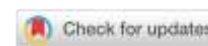


**Criminal Defamation and the Media in India: Need for Reform?****Dr. Kavita\***

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**Abstract**

This review paper critically examines the intersection of criminal defamation laws and media freedom in India, analyzing their historical evolution, constitutional implications, and contemporary relevance. While defamation serves as a mechanism to protect individual reputation, its criminalization raises serious concerns regarding freedom of speech and the press—a cornerstone of democratic societies. The paper explores the origins of criminal defamation in Indian law, its judicial interpretations, and its application in recent high-profile cases involving journalists, activists, and media houses. Drawing comparisons with international legal standards and practices, the review highlights the tension between safeguarding reputational rights and ensuring journalistic freedom. The paper argues that the existing legal framework is often misused to stifle dissent and intimidate the press. It concludes by evaluating reform proposals, including decriminalization and the strengthening of civil remedies, ultimately advocating for a balanced legal approach that upholds both personal dignity and media independence in a democratic society.

**1. Introduction**

Freedom of expression stands as a cornerstone of democratic societies, enabling citizens, institutions, and the press to question authority, debate policy, and engage in public discourse. However, this foundational right is frequently contested, particularly when it collides with issues such as national security, public morality, defamation, or academic governance. Across legal, academic, and political spheres, scholars have long debated the scope, limitations, and contradictions inherent in freedom of expression (Govindu, 2011; Ginsburg, 2022).

This review synthesizes recent and historical developments in defamation law, media freedom, and academic expression, drawing on interdisciplinary perspectives from law, political science, and communication studies. Defamation law, in particular, reveals the tension between protecting individual reputation and upholding the public's right to information. While early jurisprudence focused on safeguarding reputation against falsehoods (Gibbons, 1996; Descheemaeker, 2009), contemporary debates emphasize the chilling effect of overbroad defamation statutes on investigative journalism and political dissent (Barendt, 2011; Fides, 2018).

Simultaneously, academic freedom faces renewed threats in both authoritarian regimes and established democracies. As Ginsburg (2022) notes, global instances of democratic backsliding have manifested in political interference with universities, legislative efforts to restrict curricula, and internal



administrative constraints. These developments highlight the fragility of expressive rights even within ostensibly liberal systems.

By examining the intersecting trajectories of media regulation, defamation law, and academic freedom, this review aims to elucidate the broader implications for democratic governance and civil liberties. The selected literature spans a range of geopolitical contexts and legal traditions, reflecting both the universal value and local vulnerabilities of free expression.

Freedom of expression lies at the heart of democratic governance and individual liberty. It enables citizens to critique authority, hold institutions accountable, and engage in informed public discourse. Yet, the very exercise of this right is increasingly constrained by laws, political pressures, and regulatory frameworks that purport to protect reputation, public order, and national security. The tension between protecting personal dignity through defamation laws and safeguarding freedom of speech has persisted across jurisdictions and historical periods, shaping the contours of democratic participation and media autonomy (Ingber, 1979; Harnett & Thornton, 1949).

The scope and limitations of defamation laws have long generated legal and philosophical debate. While truth traditionally serves as an absolute defense to defamation in many common law systems, scholars such as Harnett and Thornton (1949) have critiqued this doctrine for enabling malicious publications that, though accurate, can unjustly harm reputations. Similarly, Ingber (1979) highlighted the ideological conflict between "reason"—the rational discourse protected by the First Amendment—and "decency," the moral intuition behind tort protections. These debates reveal a deeper inquiry into whether legal systems should prioritize the marketplace of ideas or the sanctity of personal honor.

In contemporary societies, the role of the media further complicates this legal landscape. Governments in various Asian countries, for instance, have deployed constitutional, administrative, and informal mechanisms to suppress dissent and restrict journalistic freedom (Mishra, 2008; Tajammul-ul-Islam, 2019). In India, increasing incidents of media censorship, state propaganda, and punitive legislation such as the Unlawful Activities (Prevention) Act (UAPA) illustrate the shrinking space for critical voices (SAHRDC, 2010). These governmental actions often rest on the rhetoric of national security or public morality, yet they simultaneously erode democratic norms and stifle legitimate dissent.

The global legal community, including bodies such as UNESCO and the UN Human Rights Committee, has emphasized that any restriction on free speech must adhere to a three-part test of legality, necessity, and proportionality (UNESCO, 2021). However, the frequent misuse of defamation and sedition laws in several jurisdictions raises pressing concerns about the abuse of such legal tools for political or ideological control.

This review paper analyzes the complex intersection of defamation law, freedom of expression, media regulation, and legislative privilege using a range of academic sources. Through comparative legal analysis and normative critique, it interrogates whether current legal regimes genuinely balance reputation with liberty—or merely cloak repression in the garb of legality.

The legal and moral boundaries of freedom of expression remain among the most contested terrains in democratic societies. At the intersection of law, ethics, and political theory lies the complex issue of defamation—particularly how societies reconcile the individual's right to reputation with the collective imperative of uninhibited discourse. This review paper critically examines the historical evolution, philosophical underpinnings, and contemporary challenges of defamation law, drawing on foundational texts from Van Vechten Veeder (1903, 1904) and more recent scholarly contributions, such as Jeremy Waldron's (2010) defense of dignity in the context of hate speech.

Historically, defamation law has been shaped by a mixture of ecclesiastical, common law, and Roman influences, often responding more to the structural needs of society than to coherent legal theory.



Veeder (1903) observed that the English law of defamation, rather than being a rational system, evolved as a "mass which has grown by aggregation," frequently characterized by inconsistencies, anomalies, and artificial distinctions such as the divide between libel and slander. By tracing its roots from Germanic tribal customs, ecclesiastical courts, and feudal manorial systems, Veeder demonstrates how the right to reputation historically functioned not only as a personal shield but also as a reflection of public order and moral discipline.

Modern legal theory, however, reconfigures these historical premises within the framework of liberal democratic values. Waldron (2010) emphasizes the notion of "dignity" as central to understanding contemporary restrictions on group defamation or "hate speech." In his account, such laws are not merely about protecting subjective feelings but aim to secure a public good: the assurance to all members of society that their equal standing will not be publicly undermined by hateful expression. This view challenges the absolutist First Amendment perspective by positing that visible hate—especially in the form of persistent, public, and symbolic defamation—threatens the social fabric more than it upholds liberty.

This review synthesizes legal-historical, doctrinal, and normative literature to explore whether defamation law in its current form meets the dual objective it claims: protecting both individual dignity and democratic openness. It assesses whether existing frameworks strike a fair balance or merely reflect accumulated compromises rooted in outdated institutional priorities. Ultimately, this paper seeks to understand how defamation law can evolve to uphold both freedom and fairness in an age of instantaneous and global communication.

## **2. Review of literature**

The interplay between defamation law, media freedom, and freedom of expression has undergone significant scrutiny in legal scholarship. Scholars have explored both the protective aims of defamation law and the chilling effect it can have on public discourse.

The foundational purpose of defamation law is the protection of reputation. As discussed in the seminal Harvard Law Review note, the legal treatment of defamation was originally rooted in efforts to prevent breaches of the peace and to safeguard honor (Developments in the Law: Defamation, 1956). The note emphasizes that courts historically defined defamatory speech as that which exposed individuals to public contempt or ridicule, often assuming reputational harm without specific proof. Over time, however, scholars have questioned whether the rigid application of these principles still serves justice. Descheemaeker (2009) challenges the traditional confinement of reputation protection solely within defamation law. He argues for a broader conceptualization that includes negligence, suggesting that reputation could, and perhaps should, be protected through tort law more generally. This approach could allow for more flexible responses to reputational harm and reflect the modern media environment.

Gibbons (1996) similarly critiques defamation law's failure to recognize how reputations are constructed and mediated by modern communication. He emphasizes the law's inadequate appreciation of the social construction of public images and its overly punitive approach to media mistakes, advocating a rebalancing of interests between media freedom and individual reputation.

Recent analyses of judicial decisions reveal tensions between privacy, defamation, and free speech. Borger et al. (2011) report on trends in U.S. defamation and privacy law, including key cases where courts affirmed strong protections for press freedom, such as fair report privilege and Section 230 immunity under the Communications Decency Act. These developments suggest judicial recognition of the need to protect speech in the digital age.

However, freedom of expression is not absolute. Gaur (1994) and Govindu (2011) detail how Indian constitutional law permits reasonable restrictions on speech in the interest of public order, morality, or



national security. Gaur highlights the balancing act embedded in Article 19(2) of the Indian Constitution, while Govindu explores contradictions in how the Indian state applies these limitations, especially during political or communal conflicts.

Internationally, the right to information and freedom of expression are often treated as mutually reinforcing. Földes, Martini, and Jenkins (2018), writing for Transparency International, note that access to information and press freedom are essential to government accountability. Yet, even in countries with strong right-to-information laws, actual media freedom may be curtailed through intimidation or censorship.

Legal commentary also includes critiques of judicial inconsistency and excessive damages in defamation suits. The case of Justice P.B. Sawant (as discussed in "Defamation and Its Real Dangers," 2011) illustrates how defamation law can be wielded in ways that may suppress journalistic inquiry and burden media organizations with financially crippling penalties.

Earlier legal discourse, such as the Yale Law Journal essay on community standards in defamation (1949), introduced the idea that community perception is central to the adjudication of reputational harm. This idea remains influential but also problematic in pluralistic societies where communities hold divergent values.

In sum, the literature illustrates an enduring tension: the need to protect individual dignity and reputations without stifling critical speech or investigative journalism. Legal scholars, judges, and policymakers continue to wrestle with how best to maintain this balance in an era of globalized, instantaneous communication.

The relationship between freedom of expression and its legal, ethical, and societal limits has long occupied a central place in media and legal scholarship. This literature review surveys historical and contemporary works that interrogate the tension between expression, censorship, state power, and defamation, especially in the contexts of conflict, democracy, and postcolonial governance.

## **2.1 Defamation and the Public Interest**

Early jurisprudence on defamation reflects concerns about balancing the right to reputation against freedom of expression. Harnett's critical analysis of defamation law in *The Truth Hurts* (1949) argues that legal doctrines prioritizing "malice" and "intent" over truthfulness often undermine the press's role in holding power to account. He warns that when legal systems punish true statements solely for their injurious nature, they impede public discourse, especially on matters involving public officials.

Expanding on this, Ingber (1979) proposes a reconciliation between defamation law and the need for conflict in democratic discourse. He asserts that conflict is not merely inevitable in pluralistic societies, but essential for political progress. Hence, suppressing contentious speech in the name of civility or harmony risks stagnation of public debate and undermines the democratic process.

Kenyon (2010), from a comparative legal perspective, emphasizes "the conversation model" of free speech, suggesting that legal systems must protect not just individual expression but the broader communicative environment of society. He argues for institutional and cultural reforms that view freedom of expression as a dialogue rather than a unilateral right, particularly within postcolonial democracies where legacy legal systems often fail to support participatory public spheres.

## **2.2 Governmental Threats and Censorship**

In the context of India, Mishra (2008) presents a powerful indictment of state overreach in silencing dissent. His empirical study documents the increasing use of legal threats, arbitrary arrests, and indirect censorship to control media narratives. He argues that these governmental threats compromise journalistic integrity and erode democratic norms.

Similarly, the 2010 SAHRDC report titled *Stifling Freedom of Expression* chronicles systemic constraints on speech in South Asia. The report highlights the use of colonial-era sedition and defamation laws, misuse of national security provisions, and targeted violence against journalists as tools to suppress dissent. The findings advocate for a rights-based framework to evaluate restrictions, insisting that limitations on speech must meet standards of legality, necessity, and proportionality .

### **2.3 Legislative Privilege and Legal Precedents**

Malhan's (1942) exploration of legislative privilege in India underscores how lawmakers have historically shielded themselves from scrutiny. He notes that broad claims of privilege have been invoked to bypass judicial oversight and suppress unfavorable press coverage, weakening institutional checks and balances .

In a legal-historical approach, Knox Mawer (1956) reviews Indian judicial decisions on defamation, revealing a gradual shift toward aligning Indian law with British common law precedents. However, he warns that transplanting doctrines without adapting to local democratic values can perpetuate colonial logic and constrain freedoms in independent states .

### **2.4 International Norms and Reform**

UNESCO's 2021 report, *Legitimate Restrictions on Freedom of Expression*, offers a contemporary global framework to evaluate speech limitations. It emphasizes that any restriction must be grounded in law, serve a legitimate aim (e.g., public order, national security), and be necessary and proportionate. The report serves as a benchmark for countries grappling with new challenges such as digital misinformation, hate speech, and platform regulation .

Tajammul-ul-Islam's (2019) analysis of media freedom in India further illustrates the disconnect between constitutional ideals and on-ground realities. While Article 19 guarantees free speech, the author argues that media houses often face state coercion, market pressures, and legal harassment, resulting in a chilling effect that undermines watchdog journalism .

## **3. Research Methodology**

This study employs a doctrinal legal research methodology, which is qualitative and involves a systematic, in-depth analysis of legal texts such as statutes, judicial decisions, legal commentaries, and scholarly writings. Doctrinal legal research is a traditional approach widely utilized in legal scholarship that aims to interpret, explain, and systematize the law through critical examination and reasoning.

### **3.1 Nature and Scope of the Methodology**

Doctrinal research is text-based and analytical, focusing on interpreting established legal principles, doctrines, and case law. It does not use empirical tools like surveys or interviews but relies on authoritative legal documents to explore legal questions, identify gaps or inconsistencies, and propose reforms.

### **3.2 Research Steps**

The research process includes:

- Identifying the legal issue;
- Collecting relevant legal sources;
- Analyzing and synthesizing these sources;
- Critically evaluating the coherence and gaps in the legal framework;
- Drawing conclusions and making recommendations for reform.

### **3.3 Sources of Data**





This study primarily utilizes both primary and secondary legal sources consistent with doctrinal legal research methodology, focusing on the constitutional and legal framework governing freedom of speech and criminal defamation in India.

### 3.4 Primary Sources

- Constitution of India: Articles 19(1)(a) and 21, addressing freedom of speech, expression, and right to reputation.
- Indian Penal Code (IPC), 1860, and the updated Bharatiya Nyaya Sanhita, 2023, which define criminal defamation and related offenses.
- Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, covering procedural aspects of defamation cases.
- Judicial decisions, including *Subramanian Swamy v. Union of India* (2016), *Shreya Singhal v. Union of India* (2015), *K.S. Puttaswamy v. Union of India* (2017), and *R. Rajagopal v. State of Tamil Nadu* (1994).

### 3.5 Secondary Sources

- Law Commission of India reports recommending reforms and alternative punishments in defamation law.
- Academic literature offering normative analyses of constitutional interpretation, press freedom, and comparative defamation law.
- Media reports and opinion pieces on landmark defamation cases and the misuse of defamation laws to silence dissent.
- Reports from media watchdog organizations like the Press Council of India and Reporters Without Borders highlighting issues of censorship and press freedom.

### 3.6 Objectives of the Research

- To understand the legal framework of criminal defamation in India.
- To examine the impact of criminal defamation laws on press freedom and journalistic practices.
- To analyze judicial trends and landmark decisions related to criminal defamation and media.
- To assess whether the current legal regime requires reform, decriminalization, or balancing measures.

### 3.7 Research Questions

1. How do criminal defamation laws affect freedom of the press in India?
2. What are the justifications for retaining criminal defamation in India?
3. How have Indian courts balanced defamation laws with Article 19(1)(a) of the Constitution?
4. Should India move toward civil defamation only, aligning with global trends.

## 4. Analysis and Findings

### 4.1 Constitutional and Judicial Balancing of Rights

The Indian Constitution attempts to balance freedom of speech (Article 19(1)(a)) with reputation protection (Article 21) through reasonable restrictions (Article 19(2)). Judicial precedents (*Subramanian Swamy v. UoI*, 2016; *K.S. Puttaswamy v. UoI*, 2017) reinforce that reputation is intrinsic to human dignity, justifying criminal defamation. However, this balance remains contentious, as dissenting opinions (e.g., Justice U.U. Lalit) argue that criminal penalties disproportionately stifle free expression.

Findings:

- Article 19(2) permits defamation restrictions, but judicial interpretation leans towards protecting reputation over unfettered speech.



- Article 21's expansion to include reputation has legitimized criminal defamation, despite global trends favoring civil remedies.

#### **4.2 Judicial Endorsement vs. Criticism of Criminal Defamation**

The Supreme Court's *Subramanian Swamy* (2016) ruling upheld Sections 499–500 IPC (now BNS 356–357), citing the necessity of criminal sanctions to deter malicious falsehoods. However, critics argue that civil defamation (compensatory damages) should suffice, as seen in jurisdictions like the US and UK.

Findings:

- Criminal defamation remains constitutionally valid but faces criticism for being outdated and excessive.
- Dissenting judicial voices highlight risks of misuse and chilling effects on dissent.

#### **4.3 Misuse of Defamation Laws to Suppress Dissent**

Analysis:

High-profile cases (*Rahul Gandhi*, *Priya Ramani*, *Arvind Kejriwal*) demonstrate strategic litigation against public participation (SLAPPs), where powerful entities use defamation laws to silence critics. Reports by the Press Council of India (PCI, 2021) and Reporters Without Borders (RSF, 2023) document systematic abuse targeting journalists and opposition figures.

Findings:

- Politically motivated cases drain resources and deter investigative journalism.
- India's press freedom decline (Rank 161/180, RSF 2023) correlates with defamation law misuse.

#### **4.4 Continuity in Defamation Laws Under BNS & BNSS (2023)**

The Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) retain the IPC's defamation framework with minor procedural updates (e.g., digital filings). Despite calls for reform, substantive provisions remain unchanged, preserving criminal penalties.

Findings:

- BNS 356–357 mirrors IPC 499–500, reflecting legislative inertia.
- No significant safeguards against misuse were introduced.

#### **4.5 Narrow Application of Defenses & Procedural Hurdles**

While BNS provides exceptions (e.g., truth for public good, fair criticism), courts often impose strict burdens of proof, making defenses difficult to claim. The Law Commission (1971–2017) noted procedural delays and recommended reforms like community service and higher malice thresholds, but these were ignored.

Findings:

- Legal defenses exist but are narrowly interpreted, favoring plaintiffs.
- Prolonged trials discourage defendants, even in valid public-interest cases.

#### **4.6 Law Commission's Reform Recommendations vs. Legislative Inaction**

The Law Commission's 42nd (1971), 200th (2006), and 267th (2017) Reports acknowledged defamation law misuse but stopped short of advocating decriminalization. Proposed reforms (e.g., mediation, stricter malice standards) remain unimplemented.

Findings:



- Consensus on misuse but no political will for decriminalization.
- Civil remedies + safeguards could strike a better balance.

#### **4.7 Chilling Effect on Media & Public Discourse**

Criminal defamation incentivizes self-censorship, particularly in investigative journalism. RSF (2023) and PCI (2021) link India's press freedom decline to legal harassment, including defamation suits.

Findings:

- Media freedom suffers due to fear of legal retaliation.
- Public interest reporting declines, weakening democratic accountability.

#### **5. Conclusion: Key Research Findings**

1. Constitutional tension persists between free speech and reputation, with courts favoring the latter.
2. Criminal defamation is misused as a tool of intimidation, especially against journalists and activists.
3. BNS/BNSS (2023) reforms are superficial, retaining problematic IPC provisions.
4. Legal defenses are weak in practice, enabling frivolous cases.
5. Law Commission proposals remain ignored, perpetuating systemic issues.
6. Press freedom erosion is directly linked to defamation law abuse.

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