



## DEFAMATION JURISPRUDENCE IN INDIA: ASSESSING CHALLENGES AND REFORM PERSPECTIVE

**AUTHOR** – SATYA VRAT PANDEY, INTEGRAL UNIVERSITY

**Best Citation** – SATYA VRAT PANDEY, DEFAMATION JURISPRUDENCE IN INDIA: ASSESSING CHALLENGES AND REFORM PERSPECTIVE, *ILE LAW AND JURISPRUDENCE (ILE JADRLR)*, 1 (1) of 2023, Pg. 11-15, APIS – 3920 – 0044 | ISBN – 978-81-964391-3-2.

### ABSTRACT

*The concept of defamation is mystify and continues to be divisive, being utilised and abused by some while having a significant negative influence on the lives of others. Even while judicial paradigm has made an effort to clarify this mess and segregate unquestionable concerns, there are still some fundamental constitutional questions about both the criminal offence and the civil offence of defamation that have not yet been addressed. The Constitution of India has given the citizens certain rights and they should use them in limits so that they should not hamper the rights of others. The prime reason for knowing the laws governing the statutorily recognised offence of defamation is to protect one's dignity, as has been guaranteed by Article 21 of the Indian Constitution. With changing times, defamation has been a misused offence in the hands of many, thereby causing a rise in debate on it concerning the limitation on free speech. Perception of the legislators on what constitutes defamation in present times should be subjected to progressive changes and the legislators should therefore encourage flexible provisions in this regard instead of a rigid legal framework. Malicious intent to harm and test of criminality in a statement for defamation is meant to dissuade persons to resort to such practices. Over the seventy-five years of Independence, there have been numerous cases of defamation and the court has interpreted every case with utmost care and they serve as precedents; Defamation laws are strengthening slowly but steadily rising in India.*

**Keywords:** Defamation, Constitutional Legality, Criminalized, Civil Wrong, Criminal Wrong.

### I. INTRODUCTION

Favourable fame holds clear importance in the lives of individuals. It differentiates individuals based on their nobility and moral principles, establishing them as the perfect individual who is better than others in the way they lead their lives. Defamation, as a legal concept, plays an important role in stabilizing the right to freedom of speech and expression with the protection of a people's reputation. In India, defamation laws have been influenced by both colonial-era legislation and parliamentary provisions. This provides an overview of defamation from the Indian legal perspective, highlighting its significance, elements, and the constitutional framework that governs it. Defamation means

the law of declaring false and harmful contention about a people or institution that harm their fame. It encircles both spoken (slander) and written (libel) affirmations that are transmitted to a third party. The objective of defamation laws is to strike a balance between ensuring free speech and preventing unjustified harm caused to a person's reputation.<sup>9</sup>In India, defamation laws have a historical background rooted in British common law. The Indian Penal Code (IPC), enacted in 1860 during the British colonial period, incorporated defamation under Section 499. The provision offends defamation as a criminal act punishable by imprisonment

<sup>9</sup> Legal service India <https://www.legalserviceindia.com/legal/article-2224-defamation-law-in-india.html> ( 20 June, 2023



or a fine. The Code of Criminal Procedure (CrPC) gives the procedural aspects related to defamation cases in the criminal courts. The constitutional perspective of the right to freedom of speech and expression is given in Article 19(1)(a) of the Constitution of India. This fundamental right is not complete and can be subjected to logical limitation under Article 19(2) in the interest of public order, decency, morality, security, or the reputation of others. Defamation is one such restriction on free speech, justified by the need for the protection of the reputation and honour of individuals. The Supreme Court of India has played a key role in interpreting and defining the outline of defamation laws in the Indian context. Through its judgments, the Court has attempted to strike a balance between protecting reputation and safeguarding free speech. Notable cases, such as *R. Rajagopal v. State of Tamil Nadu*<sup>10</sup> and *Subramaniam Swamy v. Union of India*,<sup>11</sup> have contributed to shaping the understanding and application of defamation laws in the country. While defamation laws aim to protect individuals from unjustified harm to their fame, dignity, and integrity are not without criticism. Some argue that the provisions in criminal defamation laws are subject to abuse and can have a chilling effect on free speech. Additionally, the lack of clear definitions and the burden of proof placed on plaintiffs in civil defamation cases have also been subject to scrutiny. The decriminalization of defamation has been a significant point of disagreement, with supporters arguing that civil remedies are more appropriate for protecting reputation without unduly restricting free speech.<sup>12</sup>

## II. RESTRICTION ON FREEDOM OF SPEECH

Defamation laws in India work as a legal framework to strike a balance between protecting reputation and upholding the right to freedom of speech and expression. Rooted in colonial-era legislation and constitutional provisions, defamation jurisprudence in India

continues to evolve, shaped by judicial interpretations and ongoing discussions on the need for reforms.

Limitations on freedom of speech are a compound issue that is a subject matter of arguments in different legal fields worldwide. While freedom of speech is considered a fundamental right basic to parliamentary society it is also considered that some restrictions on this right are necessary for the protection of the rights and Privileges of individuals. However, the area to which limitations on freedom of speech should be inflicted is a subject of continuous discussion and interpretation. One area where restrictions on freedom of speech can be observed is in defamation laws. Defamation means the law of declaring false affirmation that harms the fame of other people. Defamation laws aim to strike a balance between protecting an individual's reputation and safeguarding freedom of speech.<sup>13</sup> However, these laws have faced criticism for their potential to unduly restrict this cherished freedom.

## III. CHILLING EFFECT ON PUBLIC DISCOURSE

The important concern concerning the defamation act is its chilling effect on public discourse. The trepidation of going through defamation charges can make people self-discipline or abstain from showing their thinking freely, basically when it involves censoring public figures, institutions, or important matters of public interest. This chilling effect can hinder the free flow of ideas and airless robust debate, ultimately impeding the democratic process. *Subramaniam Swamy v. Union of India* (2016)<sup>14</sup> In this case, the Supreme Court of India observed that imprisonment as punishment for defamation can have a chilling effect on free speech. The court held that defamation should be treated as a civil offence rather than a criminal offence to strike a balance between the right to reputation and the right to freedom of speech and expression. Another aspect to

<sup>10</sup> R. Rajagopal and Ors. V. State of Tamil Nadu, 1994 SCC (6) 632.

<sup>11</sup> Subramaniam Swamy vs Union of India, AIR 2016 SC 2728.

<sup>12</sup> Ipleader <https://blog.ipleaders.in/defamation-law-in-india/> (20 june, 2023)

<sup>13</sup> India law office <https://www.indialawoffices.com/legal-articles/defamation-law-in-india> (20 june , 2023)

<sup>14</sup> Subramaniam Swamy vs Union of India, AIR 2016 SC 2728.



consider is the potential for abuse and misuse of defamation laws.

#### IV. LOPSIDED PUNISHMENTS

Powerful people or institutions may make use of these laws to conquer arguments, and silence criticism, from revealing corruption or wrongdoing. Furthermore, the punishment prescribed for defamation offences can be disproportionate to the harm caused. Criminal defamation provisions, in particular, can lead to severe consequences, including imprisonment and hefty fines. Such punishments can put off individuals from engaging in legitimate criticism or expressing their opinions, even when their statements are true or made in good faith. This imbalance between the harm caused and the severity of punishment raises questions about the proportionality and fairness of defamation laws. The application of defamation laws can also be inconsistent and subjective. Different judges or jurisdictions may give meaning to the elements of defamation differently, leading to varying outcomes and potential biases in judgments. This lack of consistency undermines the predictability and uniformity of the law and raises concerns about the fairness and impartiality of the legal process. While restrictions on freedom of speech are deemed necessary to protect the rights and reputation of individuals, it is crucial to strike the right balance to ensure that these restrictions do not unduly curtail this fundamental right. Defamation laws, in particular, have been criticized for their potential to restrict freedom of speech, create a chilling effect on public discourse, allow for abuse and misuse, and impose disproportionate punishments. *MF Husain's case*<sup>15</sup> Renowned Indian artist MF Husain faced multiple defamation cases due to his controversial paintings. The lawsuits and subsequent legal battles resulted in a prolonged period of harassment and forced Husain to live in self-imposed exile. From a legal perspective, the law of defamation, incorporated in Sections 499 and 500 of the

Indian Penal Code (IPC) with a chilling effect on public discourse. The fear of potential legal consequences for making statements that could harm someone's reputation may deter individuals from engaging in open and robust discussions, expressing critical opinions, or sharing important information. When defamation laws are completely restrictive and provide penalties for arguments that may be true or made in good faith, it creates an environment of awareness and self-discipline. People may waver to give their judgment or produce valuable understanding on matters of public interest due to the apparent threat of defamation charges. This can impede the free flow of information, stifle debate, and hinder the public's access to diverse perspectives and knowledge<sup>16</sup>. Legal frameworks that encourage responsible speech, provide adequate safeguards against abuse, and prioritize the public interest can help mitigate the chilling effect on public discourse while still giving importance to genuine cases of reputational harm.<sup>17</sup> Defamation mentions the law of creating false arguments about someone that harm their fame. While the defamation act varies from jurisdiction, criminal defamation provisions, such as Section 500 of the Indian Penal Code (IPC), often provide imprisonment and fines as punishment for defamation. However, the severity of these penalties raises concerns about their proportionality. First of all, it is important to accept the worth of freedom of speech, a fundamental right in parliamentary societies. Powerful public discussion, including the capacity to provide opinions and criticize public figures or entities, is essential for a healthy democracy. Not appropriate punishment for defamation wrongdoing can have a chilling effect on free speech and put off individuals from attracting legitimate critics or expressing their views freely. Furthermore, the nature of defamation offences itself raises questions about the need for criminal sanctions

<sup>15</sup> Maqbool Fida Husain v. Raj Kumar Pandey 2008 CRI. L. J. 4107.

<sup>16</sup> [Yusra Khatoun, Avinash Ray], Critical Analysis of Evolution and Legality of Defamation in India, the lawman socio legal review.

<sup>17</sup> Hellocounsel <https://www.hellocounsel.com/defamation-civil-criminal/> (20 June, 2023)



In addition, the effect of defamation has converted important in the information age. With the appearance of social media and online platforms, information rolls out speedily and reaches broad viewers. Not appropriate to retribution can be used as a tool for alarming, demoralizing people from growing legalized concerns or expressing offence due to the fear of severe legal consequences.

#### V. MELIORATION OF DEFAMTION LAWS : THE ESSENTIAL OF DEMOCRACY

Revisiting and reforming these provisions to ensure a fair balance between protecting reputation and safeguarding free speech is crucial in maintaining a just and democratic society. To enhance the defamation law in India, several measures can be considered. some potential steps that can contribute to the betterment of defamation laws. Decriminalization of defamation. One significant reform would be to decriminalize defamation and shift it from the principality of criminal law to civil law. By treating defamation as a civil offence, the focus would shift from punishment to resolution, encouraging parties to seek mediation or compensation rather than resorting to criminal prosecution. This would alleviate concerns about disproportionate punishment and help protect freedom of speech. Establishing a public interest defence. This defence would shield journalists, whistle blowers, and citizens engaging in responsible criticism from defamation claims when their statements are made in good faith and for the betterment of society. Requiring clear evidence of actual harm and malicious intent would discourage the misuse of defamation laws to silence critics and promote a more just and balanced legal process. Encouraging the use of alternative dispute resolution mechanisms, such as mediation or arbitration, can help resolve defamation disputes more expeditiously and amicably. Established guidelines and structure to gear online defamation appropriately, including cooperation between platforms and law enforcement agencies, can

help protect of individual's reputation while preserving freedom of speech in the information age. Ensuring swift and fair legal proceedings. Streamlining and expediting defamation cases through specialized courts or dedicated benches can help reduce the burden on the judiciary and ensure timely resolution. This would provide individuals with quicker access to justice and minimize the impact of prolonged legal battles on freedom of expression. Periodic review and reform. Regularly reviewing defamation laws, taking into account evolving societal norms, technological advancements, and international best practices, is essential. Conducting comprehensive assessments and seeking input from stakeholders, including legal experts, journalists, civil society organizations, and academia, can inform necessary reforms and adaptations. The improvement of the defamation act in India needs a complete approach that balances the protection of reputation with the free speech of the public.

#### VI. CONCLUSION

The main basic support of a Parliamentary society lies in verifying the fundamental right of freedom of speech and expression, as given under Article 19 of the Indian constitution. *Ponnusamy v. State of Tamil Nadu*<sup>18</sup>The Madras High Court, in this case, noted that imposing imprisonment for defamation is a violation of freedom of speech. The court held that criminal defamation should be decriminalized, considering the potential for misuse and the impact on free expression. This right not only permits individuals to share their opinions, including political perspectives but also fosters an atmosphere where citizens can effectively participate in the social and political procedures of the nation. The idea of freedom of speech and expression, as guaranteed in Article 19(1)(a), has developed and includes the right to disagree with the government. The original purpose and objectives of the defamation laws have become obsolete in light of the dynamic

<sup>18</sup> C. Ponnusamy And 62 Ors. Vs Govt. Of Tamil Nadu.



nature of the right to free speech. Shifting the focus to the recent incident that exemplifies the second aspect of this article, it is intriguing to observe that while political leaders in our country often engage in name-calling and jesting at each other's names for gaining public favour, Mr Rahul Gandhi's<sup>19</sup> attempt at humour seems to have backfired. His remark, in this case, was directed towards the Modi Group/Community. Let us explore whether this remark falls within the purview of an identifiable group. The issue of defamation of a group is addressed in Explanation 2 to Section 499 of the Indian Penal Code (IPC), and its interpretation was further examined in the *S. Khushboo v. Kanniammal case*.<sup>20</sup> The Supreme Court, in that case, ruled that for an offence of defamation to be established against a group, the group must be identifiable and distinct from the rest of the community. Its members should be precisely identifiable and must have been defamed. Hence, it can be inferred that if a group lacks a collective identity concerning the alleged defamatory remarks, no case of defamation can be sustained. Additionally, in the *Subramanian Swamy case*, while discussing the *Khushboo case*, the court stated that defamation should not apply to "mankind in general or against a particular order of men" but should specifically target individuals for it to qualify as criminal defamation. Applying the tests established in the *Khushboo* and *Subramanian Swamy* cases to Mr Rahul Gandhi's statement, it is arguable that referring to the last names of three individuals without providing further particulars does not amount to criminal defamation, particularly when none of the three individuals personally filed defamation suits or alleged defamation. The term "Modi community" cannot be deemed an identifiable group, considering there are approximately 130 million people with the surname Modi in India alone. Therefore, based on the application of the legal principles derived from the *Khushboo* and *Subramanian Swamy*

cases to Mr Rahul Gandhi's statement, it is unlikely that his reference to the last names of three individuals without providing specific details would constitute criminal defamation. This is especially evident when none of the three individuals directly initiated any defamation claims or alleged defamation. The term "Modi community" does not fulfil the criteria of an identifiable group, given the vast number of individuals with the surname Modi in India. It is a major point to note that the explanation and use of the defamation act can be varying, and specific legal expertise may be required to thoroughly assess the case in question.

#### VII. REFERENCE

1. Ayushi, Critical Analysis of Defamation Laws in India, Legal Service India, <https://legalserviceindia.com/legal/article-6886-critical-analysis-of-defamation-laws-in-india.html> (Last Accessed on 29<sup>th</sup> June, 2023 – 10:23).
2. Oishika Banerji, Defamation Law in India, <https://blog.ipleaders.in/defamation-law-in-india/> (Last Accessed on 30<sup>th</sup> June, 2023 – 10:50).
3. S K Sarvarai, V Mitter, Law of Defamation and Malicious Prosecution Civil and Criminal (14<sup>th</sup> Edition- 2017) Pg. 231.
4. Mehrotra B.N., Commentary on Law of Defamation, Damages And Malicious Prosecution (Civil and Criminal) (8<sup>th</sup> Edition – 2023) Pg. 356.

<sup>19</sup> Mondaq <https://www.mondaq.com/india/libel-defamation/1167834/defamation-law-in-india-debriefed> (20 June, 2023)

<sup>20</sup> *S. Khushboo vs Kanniammal & Anr* (2010) 5 SCC 600