Decriminalyzing Defamation

Defamation

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- Defamation is the communication of a **false statement** that harms the reputation of an individual person, business, product, group, government, religion, or nation.
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India’s scenario

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- In India, defamation can both be a **civil wrong and a criminal offence.**
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- While a civil wrong tends to provide for a redressal of wrongs by awarding compensation, a criminal law seeks to punish a wrongdoer and send a message to others not to commit such acts.
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- In Indian laws, criminal defamation has been specifically defined as an offence under the **Indian Penal Code (IPC)** whereas the civil defamation is based on **tort law** – an area of law which does not rely on statutes to define wrongs but takes from ever-increasing body of case laws to define what would constitute a wrong.
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- Moreover, in a criminal case, defamation has to be established beyond reasonable doubt but in a civil defamation suit, damages can be awarded based on probabilities.
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Criminal Defamation:

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- **Section 499 and 500** of Indian Penal Code,1860 deals with Criminal defamation.
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- It prescribes two years' imprisonment with or without fine for a person found guilty of defamation.
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Pre colonial scenario:

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- The criminal provisions have often been used to pursue political vendettas. In the colonial era, the law was used, along with sedition, to jail freedom fighters.
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- So-called **SLAPP (or strategic lawsuit against public participation)** suits have been used in the recent past to muzzle investigative journalists and prevent critical analysis of the financial information of listed companies.
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Threat to free Speech and Expression:

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- Activists against criminal defamation argue that the possibility of being arrested by the police, held in detention and subjected to a criminal trial will be in the back of the mind of a journalist when he or she is deciding whether to expose, for example, a case of high-level corruption.
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- The criminal provisions have often been used purely as a **means of harassment.**
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- Given the cumbersome nature of Indian legal procedures, the process itself turns into punishment, regardless of the merits of the case.
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Supreme Court’s directives:

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- Defamation is one of the recognised exceptions to the fundamental right to free speech and expression under Article 19(1)(a) of the Constitution.
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- In Subramanian Swamy vs Union of India case, a bench of Justices Dipak Misra and P C Pant approved the Constitutional validity of sections 499 and 500 (criminal defamation) in the Indian Penal Code, underlining that an individual’s fundamental right to live with dignity and reputation “cannot be ruined solely because another individual can have his freedom”.
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- The ruling noted that **“the right to freedom of speech and expression is not an absolute right”** and has to be **“balanced with the right to reputation” which is protected under Article 21 of the Constitution".**
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- The court held that criminalisation of defamation to protect individual dignity of life and reputation is a “reasonable restriction” on the fundamental right of free speech and expression.
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- The judgment holds far-reaching implications for political dissent and a free press.
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- In August 2016, the court also passed strictures on Tamil Nadu Chief Minister J Jayalalithaa for misusing the criminal defamation law to “suffocate democracy” and, the court said, “public figures must face criticism”.
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- However, it also underscored that **criticism was not defamation**, the bench accepted their plea that a trial court must be “very careful” in scrutinising a complaint before issuing summons in a criminal defamation case.
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Government’s response:

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- The government has sought a report from the Law Commission of India (LCI) on the issue.
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- A joint consultation paper published by the LCI in September 2014 notes that the respondents "overwhelmingly expressed dissatisfaction with the present state of defamation law".
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- Considering the need to repeal Section 499, it acknowledged that criminal defamation laws violated international norms, and that the penalty of imprisonment up to two years was clearly disproportionate.
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- **International bodies** such as the UN had recognised the threat posed by criminal defamation laws and have recommended that they should be abolished.
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The Protection of Speech and Reputation Bill, 2016:

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- Tathagata Satpathy, a member of Parliament belonging to the Biju Janata Dal, is drafting a private member's Bill entitled "The Protection of Speech and Reputation Bill, 2016".
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- The Bill seeks to **decriminalise defamation** and remove the "chilling effect" of old provisions that throttle free speech and encourage censorship.
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- The Bill seeks to remove the criminal provisions while guarding the right to reputation with stronger, more effective remedies for civil relief, including apologies, corrections and retractions, and the award of reasonable damages.
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- The Bill will also attempt to set the maximum claim limits and to bar governments, local bodies and other institutions, exercising statutory functions, from filing suits for defamation.
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Way Forward:

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- Criminal complaints should not be entertained unless the damage to reputation is prima facie, a serious one.
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- Unnecessary complaints should be dismissed at the threshold. That apart, complaints cannot be entertained except on behalf of the “person aggrieved”.
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- Such a restriction must not be arbitrary or excessive, and the impairment of freedom must be ‘as little as possible’.
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- This is not to say that defamation must not be discouraged.
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- But decriminalising it will bring the IPC in accord with Article 19(2), ensuring that the means used to discourage defamation do not end up damping legitimate criticism.
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- Criminal defamation laws have been **repealed in most democracies** and it is high time India modernised its law to take cognisance of new modes of communication.
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Source: Business Standard, The Hindu, Indian Express

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