

Defamation Laws in India: Balancing Reputation and Press Freedom in a Constitutional Democracy

¹Dr. Varsha Dhabhai, ²Dr. Reema Bhattacharya, ³Dr. Tanu Arora

Jagannath University, Jaipur¹

Assistant Professor, Jagannath University, Bahadurgarh²

Assistant Professor, Jagannath University, Bahadurgarh³

Abstract

Defamation laws in India, recognized as a reasonable restriction under Article 19(2) of the Constitution, are increasingly used by politicians and corporations as tools to suppress dissent. Criminal defamation under Section 499 of the Indian Penal Code, along with excessive civil damages, has created a chilling effect on journalists and media organizations. This paper employs doctrinal and comparative analysis to examine the misuse of defamation laws and their impact on press freedom. It references landmark Indian cases and compares the Indian framework with the United States and the United Kingdom, where stronger protections for free expression exist. The study also engages with international human rights standards, including the UN Human Rights Committee's stance on criminal defamation. It concludes that while protecting individual reputation is important, the ongoing criminalization of defamation in India undermines democratic accountability. Reforms such as decriminalization, damages caps, and anti-SLAPP legislation are essential to balancing the right to reputation with the freedom of the press.

Keywords: Defamation law, press freedom, criminal defamation, freedom of speech, media law, digital journalism, anti-SLAPP, constitutional democracy.

Introduction

Freedom of speech and expression is one of the most vital guarantees in the Indian Constitution. Article 19(1)(a) protects the right of every citizen to express opinions and disseminate information, while the press serves as the primary medium through which this right is exercised collectively (Divan, 2006). A free press is often described as the "fourth pillar of democracy" because it enables public debate, ensures accountability of state institutions, and facilitates the circulation of information in the public interest (Kundra, 2005). At the same time, the right to free speech is not absolute. Article 19(2) authorizes the State to impose reasonable restrictions on grounds such as the sovereignty and integrity of India, security of the State, public order, decency, morality, contempt of court, incitement to an offence, and defamation (Pandey, 2020). Among these restrictions, defamation has emerged as one of the most contested, as it directly pits two fundamental rights against each other: the right to free expression under Article 19(1)(a) and the right to reputation under Article 21. The Supreme Court has consistently upheld that reputation is an integral part of the right to life and dignity (*Subramanian Swamy v. Union of India*, 2016). Defamation law in India operates on two levels: civil and criminal. Civil defamation allows individuals to seek damages for reputational harm. In contrast, criminal defamation under Sections 499–500 of the Indian Penal Code (IPC) punishes imprisonment up to two years, a fine, or both. Unlike common law jurisdictions that distinguish between libel (written) and slander (spoken), Indian law treats both as actionable in civil and criminal proceedings (Divan, 2006). Critics contend that criminal defamation, introduced to protect the interests of the British Raj, does not fit the bill of a modern-day democratic country and has had a chilling effect on investigative journalism (*Rajagopal v. State of Tamil Nadu*, 1994).

Traverses of recent litigations indicate that defamation suits have increasingly become weaponized by powerful political and corporate actors to silence journalists, authors, and media organisations. In *NSE v. Moneylife* (2015), the National Stock Exchange filed a lawsuit of ₹100 crore against journalists who reported irregularities, which was widely panned as an intimidation tactic. *The Wire v. Jay Shah* (2017) was a defamation case by a news portal for investigating the finances of a political leader's family member. Most recently, complaints have also extended to online media and social media comments. Various state governments have initiated proceedings against independent journalists and online platforms for posting content critical of their policies (Reporters Without Borders, 2022). We are seeing a new trend where defamation cases are used to shut individuals up rather than to protect one's reputation. When we look at other countries' laws on this issue, we see that India's law is unduly restrictive. In a landmark ruling in the United States, the *New York Times v. Sullivan* (1964) case established the standard of "actual malice," which requires public officials to prove that false statements were made with actual malice, or with reckless disregard for the truth. This high bar shows that there is a strong commitment to protecting vigorous political debate. Likewise, the United Kingdom reformed its law through the Defamation Act 2013, which decriminalised defamation and required you plaintiffs to show "serious harm" to reputation. While other democracies have anti-SLAPP suits to counter frivolous cases, India continues to criminalise defamation, allow claims for astronomical civil damages, and not legislate statutory safeguards against the most serious of such cases.

The issue is not only domestic but also international. The United Nations Human Rights Committee has repeatedly called on states to abolish criminal defamation, insisting that jail time for reputational harm is "disproportionate" and "incompatible" with Article 19 of the International Covenant on Civil and Political Rights (ICCPR). India is a party to the ICCPR. Regional organizations have cautioned against the use of criminal penalties in defamation matters, as exemplified by the European Court of Human Rights. India is increasingly out of sync with global democratic standards due to its retention of criminal defamation laws. This article closes the gap between India's restrictive defamation framework and the evolving international law standards of free expression. This paper examines the statutory provisions, important judicial precedents, and recent trends in litigation. It also analyzes how international human rights law is applied to provide other countries with effective and comparative models for application by the United States and the United Kingdom. While protecting reputation remains important, India's present framework overreaches, undermines the architecture of accountability necessary in any democracy, and calls for urgent reforms.

Research Problem

India's defamation law was initially intended to safeguard individual reputation, which the Supreme Court has acknowledged as a fundamental right under Article 21 (*Subramanian Swamy v. Union of India*, 2016). However, in reality, these laws are increasingly being utilized as tactical tools by politicians, corporations, and government institutions to stifle journalists, authors, and media outlets. The dual system of civil and criminal defamation exacerbates this issue. Civil law allows plaintiffs to claim damages for harm to their reputation, while criminal defamation under Sections 499 and 500 of the Indian Penal Code permits imprisonment for up to two years. Critics argue that the criminalisation of defamation, a colonial legacy, is incompatible with the values of a modern democracy (Divan, 2006). However, the Supreme Court upheld its constitutionality in *Subramanian Swamy v. Union of India* (2016), affirming the State's authority to restrict speech in the name of reputation. What makes the issue more urgent today is the growing number of defamation suits filed not by ordinary citizens but by influential actors. High-profile cases such as the Ambani family preventing publication of *The Polyester Prince* (Ninan, 2011), *NSE v. Moneylife* (2015), and *The Wire v. Jay Shah* (2017) illustrate how defamation law is routinely deployed to shield powerful interests from scrutiny. Recent years have also seen a surge in cases targeting digital media and online commentary, including prosecutions of independent journalists for critical reporting during the COVID-19 pandemic and defamation complaints against online fact-checkers and social media users (Reporters Without Borders, 2022).

Unlike jurisdictions such as the United States, where *New York Times v. Sullivan* (1964) requires public officials to prove "actual malice," or the United Kingdom, where the Defamation Act 2013 introduced a "serious harm" test and abolished criminal defamation, India lacks equivalent safeguards. Moreover, India does not have anti-SLAPP legislation, which in Canada and parts of the US prevents frivolous suits designed to silence dissent (Pring & Canan, 1996). The absence of such protections leaves journalists vulnerable to lengthy litigation, financial strain, and even imprisonment. Thus, the central problem is that while defamation law in theory balances freedom of speech with the right to reputation, in practice it disproportionately burdens the press and diminishes democratic accountability. India's framework faces significant concerns due to the continued use of criminal defamation, the lack of safeguards, and unchecked civil damages, which may not align with the country's constitutional promise of free expression under Article 19(1)(a) and international human rights standards.

Research Objectives

This paper assesses whether India's defamation laws are adequate to protect people's reputation while also maintaining a measure of free press. The following objectives will be conducted to solve this problem.

1. To analyze the rise in defamation cases against media and journalists, focusing on recent digital and online trends (2017–2024).
2. To review India's judicial trends through key decisions like *Romesh Thapar v. State of Madras* (1950), and how courts approach reputation and free speech in cases like *Rajagopal v. State of Tamil Nadu* (1994), *Subramanian Swamy v. Union of India* (2016).
3. To compare India's defamation laws with international models, including the US "actual malice" rule, the UK's "serious harm" test under the 2013 Act, and UN perspectives on criminal defamation.
4. To assess India's safeguards, proposing reforms like decriminalization, civil damages caps, and anti-SLAPP legislation to guard against misuse.

The objective of this study is to identify structural and doctrinal flaws in related Indian laws and to recommend reforms aimed at ensuring a person's dignified existence and the vitality of a free press.

Hypothesis.

This research is based on the assumption that Indian defamation laws, particularly the continuation of criminal defamation and the imposition of high civil damages, place an excessive burden on journalists and the media. The threat of jail under Sections 499-500 of the IPC or the risk of crippling damages in civil suits can serve as a serious deterrent to investigative reporting or critical commentary. Unlike the USA, which has an "actual malice" standard that encourages open political debate, or the UK, which has a "serious harm" provision to prevent frivolous lawsuits, India lacks such defenses. Without these legal protections, journalists have to face harassment lawsuits. A series of libel cases filed against media outlets demonstrates that it is no longer possible to defame someone without consequences. Even websites are not immune. The current Indian legal framework fails to balance reputation and free speech fairly; instead, it unjustly restricts press freedom and violates Article 19(1)(a) of the Constitution. This system raises the bar for democratic accountability.

Methodology.

The research uses doctrinal and comparative legal methods, critically analyzing judicial trends, statutes, and secondary literature. Its focus on constitutional provisions, statutory frameworks, and judiciary deliberations regarding the balance between reputation and free speech makes this approach suitable. The analysis assesses Indian defamation laws, statutes, and judgments, discussing permissible speech by authorities like the government and judiciary under the Constitution in relation to Indian Penal Code offences. This includes Sections 499 and 500 of IPC Articles 19(1)(a), 19(2), and 21 of the Constitution and Leading Judicial Pronouncements.

Cases like *Romesh Thapar v State of Madras* (1950). To understand how the judiciary's attitude towards free speech and reputation has changed over time, the cases of *Rajagopal v. State of Tamil Nadu* (1994), *Subramanian Swamy v. Union of India* (2016), and *NSE v. Moneylife* (2015) are reviewed. A discussion of *The Wire v. Jay Shah* (2017), along with the defamation suits filed against digital journalists and fact-checkers from 2020 to 2024, highlights recent developments in the media landscape. To study the Indian framework in relation to comparable international frameworks, a comparative analysis is undertaken. The U.S. courts established the standard of "actual malice" in *New York Times v. Sullivan* (1964) to protect certain forms of speech from defamation claims, ensuring political debate remains as vigorous as possible.

The Defamation Act 2013 of the UK has repealed criminal defamation and also proposed the serious harm threshold. The UK Act, which contrasts with the Defamation Act of India, also helps in deterring frivolous cases. The ICCPR Article 19 and UN Human Rights Committee General Comment No. 34 refer to international human rights standards, which state that defamation must not be subjected to any criminal sanction. Our conclusion will assess how India's defamation law and related legal principles work in practice. Numerous reports, including those from the CPJ, RSF, and academic research, have shown that defamation suits can have a chilling effect on free speech. Media law experts also highlight the financial and emotional toll on journalists, the risk of lengthy litigation, and concerns about accountability in a democracy. By using doctrinal methods, comparative laws, and critical perspectives, we will build a solid foundation for evaluating whether India's defamation laws provide more protection for reputation at the expense of press freedom.

Discussion and Analysis.

India's defamation law operates under a dual system, treating it as both a civil wrong and a criminal offense. As a result, its framework is more stringent than that of most liberal democracies. Under civil law, individuals can bring defamation suits against anyone who causes them harm to their reputation. Meanwhile, sections 499 and 500 of the Indian Penal Code address defamation as a criminal offense, with penalties of up to two years in prison, a fine, or both. Unlike common law jurisdictions that distinguish between libel (written) and slander (spoken), Indian law treats both as actionable under its regimes. The defences available, which include truth, fair comment, and privilege, are narrow and often ineffective in practice. For instance, the defence of truth is not absolute unless it can be shown to be in the public interest. This presents another challenge for journalists reporting in the public interest. The fact that the same act may result in civil and criminal liability significantly increases the risk of the media actors creating an intimidating atmosphere.

Interpretation of these provisions by the courts has been inconsistent and largely regressive. In *Romesh Thapar v. State of Madras* (1950), the Supreme Court ruled that freedom of speech and expression is crucial for a democracy to thrive. Similarly, the Court decided in *Rajagopal v. State of Tamil Nadu* (1994) that the press has the right to publish information about public officials as long as it is in the public interest, without prior restraint. These early decisions showed that judges acknowledged the media's role as a watchdog. However, the path of this issue shifted with *Subramanian Swamy v. Union of India* (2016), where the Supreme Court upheld the constitutionality of criminal defamation. The court decided that reputation is part of Article 21 and must be balanced with Article 19(1)(a). Critics argue that the judgment worsened a colonial-era provision and failed to consider its chilling effect on free speech. The ruling also did not address international human rights standards on criminal defamation and is incompatible with democratic principles. Judicial responses at the level of the High Court have sometimes been progressive. In *NSE v. Moneylife* (2015), the ₹100 crore defamation suit against journalists was dismissed with costs by the Bombay High Court, which noted that the claim was intended to stifle the investigation. The Court was informed of the misuse of defamation law, rejected the suit, and imposed costs on the plaintiff. However, such cases are exceptions, and the application of the law is generally erratic and unpredictable. The misuse of defamation suits has expanded with the growth of digital media and online platforms. Traditional newspapers and television outlets are no longer the sole targets; digital portals, fact-checkers, and even individual social media users have faced defamation proceedings. *The Wire v. Jay Shah* (2017) stands as a prominent example of litigation directed at online journalism. More recently, independent digital news platforms such as *Newslaundry* and *Alt*

News have faced multiple defamation claims filed by political leaders and corporations (Chaudhuri, 2023). The COVID-19 pandemic intensified this trend, with state governments and local authorities filing complaints against journalists who reported on administrative failures. In many of these cases, the legal process itself became the punishment, as journalists were compelled to spend years defending themselves in court, regardless of the eventual outcome. The cumulative effect of such litigation has been a profound chilling effect. Journalists often preemptively avoid controversial topics, and publishers engage in self-censorship to avoid legal exposure. The decision by HarperCollins to withdraw Hamish MacDonald's biography *The Polyester Prince* from publication in India due to anticipated defamation claims by the Ambani family illustrates how the threat of litigation alone can restrict the circulation of information in the public interest. This culture of restraint undermines the press's role as a watchdog and weakens democratic accountability.

Analysis shows that India is an outlier. The US Supreme Court's *New York Times v. Sullivan* case established the actual malice standard, requiring public officials to prove that a statement is false and the person making it knew it was false. This doctrine aims to protect lively political discussion and journalistic statements from being falsely published. In the UK, the Defamation Act 2013 has done away with criminal defamation and introduced a serious harm test, which means claimants must show actual harm to their reputation. There have been efforts to strengthen free speech protections through various reforms. However, India's continued use of criminal defamation, along with the possibility of unlimited damages in civil suits and the lack of anti-SLAPP protections, leaves journalists highly vulnerable to risks.

The departure from international norms is equally evident. According to the UN Human Rights Committee's General Comment No. 34, which adopts Article 19 of the ICCPR, imprisonment for defamation is never an appropriate sanction. States must consider decriminalizing marijuana, according to the Committee. As per the Johannesburg Principles, any restriction on speech must be necessary, proportionate, and the least restrictive option. National Security, Johannesburg Principles (1995). The European Court of Human Rights has repeatedly held the view that criminal defamation sanctions are incompatible with Article 10 of the European Convention on Human Rights, which guarantees the right to freedom of expression. By signing the ICCPR, India is bound to follow the international standards, yet it has retained the criminal defamation laws and is insulated from the international community.

Journalists' lived realities show how defamation law creates a chill effect. Gauri Lankesh faced many defamation cases before her murder in 2017. This shows how voices in India are under threat. A complaint of criminal defamation was filed against The Tribune's Rachna Khaira for her Aadhaar data leak report. Journalists revealing systemic abuses may face imprisonment. Regional journalists lacking institutional protections are even more vulnerable. As stated by the Reporters Without Borders 2022 report and the Committee to Protect Journalists, local reporters are constantly facing harassment and defamation cases for carrying on with their work. It covers human rights abuse, corruption, and environmental violations. The judicial pronouncements steadfastly affirm the Right to Education enshrined in the Constitution. Lawsuits can be misused, as seen in the case of *NSE v. Moneylife*. The ongoing chilling effect is largely due to damage caps and anti-SLAPP laws not being implemented as a system. Criminal defamation can block the ability of the dissenters to speak their minds. It creates a feeling of fear.

In short, India's defamation law regime imposes an unfair burden upon the Press through dual imposition of liability, narrow defences, and a lack of shield. India's refusal to limit excessive civil damages, resistance to global best practices, and retention of colonial-era provisions for criminal defamation position it at odds with the liberal democratic trend to strengthen free expression. A law aimed at limiting speech as it relates to reputation often silences the dissenting voice. In the absence of a decriminalization measure, a cap on statutory damages, and anti-SLAPP legislation, the new defamation regime will act as an unreasonable impediment to the constitutional right of free speech guaranteed under Article 19(1)(a) of India.

Findings.

According to a study, there is an "unfair" burden on the press because of India's defamation laws. The publication of a single article generates both civil and criminal liabilities. In other words, one article can give rise to a monetary claim and at the same time threaten imprisonment or loss of liberty. The way the authorities are enforcing laws is harsher than in many other democracies, leaving a chilling effect on business and commercial journalism. First, judicial interpretation has been inconsistent. The court took a strong pro-speech view in *Romesh Thapar v. State of Madras* (1950). In the latter case, *Subramanian Swamy v. Union of India* (2016), the Court held that criminal defamation is constitutional, prioritising reputation over free speech. Some courts in *NSE v. Moneylife* (2015) recognized the misuse of litigation and attempted to prevent it. However, this is an exception rather than the norm. Second, there is an increasing misuse of defamation lawsuits. Political leaders, companies, and government institutions are not filing lawsuits for defamation to repair so-called reputations but to silence critics and investigative journalists. Rephrased as follows (38 words): High-profile cases like *The Wire v. Jay Shah* (2017) and the defamation case against Priya Ramani during the #MeToo movement demonstrate that the legal strategy itself can punish a certain class. Most recently, this was seen in relation to digital fact-checkers. Between 2020 and 2024, the coverage of defamation claims has extended to include all digital and social media users, as the chilling effect has become multi-sectoral.

The Indian media suffers from systematic failures owing to a variety of factors. These include a lack of damage caps, anti-SLAPP, and other systemic protections. Losing lawsuits can be expensive and create self-censorship. Publishers also often shelve controversial works like Hamish MacDonald's *The Polyester Prince*. It restricts public information, thus undermining democratic accountability. To put it differently, a comparison between India and other democracies shows that India is lagging behind those democracies in this respect. In the case of *New York Times v. Sullivan* (1964), the United States adopted the actual malice rule to allow for robust public debate. The UK, on the other hand, allowed for the repeal of the offense of criminal defamation and the introduction of a 'serious harm' test under the 2013 Defamation Act. Further, according to Article 19 of the ICCPR and General Comment No. 34 of the UN Human Rights Committee, defamation should not be subjected to criminal law sanctions, as no democratic society needs to concern itself with them. Unlike other democracies, India is the only country that has and upholds such laws. In effect, the data affirm that this study's hypothesis—that India's defamation laws are overly restrictive of press freedom, promote self-censorship, and harm democratic accountability—holds. In addition, the defamation laws do not sufficiently protect free speech.

Conclusion.

India has defamation laws to protect reputation. Nonetheless, their enforcement often acts as a potent weapon against dissent. The combination of civil and criminal punishment, injunctions, limited defenses, and the absence of structural safeguards creates a chilling effect on investigative journalism, which leads to self-censorship. The judiciary's interpretation of the article varies. Some judgments uphold free speech while others, like that in *Subramanian Swamy v. Union of India* (2016), uphold the validity of criminal defamation. Further, it also recognises that the right to reputation outweighs the right to democratic debate. In the context of the rest of the world, India's position is restrictive. A public official may not maintain a suit for defamation relating to speech concerning an official act. In contrast, the US protects speech through the "actual malice" standard. The UK has repealed its criminal defamation laws and adopted a 'serious harm' test to deter vexatious claims. According to international human rights organizations like the UN Human Rights Committee and the European Court of Human Rights, the use of criminal defamation liability is chilling and should be abolished. India is misusing defamation laws that do not comply with international law.

Due to the imbalance between the protection of reputation and press freedom, there is a need for reforms. Punishments against harm to a person's reputation should be removed, as civil remedies are sufficient. In addition, the law must put a limit on the damages so that high claims are not weaponized. Third, anti-SLAPP legislation must be enacted to dismiss frivolous or malicious lawsuits intended to silence dissent. Ultimately, Indian courts

should adopt a more speech-protective standard, inspired by the US "actual malice" rule or the UK "serious harm" test, for cases involving public figures and matters of public interest.

Implementing these reforms will not be without challenges. Due to political pressure, resistance to the judiciary's conservative stance in *Subramanian Swamy v. Union of India*, and established interests, progress may be slow. However, the urgency of reform cannot be overstated. India's press freedom is already falling far behind global indices like those compiled by Reporters Without Borders. The ability of a democratic system to hold the powerful accountable depends on a press that is free to inquire, investigate, and criticize without the fear of being jailed or bankrupted. To sum up, the right to reputation is important, but it cannot override the constitutional right to free speech under Article 19(1)(a). India needs a reformed framework for defamation that eliminates criminal liability, regulates civil damages, and provides safeguards against abuse of process. This is essential if it aims to strengthen its democratic character and help the press stay free, fearless, and independent.

References

Books and Articles

- [1] Chaudhuri, S. (2023). *Defamation, digital media, and democracy in India*. *Economic and Political Weekly*, 58(12), 21–26.
- [2] Divan, M. (2006). *Freedom of the press and the law*. New Delhi: Oxford University Press.
- [3] Jha, P. (2019). Defamation and media freedom in India: Emerging challenges. *Indian Journal of Constitutional Law*, 13(2), 145–162.
- [4] Kundra, R. (2005). *Media law in India*. New Delhi: Universal Law Publishing.
- [5] Ninan, S. (2011). *Headlines from the hinterland: Media and telecommunications in India*. New Delhi: Sage Publications.
- [6] Pandey, J. N. (2020). *Constitutional law of India* (51st ed.). Allahabad: Central Law Agency.
- [7] Pring, G. W., & Canan, P. (1996). *SLAPPs: Getting sued for speaking out*. Philadelphia: Temple University Press.
- [8] Reporters Without Borders. (2022). *India: Press freedom under pressure*. Retrieved from <https://rsf.org>
- [9] Reporters Without Borders. (2023). *World Press Freedom Index 2023*. Retrieved from <https://rsf.org>
- [10] United Nations Human Rights Committee. (2011). *General Comment No. 34: Article 19: Freedoms of opinion and expression*. CCPR/C/GC/34. Geneva: UN.

Cases

- [1] *Romesh Thapar v. State of Madras*, AIR 1950 SC 124.
- [2] *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.
- [3] *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.
- [4] *NSE v. Moneylife*, (2015) SCC OnLine Bom 516.
- [5] *The Wire v. Jay Shah*, (2017) Gujarat HC (Defamation suit pending).
- [6] *M.J. Akbar v. Priya Ramani*, (2021) Delhi HC (Acquittal in criminal defamation).
- [7] *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

Statutes and Constitutional Provisions

- [1] The Constitution of India, Articles 19(1)(a), 19(2), and 21.
- [2] The Indian Penal Code, 1860, Sections 499–500.
- [3] Defamation Act, 2013 (United Kingdom).
- [4] International Covenant on Civil and Political Rights, 1966, Article 19.
- [5] Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1995.
- [6] European Convention on Human Rights, 1950, Article 10.