees accountable for their failure to verify the information.

9. CONCLUSION:

Therefore it may be concluded, free expression is a vital social protection. The "right to freedom of speech and expression" covers the dissemination of ideas in print, broadcast, advertising, and technological media. Press freedom, public record access, and other rights are included. Over-criminalizing defamation has several detrimental effects, as described above. If defamation remained a crime in India, the legal system would suffer. If criminal law is exploited as a fast fix, the State will lose its authority to punish when necessary. Since we live in a more evolved society, the government must modernize the British-era IPC. Sections 499 and 500 of the IPC (sec. 356 of BNS) are outdated British antiques that have no place in a democratic India. Keeping criminal defamation shows our colonial past. Some laws need to be revised or rewritten since they're outdated. No need to combine defamation defendants with violent perpetrators. The criminal law's punishment for defamation is too harsh and intrusive. State must guarantee these laws are not abused. Criminal defamation is a Band-Aid solution to a systemic problem that will fail. Many premise in the paper show this law is wrong. A strong movement is underway to remove criminal penalties for defamation in an effort to keep faith in the criminal justice system. It seems reasonable in the spirit of time since law should not be lagged behind by those who evade it.

¹⁰ *D.P. Chowdhery v. K.M. Manjulata*, AIR 1997 Raj 170 (India).