

6. Decriminalise Defamation – Polity

A Supreme Court judge has suggested decriminalizing defamation, arguing its misuse for political vendettas chills free speech (Article 19). This reopens the debate settled in 2016, where the SC had upheld criminal defamation (IPC 499–500) as a reasonable restriction to protect the right to reputation (Article 21).

The Renewed Debate on Decriminalizing Defamation

A recent suggestion from a sitting Supreme Court judge has reignited the national conversation on whether India should abolish criminal penalties for defamation.

What Happened? – Supreme Court judge Justice M.M. Sundresh recently remarked that the time has come to decriminalize defamation.

The Background – This observation is significant because it signals a potential shift from the Supreme Court's 2016 stance in the *Subramanian Swamy v. Union of India* case, where it had upheld the constitutional validity of criminal defamation.

The Trigger – The debate is fueled by numerous high-profile cases involving figures like Rahul Gandhi, Shashi Tharoor, and media outlet *The Wire*. These instances highlight a growing concern that criminal defamation is being weaponized for political and personal vendettas, rather than to genuinely protect reputation.

Understanding Defamation in India

In India, an injury to a person's reputation can be pursued through two distinct legal avenues – civil and criminal. The table below outlines their key differences.

Feature	Civil Defamation	Criminal Defamation
Nature of Wrong	A private wrong (a tort) against an individual.	A public wrong considered an offence against society at large.
Legal Basis	Not codified in a single statute; governed by common law principles of tort.	Codified under Sections 499 (definition) and 500 (punishment) of the Indian Penal Code (IPC).
Remedy / Punishment	Monetary damages (compensation) paid to the aggrieved person and injunctions.	Imprisonment for up to 2 years, a fine, or both.
Burden of Proof	On the plaintiff, based on a "balance of probabilities."	On the prosecution, requiring proof "beyond a reasonable doubt."
Key Exceptions	–	Section 499 IPC includes 10 exceptions, such as – • Truth stated for the public good. • Fair comment on the public conduct of public servants. • Fair and accurate reporting of court proceedings.

Constitutional and Legal Angles

The debate is rooted in a fundamental conflict between two key fundamental rights guaranteed by the Indian Constitution.

Article 19(1)(a) – This article guarantees to all citizens the fundamental right to freedom of speech and expression.

Article 19(2) – This clause allows the state to impose "reasonable restrictions" on free speech in the interests of specific matters, including defamation.

Article 21 – The Supreme Court has interpreted the right to life and personal liberty under this article to include the right to reputation and dignity.

The Core Conflict – The central legal challenge is to strike a balance between protecting an individual's right to reputation (Article 21) and upholding the citizen's right to free speech (Article 19).

Key Data and Global Practices

Data from India and trends from around the world provide important context to the debate.

Law Commission of India – In its 267th Report (2017), the Commission recommended retaining criminal defamation but called for safeguards to prevent its misuse.

National Crime Records Bureau (NCRB) – Data shows that thousands of defamation cases are pending, contributing significantly to the clogging of Indian trial courts.

Global Practice – India is among a shrinking minority of democracies that retain criminal defamation. Many others have moved away from it –

Decriminalized – The UK (in 2009), USA (rely only on civil remedies), Ghana, and Sri Lanka (partially).

Multi-Dimensional Analysis

The issue of criminal defamation impacts various facets of Indian society.

Political – It is frequently used as a political weapon by ruling and opposition parties alike to harass and silence opponents.

Social – It creates a “chilling effect” on free expression, making journalists, activists, artists, and comedians hesitant to critique powerful individuals for fear of prolonged legal battles.

Legal – The need for a re-examination is clear. The Supreme Court itself frequently stays summons in defamation cases, indicating an inconsistency in its application and an acknowledgment of its potential for harassment.

International – Global bodies, including the UN Human Rights Committee (UNHRC), consistently recommend the decriminalization of defamation to bring laws in line with international standards for protecting free speech.

The Central Arguments – A Balanced View

The table below summarizes the main arguments for and against decriminalizing defamation.

Arguments FOR Decriminalisation

It is widely misused as a political weapon and a tool for personal vendettas.

It has a chilling effect on free speech, which is essential for a robust democracy and a free press.

Civil law is a sufficient and adequate remedy for protecting an individual's reputation.

It clogs the judicial system with cases that are essentially private disputes.

Arguments AGAINST Decriminalisation

Reputation is a fundamental right under Article 21 and deserves strong protection.

Civil remedies (monetary damages) may be insufficient, especially for marginalized individuals who cannot afford litigation.

The threat of criminal action acts as a necessary deterrent against the malicious misuse of free speech.

Without criminal defamation, it would be easier for people to spread falsehoods without fear of serious consequences.

The Way Forward

A consensus is emerging that a more balanced approach is needed to protect both reputation and free speech.

Recalibrate, Don't Eliminate – The goal is not to leave reputations unprotected but to find a more proportionate remedy.

Key Recommendations –

1. Strengthen and retain defamation as a robust civil liability.
2. Decriminalize it entirely or, at a minimum, narrow the scope of criminal defamation to apply only in exceptional cases (e.g., incitement that threatens national security or communal harmony).
3. Establish mechanisms to ensure faster disposal of civil defamation cases to provide timely justice.

The Process – The path forward involves a comprehensive re-examination by the Law Commission, an informed Parliamentary debate, and efforts to harmonize India's laws with global democratic best practices.

Source – <https://www.thehindu.com/news/national/supreme-court-judge-says-its-high-time-to-decriminalise-defamation/article70079931.ece>