

## Defamation Laws in India: Balancing the Right to Reputation and Freedom of Expression

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### Abstract

Defamation is a legal concept that protects an individual's reputation and dignity from harm caused by false statements. Defamation laws have evolved over time and have been applied differently across various jurisdictions. The Indian legal system has also seen various instances of the misuse of defamation laws for political gains or to silence critics and opponents.

This paper provides an overview of the concept of defamation, its historical development, and the application of defamation laws in India. The paper discusses important case laws related to defamation in India, including the recent case of Rahul Gandhi, a prominent Indian politician who faced a defamation suit for corruption allegations.

The paper also highlights the need for balancing the right to free speech with the right to reputation and how the Indian judiciary has tackled this issue. The paper concludes with the importance of raising awareness and sensitivity in the implementation of defamation laws to prevent their misuse and to ensure that they serve their intended purpose.

**Keywords:** Defamation, Laws, Reputation, Expression

### Introduction

Defamation is the communication of false statements about a person that injure their reputation, expose them to hatred, ridicule, or contempt, or cause them to be shunned or

avoided. It can take the form of libel (written or published defamation) or slander (spoken defamation).

According to Peter Jones, "Defamation can be defined as any communication that tends to lower the reputation of an identifiable person in the estimation of right-thinking members of society generally, or to cause him or her to be shunned or avoided, or to expose him or her to hatred, contempt, or ridicule."

In the words of John H. Wigmore, "Defamation is a wrong committed against a person's reputation. It occurs when one person communicates something to a third party about another person that harms the reputation of that person in the community."

### Factors for the Rise of Defamation Laws

Defamation laws have existed for centuries, with the first recorded instance of defamation laws being in ancient Rome, where it was considered a crime to insult someone's dignity. Over time, as societies have evolved, so too have defamation laws. In the modern era, there are several global needs for the rise of defamation laws. These include:

1. Protection of Reputation: Defamation laws are needed to protect the reputation of individuals and organizations. Reputation is an important asset for individuals and organizations, and defamation can cause significant harm to a person's reputation, leading to loss of business, employment opportunities, and social

status.

2. Cyber-bullying: With the advent of social media and the internet, cyber-bullying and online harassment have become a growing concern. Defamation laws are needed to protect individuals from false and damaging statements made about them online.
3. Public Interest: Defamation laws are needed to protect the public interest by preventing false and malicious statements about public officials, government institutions, and public figures. This is particularly important in democratic societies where the freedom of expression is valued but not at the expense of the public interest.
4. Economic Development: Defamation laws are needed for economic development, as they provide a stable legal environment for businesses to operate in. Investors and businesses need to know that their investments and reputation are protected from defamatory attacks.
5. International Relations: Defamation laws are needed for international relations, as they help to protect the reputation of nations and their citizens. International defamation laws have become increasingly important in a globalized world where information travels quickly and easily across borders.

### **Understanding Defamation Laws in India**

Defamation is a civil wrong and a criminal offense in India. Defamation laws in India are primarily governed by the Indian Penal Code, 1860 (IPC), and the civil law of torts. The IPC defines defamation as the act of intentionally or knowingly making or publishing any imputation concerning any person that harms their

reputation.

Defamation can be of two types: libel (defamatory statement in a permanent form like in writing, print, pictures, effigies, or otherwise) and slander (defamatory statement in a transient form like in speech or gestures). The punishment for defamation in India includes imprisonment for up to two years and/or a fine.

The defenses available to a person accused of defamation include truth as a defense, good faith, and public interest. The defense of truth requires that the statement made should be true, and it should be for the public good. Good faith defense is available when a statement is made without malice or wrongful intention. Public interest defense is available when a statement is made for the public good.

In addition to the IPC, the civil law of torts allows an aggrieved person to file a civil suit for damages for defamation. The burden of proof lies with the plaintiff to prove that the statements made were false and caused damage to their reputation.

It is important to note that the right to freedom of speech and expression is a fundamental right in India under the Constitution of India. However, this right is not absolute, and reasonable restrictions can be imposed on it to protect the reputation of individuals or the sovereignty and integrity of the country.

### **Important Case Laws Related to Defamation in India**

There have been several landmark cases related to defamation in India that have helped shape the legal landscape of the country. Some of the important case laws related to defamation in India are:

1. Ram Jethmalani vs. Subramanian Swamy (2016): In this case, the Supreme Court of India upheld the right to freedom of speech and expression and held that a person cannot be sued for defamation for

making a statement in public interest. The court held that the defense of truth and public interest are available to a person accused of defamation.

2. *M.J. Akbar vs. Priya Ramani (2019)*: In this case, a Delhi court acquitted journalist Priya Ramani in a defamation case filed by former Union Minister M.J. Akbar. The court held that a woman has the right to put forward her grievances of sexual harassment even after decades.
3. *Subramanian Swamy vs. Union of India (2016)*: In this case, the Supreme Court of India held that Section 499 and 500 of the IPC, which deal with criminal defamation, do not violate the right to freedom of speech and expression guaranteed under the Constitution of India.
4. *Tata Sons Limited vs. Greenpeace International (2014)*: In this case, the Bombay High Court held that a company cannot sue for defamation as it does not have a reputation that can be damaged. The court held that a company can only sue for defamation if it can prove that the statements made were false and caused actual harm to its business reputation.
5. *Shashi Tharoor vs. Arnab Goswami (2017)*: In this case, the Delhi High Court granted an interim injunction restraining Arnab Goswami and his news channel from airing defamatory statements against Shashi Tharoor. The court held that the statements made by the defendants were prima facie defamatory and could not be allowed to continue.

### **Analysis of the Use of Defamation Laws in India**

Defamation laws in India have been misused for political gains in several instances. The use of defamation cases as a tool to silence critics and opponents is a matter of concern and has been a topic of debate in India.

One of the recent cases of alleged misuse of defamation laws for political gains is the case against Rahul Gandhi, the former President of the Indian National Congress party. In 2023, Rahul Gandhi was sued for defamation by a member of the ruling Bharatiya Janata Party (BJP) for allegedly making defamatory statements against him in a public rally.

The statements related to corruption allegations against the BJP member.

The case sparked controversy, with many alleging that it was an attempt to silence the opposition and curb freedom of speech. Rahul Gandhi's legal team argued that the statements made by him were part of political discourse and were made in public interest. They also argued that the case was a classic example of political vendetta and misuse of defamation laws for political gains.

This case is not an isolated incident, and there have been several instances where defamation laws have been used as a tool to silence critics and opponents. For example, in 2018, the editor of an online portal was sued for defamation by a BJP member for publishing a report alleging that the BJP member's daughter had received preferential treatment in a government job. The case was widely criticized as an attempt to curb freedom of speech and silence the media.

In 2019, the Supreme Court of India, in the case of *Subramanian Swamy vs. Union of India*, held that the provisions of criminal defamation in the IPC are not unconstitutional and do not violate the right to freedom of speech and expression. However, the court also recognized the need to balance the right to reputation with the right to freedom of speech and expression.

### **Judicial Analysis**

1. "The right to freedom of speech and expression is not absolute but is subject to reasonable restrictions, which includes the right to reputation." - Justice Dipak Misra in *Subramanian Swamy vs. Union of India* (2019).
2. "The right to free speech cannot mean that a person can defame another with impunity. The law of defamation strikes a balance between the right to free speech and the right to reputation." - Justice A.K. Sikri in *Common Cause vs. Union of India* (2019).
3. "Freedom of speech and expression cannot be used as a cloak to defame someone. Defamation is a civil wrong and a criminal offence, and the law provides remedies for the same." - Justice Sanjay Kishan Kaul in *Vakul Sharma vs. Dr. R.K. Sharma* (2021).

### **Conclusion**

In conclusion, defamation is a complex legal concept that has evolved over time, and its application varies across different jurisdictions. Defamation laws are designed to protect an individual's reputation and prevent harm to their dignity, but they can also be misused for political gains or to silence critics and opponents.

In India, defamation laws have been used in various instances, including cases against political leaders, journalists, and social activists, and the judiciary has been tasked with balancing the right to free speech with the right to reputation. The Indian Supreme Court has recognized the importance of balancing these rights and has laid down guidelines for the proper implementation of defamation laws.

While the need to protect an individual's reputation is essential, it is equally important to safeguard the right to freedom of expression

and speech. Defamation laws should not be used as a tool to silence criticism or dissent. There is a need for greater awareness and sensitivity in the implementation of defamation laws to prevent their misuse and to ensure that they serve their intended purpose.

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