



## Time to Reform Defamation Laws in India

This editorial is based on “[Penalty in proportion: On growing use of criminal defamation proceedings.](#)” which was published in The Hindu on 24/09/2025. This article highlights that criminal defamation is often misused in India, creating hurdles for free expression, and suggests that civil remedies would be a fairer way to protect reputation in a democracy.

**For Prelims:** [Defamation](#), **Section 356** of the [Bharatiya Nyaya Sanhita](#), [Article 21](#). **Subramanian Swamy v. Union of India (2016)**, “[Bonnard Standard](#)”, [Section 66A of IT Act](#)

**For Mains:** Recent Cases Related to Defamation in India, Key Arguments in Favour & Against of Decriminalising Defamation in India

The **Supreme Court of India** has recently signalled a significant shift in its approach to **criminal defamation**, observing during a hearing that ‘**time has come to decriminalise all this.**’ This remark came while considering a plea by the **Foundation for Independent Journalism**, seeking to **quash summons** issued in a criminal defamation case. The remark reflects concern over the **misuse of defamation laws to intimidate critics and journalists**. It raises a crucial debate on balancing the **protection of reputation** with **free speech** in a **democracy like India**.

### What is the Concept of Defamation in Law?

- **About:** Defamation refers to any **oral or written statement**, conveyed through words or expressions, that **damages the reputation** of another person.
  - **Types of Defamation:**
    - **Libel:** Defamatory statement that is **written, published, or visible**.
    - **Slander:** Defamatory statement that is **spoken** and causes loss of reputation.
- **Legal Basis in India:** **Section 356** of the **Bharatiya Nyaya Sanhita** defines defamation as making or publishing any imputation intending to harm, or knowing it will harm, a person’s reputation.
- **Constitutional Justification:** Courts locate reputation within **Article 21 (right to life and personal liberty)**, treating reputational harm as affecting social harmony.
- **Scope of Offence:** Applies to living individuals, the dead, companies, associations, and includes statements made ironically or by alternatives.
  - Harm includes lowering moral/intellectual character, caste/calling reputation, creditworthiness, or causing belief that a person’s body is in a disgraceful state.
- **Civil vs Criminal Defamation:**
  - **Civil:** Private wrong; remedies include compensation for reputation damage.
  - **Criminal:** Public offence; punishable by fine or imprisonment to deter malicious attacks.
- **Elements for Criminal Liability:** For **criminal liability** to arise, **three elements** must be present: the **statement must be defamatory**, it must be **directed at a specific person or**

clearly identifiable group, and it must be published or communicated to at least one person other than the claimant.

- Unlike **civil liability**, **criminal law** requires proof of either an **intention to cause harm** or **knowledge that harm is likely to occur**.

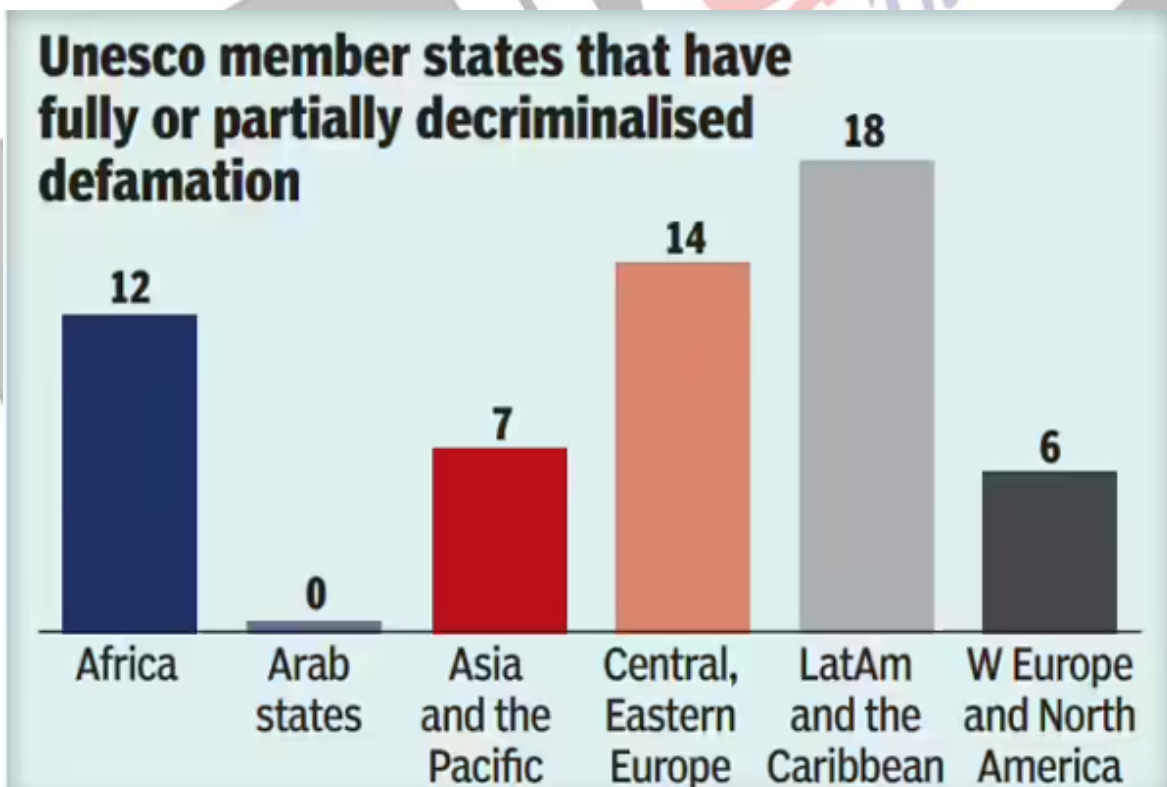
## What are the Recent Judicial Cases Related to Defamation in India?

- **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)**, ruling that criminal defamation is a **reasonable restriction on free speech** under **Article 19(2)** and that the **right to reputation** is part of the **right to life** under **Article 21**.
  - The Court emphasised **balancing freedom of speech** with **protection of individual reputation**, stating “**Reputation of one cannot be allowed to be crucified at the altar of the other’s right of free speech**”.
- **MJ Akbar v. Priya Ramani (2021):** In a prominent **MeToo case**, the **Delhi court** acquitted **Priya Ramani** of **criminal defamation** charges filed by **MJ Akbar**, holding that the **right to dignity** and **protection from sexual harassment** outweighed Akbar’s claim to **reputation**.
  - **Truth** and **public good** were recognised as valid **defences** in defamation cases.
  - Similarly, in the recent **Sameer Wankhede v. Netflix & Red Chillies Entertainment** case (Delhi High Court, September 2025), the issue of **defamation** has resurfaced prominently, underscoring the **tension between freedom of expression and the protection of individual reputation**.
- **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 **quashed a gag order** restricting **journalists** from publishing allegedly **defamatory content** against **Adani Enterprises**.
  - The **Supreme Court** reiterated the “**Bonnard Standard**”, stating that **pre-trial injunctions** should be **rare** and only justified if the **defendant cannot defend** the alleged defamation.
- **Supreme Court’s 2025 Observation:** In **September 2025**, the **Supreme Court** hinted at the possibility of **decriminalizing defamation**, suggesting the **colonial-era offence** might not fit a **modern democracy**.
  - The ongoing case involves a **JNU professor** and ‘**The Wire**’, with the **bench** openly debating the **relevance** and **necessity** of **Section 356 of BNS**, previously **Section 499 IPC**.

## What are the Key Arguments in Favour of Decriminalising Defamation in India?

- **Protecting Freedom of Speech:** **Criminal defamation laws** have a “**chilling effect**” on **free speech**, inhibiting **journalists, whistle-blowers, and citizens** from expressing **legitimate criticism** or **dissent** resulting in self censorship.
  - In **September 2025**, the **Supreme Court** itself noted that fear of **criminal prosecution** restricts the exercise of **Article 19(1)(a)** rights and that **civil remedies** sufficiently address **reputational harm**.
  - The **Supreme Court** in **Shreya Singhal v. Union of India (2015)** **struck down** the **criminal section on online defamation (Section 66A of IT Act)** precisely because it was **vague** and had a **chilling effect** on **free speech**.
- **Preventing Abuse and Harassment:** **Criminal defamation** has become a **weapon** for **powerful individuals** like **politicians, actors, and industrialists** to file **Strategic Lawsuits Against Public Participation (SLAPP)**.

- Recent examples include multiple **FIRs** registered against **investigative journalists** for reporting on **government** and **corporate conduct**, with the **Editors Guild** noting that even the process of responding to **criminal summons** acts as a “**punishment by process**” and suppresses **free journalism**.
- **Reducing Judicial Backlog and Delays:** Defamation trials clog **lower courts** and consume vast **judicial resources** for private disputes.
  - The **Supreme Court**, while hearing the **Wire-JNU case** in **September 2025**, observed **protracted litigation** and **delays** in thousands of **criminal defamation cases**, often lasting for **years**, wasting valuable **judicial time** that could be reserved for **serious offences**.
- **Safeguarding Press Freedom:** Legal experts highlight that **criminal defamation** risks **gagging the media** and stifling **democratic debate**.
  - The **quashing of criminal cases** against **Punjabi Tribune** and **Tribune editors** in **April 2025** illustrates that **responsible reporting** should not be criminalised, especially when **journalists face strategic lawsuits** designed to silence them.
  - India is ranked **151st out of 180 countries** in the **World Press Freedom Index (2025)**, highlighting significant challenges to **journalistic freedom and media independence**.
- **Upholding Democratic Values:** The **Supreme Court**, in its recent remark, emphasised that the **dignity of reputation** should be protected, but not at the cost of **democratic pluralism** and **critical discourse**.
  - **Decriminalisation** realigns the law with **constitutional values** of **dignity, fraternity, and mutual respect**, ensuring neither right is “**crucified at the altar**” of the other.
- **Conformity with Global Standards:** **International human rights organisations**, including the **Committee to Protect Journalists** and **UNHRC**, urge India to **repeal criminal defamation laws**.
  - **Reputational injury** is primarily a **civil wrong (tort)** that can be adequately remedied through **monetary damages, injunctions, public apologies, or retractions**.
  - Many countries have **abolished such criminal provisions**, recognising that they disproportionately impact **free media** and **civic activism**.



## What are the Key Arguments Against the Decriminalisation of Defamation in India?

- **Protection of Reputation as a Fundamental Right:** The **Supreme Court**, in **Subramanian**

**Swamy v. Union of India (2016)**, declared that **reputation** is an essential facet of the **right to life** under **Article 21**, and **criminal defamation** is a **reasonable restriction** under **Article 19(2)**.

- Maintaining **criminal penalties** helps ensure **rapid redressal** for **unjust attacks on reputation**.
- **Deterrence against Malicious and Irresponsible Speech:** In the **digital era**, **false information** can spread instantly and irreparably.
  - **Legal experts** and the **Law Commission (2023)** argued that **criminal law** serves as a **powerful deterrent** against the **deliberate and reckless spread of defamatory content**, helping curb **fake news** and **irreparable harm** to individuals.
    - **Law Commission of India's 285th Report** recommended **retaining criminal defamation** as a part of **new criminal laws**.
  - In **SMC Pneumatics v. Jogesh Kwatra (2004)**, the **Delhi High Court** issued the first **Indian cyber defamation injunction**, recognising **defamatory emails** and **internet posts** as actionable under **defamation law**.
- **Safeguarding from Social Ostracism:** **Civil defamation cases** are **lengthy and costly**, which can disadvantage **ordinary people** lacking **resources**.
  - **Criminal prosecution**, in contrast, provides a **cost-effective** and **accessible remedy**, empowering those who might otherwise face **social ostracism** or **livelihood loss** due to **damaging rumours**.
- **Protection of Vulnerable Groups:** **Criminal defamation** can serve as a safeguard for **marginalized or vulnerable communities** whose **reputations** are particularly susceptible to harm.
  - For instance, **defamatory statements** targeting **women, Dalits, or minority groups** can lead to **social stigma** or **harassment**.
  - **Criminal provisions** ensure **swift accountability** and **redress**, which **civil litigation** might **delay** or make **inaccessible**.
- **Preserving Public Order:** **Reckless or malicious statements** have the potential to stoke **community unrest** and escalate **conflict**, particularly in India's **socially sensitive climate**.
  - **Criminal defamation provisions** serve as a check on such behaviour, mitigating the risk of **widespread discord** and protecting **public order**.

## Which Reforms are Necessary for Defamation Law in India?

- **Decriminalise Private Defamation, Retain Criminal Defamation for Public Interest:** A **balanced approach** recommended by **legal experts** is to restrict **criminal defamation** only to cases involving **public interest, national security, or public figures**, while shifting **private reputation disputes** entirely to **civil courts**.
  - This will protect **freedom of speech** for **ordinary citizens** while ensuring **strong deterrents** for **reckless falsehoods** affecting **society**.
  - Globally, most **democracies** treat **defamation** as a **civil wrong**, with victims seeking **monetary compensation** and **corrective orders**.
- **Strengthen and Fast-track Civil Defamation Proceedings:** Much of the harm in **defamation** arises from **delayed justice**.
  - India should introduce **fast-track courts** or **dedicated benches** to handle **civil defamation cases** with **clear timelines** and **reasonable compensation limits**, thus offering **effective** and **timely remedies** without **criminalising speech**.
  - Countries like the **UK** have relied on **modernised civil laws**, alongside **Defamation Reform Acts**, ensuring **balanced protections** without the threat of **imprisonment**.
- **Introduce Anti-SLAPP (Strategic Lawsuit Against Public Participation) Legislation:** **SLAPP suits** are used by **powerful individuals** and **corporations** to **intimidate critics** with **costly litigation**.
  - Enacting **anti-SLAPP laws**, as done in jurisdictions such as the **US, Canada, and Australia**, would protect **journalists, activists, and citizens** from **litigation abuse** while allowing **genuine defamation claims** to proceed.
- **Provide Specific Judicial Guidelines on Fair Criticism and Public Good:** Drawing from the **Supreme Court's observations** and **international best practices**, **clear judicial principles** should be codified to demarcate **fair criticism, satire, and opinion** from **malicious**



**defamation.**

- This will help **courts** to fairly adjudicate **defamation** while avoiding **arbitrary restrictions on speech**.

▪ **Promote Media Literacy and Public Awareness on Responsible**

**Speech:** Encouraging **responsible speech** and educating **citizens** on the distinction between **criticism** and **defamation** can reduce **frivolous cases**.

- **Government, civil society, and media** can collaborate on **awareness campaigns**, as seen in countries with **active civic education**, reducing **societal tensions** and **legal disputes**.

## Conclusion:

Reforming defamation laws in India requires balancing **freedom of expression** with **protection of reputation**. As **John Stuart Mill** argued (in *On Liberty*), “**silencing an opinion deprives humanity of the opportunity to exchange error for truth, thereby stifling critical thought and democratic accountability.**” Thus, decriminalising **private defamation**, strengthening **civil remedies**, and enacting **anti-SLAPP measures** can protect journalists and citizens, foster responsible discourse, and uphold both constitutional freedoms and social justice.

### Drishti Mains Question:

Criminal defamation laws in India have often been criticized for their chilling effect on free speech. How can India balance the constitutional right to free speech with protection of reputation through defamation law reforms?

## UPSC Civil Services Examination, Previous Year Question (PYQ):

### Prelims

**Q.** Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and appropriately imply the above statement? **(2018)**

- (a) Article 14 and the provisions under the 42nd Amendment to the Constitution.
- (b) Article 17 and the Directive Principles of State Policy in Part IV.
- (c) Article 21 and the freedoms guaranteed in Part III.
- (d) Article 24 and the provisions under the 44th Amendment to the Constitution.

**Ans: C**

### Mains

**Q.** What do you understand by the concept of “freedom of speech and expression”? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss. **(2014)**