Assessing Defamation Law - #MeToo Movement

What is the issue?

The response to the #MeToo movement in the form of defamation cases calls for a relook at the relevance and validity of the Indian defamation law.

What is the recent development?

- Accusations of sexual harassment have leveraged criminal defamation law as a way of striking back.
- E.g. M.J. Akbar made criminal defamation complaint against Priya Ramani, Alok Nath filed criminal and civil defamation complaints against Vinta Nanda
- The #MeToo movement thus seems to emphasise that defamation was the first refuge of the powerful.

Dispute - No legal system can allow false and slanderous statements to be made publicly, with impunity.
- In this line, the defamation law is certainly the balancing tool.
- But there is a concern that in the guise of protecting reputation, the freedom of speech and expression are often silenced.

How is defamation dealt in India?
Unlike many other countries, defamation in India is both civil and criminal offence.

Under the civil law, the person defamed can move either the high court or trial court.

The complainant can seek damages in the form of monetary compensation from the accused.

On the other hand, the Indian Penal Code also gives an opportunity to the defamed individual to move a criminal court.

It is a bailable, non-cognizable and compoundable offence i.e. no police can register a case and start investigation without the court’s permission.

Under sections 499 and 500 of the IPC, a person found guilty can be sent to jail for two years.

Since the law is compoundable, a criminal court can drop the charges if the victim and accused enter into a compromise (even without the permission of the court).

What are the concerns with defamation law?

- **Relevance** - India’s criminal defamation law largely falls in the category of silencing the freedom of speech and expression.

- Section 499 of the Indian Penal Code provides an ideal weapon for powerful individuals to silence critical or inconvenient speech.

- It is a colonial relic that was introduced by the British regime to suffocate political criticism.

- **Conviction** - Unlike many other countries, defamation in India is a criminal offence (and not just a civil wrong).

- So it is a conviction that entails both social stigma and potential jail time.
• **Process** - There is a very low threshold for a prima facie case of defamation to be established by a complainant.

• S/he must only show that an “imputation” has been made that could reasonably be interpreted as harming reputation.

• On the other hand, an accused has multiple defences open, but they are effectively available only after the trial commences.

• So an accused individual would have to undergo the long-drawn-out trial process, where the procedure in itself is punishment.

• **Disproportionality** - Even the defences open to an accused are insufficient to protect free speech.

• In a civil defamation case, a defendant need to only show that her statement was true in order to escape liability.

• But in a criminal defamation proceeding, an accused must show that her statement was true and in the public interest.

• This is paradoxical as the legal system is more advantageous towards those at the receiving end of civil defamation proceedings.

• On the other hand, it is harsher towards those who have to go through the criminal process.

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• **Court** - In 2016, the constitutionality of criminal defamation was challenged in the Supreme Court.

• But it was largely ignored by the court and was held that Sec 499 was constitutional as it protected individual reputation.

• The disproportionality of criminalising what is essentially a civil wrong was not considered by the court.

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**What is the new challenge?**
Much has changed in the last two years and the most significant change has been brought by the #MeToo movement.

The #MeToo movement has brought submerged experiences to the surface and given a fresh vocabulary to express what, for years, seemed simply inexpressible.

But powerful men filing criminal defamation cases to silence this new mode of public expression remains a concern.

It has the threat of preserving and perpetuating the old hierarchies that the #MeToo movement has now challenged.

How was it dealt in the U.S.?

The U.S. Supreme Court, in 1960s, made substantial modifications to defamation law.

It was to ensure that it could no longer be used as a tool of harassment and blackmail.

Articulating a very high threshold of “actual malice”, the court ensured that journalists and others could go about their job without fear.

But this is as long as they did not intentionally or recklessly make outright false statements.

What lies ahead in India?

The courts must now address the above challenges and concerns.

It is no longer about an abstract challenge to the constitutionality of criminal defamation.

It is rather about a live issue on the relationship between legal system and a
social movement that publicly redresses long-standing injustices.

- The courts can choose to revisit the constitutionality of criminal defamation, but even without that, there are enough ways to judicially interpret Sec 499.
- This is to ensure that it no longer remains the tool of the powerful to blackmail, harass, and silence inconvenient speech.

Source: The Hindu, Hindustan Times