

## Defamation in India

Defamation is defined in **section 499 of the Indian Penal Code** as- “Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

### Defamation in India - Related Updates

The concept of fame, reputation, recognition in public life forms an integral part of the fundamental rights as per the Constitution of India under article 21. Actions, allegations translating into defamation for another person or circumstances under which they were issued have been in headlines in recent months. Earlier this year, the Delhi High court in a landmark judgement acquitted one journalist in a criminal defamation case, filed by her former employer, pertaining to her publication detailing the horrifying accounts of years of workplace violence.

The court rejecting the petition for Defamation suit drew a fine-line between defamation and expression of genuine grief, accounts of abuse, and a person has gone through. The court in its order declared-“Women cannot be punished for raising voice against the sexual abuse in the pretext of complaint of defamation. The woman has the right to put her grievance at any platform of her choice and even after decades.”

Most recently, the suit of defamation filed by a family member of an in-service official of the Govt. of India against one serving minister of the concerned state, stating that the slanderous allegations, statements; publication of images, press conferences held by the latter has damaged the reputation, image, social respect of his family, has evoked interest among citizens on Defamation and its various components.

### What constitutes Defamation, as per Indian Laws?”

- It is an all encompassing term, can stretch to aspersions, statements, publications malicious in nature, injurious to reputation, fame, social image, profession of person, entity group or agency.
- **‘Libel’ and ‘Slander’ are two categories** into which defamation can be classified. While the former refers to Written Defamation, the latter refers to spoken form. Although derived from English Common Law, they are indistinct in the Indian context of Jurisprudence.
- The Code of Criminal Procedure (CrPC), dealing with the procedural aspects of the law, holds such offences as non-cognizable and bailable offences.

### Necessary Characteristics to Qualify as Defamation

- The Statement in question must be defamatory in nature.
- The allegation or statement must refer to the petitioner
- It should be a statement that must be published, communicated to at least one person, apart from the affected one.

### Defamation Law in India

- The constitution of India concerning Fundamental Rights guarantees various freedoms to citizens under

article 19, with reasonable restrictions.

- Contempt of court, defamation, and incitement to offence are not allowed under right to freedom.
- Justifiably, freedom to express need not and should not obliterate the right to life with dignity and reputation, recognition a fundamental right for the affected party as well.

### Defamation and its Nature:

- Defamation by nature is both **a civil and criminal offence**.
- In civil law, defamation is **punishable under the Law of Torts** by imposing punishment in the form of damages awarded to the aggrieved party.
- In Criminal law, Defamation is a **bailable, non-cognizable offence** and can be compounded.

### Civil Defamation

- The Allegation or statement has to be false, expressed without the consent of the affected person.
- Provision of claiming monetary compensation from the defendant for the defamation.
- The statements or the allegations levelled must pass the test of presence of substance, facts defamatory in nature.
- The defamatory content is one meant to damage the reputation of the affected party, causing them hatred, hostility or ridicule.
- The defamation and its nature are calculated from the eye of the common citizen and their understanding of the matter.

### Criminal Defamation:

- In matters of criminal defamation, imprisonment can be awarded, as per Indian Penal Code (IPC) section 500.
- Under a criminal suit, the intention of the allegation must involve a criminality, i.e. to defame, with malicious intent.
- Must be established beyond reasonable doubt that the action was meant for lowering, harming the reputation of the affected party.

### Exceptions which are not considered as Defamation

- Imputation of truth which public good requires to be made or published. Publication, allegation, attribution of truth in larger interest of public good is not defamation. The application of public good is to be debated in such a situation.
- Public conduct of public servants. Expressing opinion on the conduct of a public servant, in discharge of his public functions, in good faith is not defamation.
- Conduct of any person touching any public question. Expressing opinion on conduct of a person concerning any public question is not defamation.
- Publication of reports of proceedings of courts. Publishing a true report of the proceedings of a Court of Justice, or the result of such proceedings, don't come under defamation.
- Merits of case decided in Court or conduct of witnesses and others concerned. Expressing any opinion respecting the merits of any case, as decided by the court, or of the concerned parties in good faith, reflecting the speaker's character is not treated as defamation.
- Merits of public performance. Opinion expressed in good faith in respect of performances, with the concurrence of the author, does not come under defamation.
- Censure passed in good faith by a person having lawful authority over another. Censure made in good

- faith by a person over another, within lawful authority, on the conduct of the latter is not a defamation.
- Accusation preferred in good faith to authorized persons. Accusations made in good faith by a person on another having lawful authority on the subject is not termed as defamation.
- Imputation made in good faith by a person for protection of his or other's interests. Allegations, statements made in good faith by a person in protection of his interest or another person or in larger public good is not defamation.

## Defamation in India - Landmark SC Judgements

### Subramanian Swamy Versus Union Of India

- The [Supreme Court](#) held the freedom of expression as a “highly treasured value under the Constitution”
- In application of the concept of reasonable restrictions it held that - “Notwithstanding the expansive and sweeping ambit of freedom of speech, as all rights, the right to freedom of speech and expression is not absolute. It is subject to imposition of reasonable restrictions.”
- The court held that the reputation of a person is an integral part of the right to life granted under Article 21 of the Indian Constitution.-“Reputation of one cannot be allowed to be crucified at the altar of the other’s right of free speech.
- The court differentiated a defamatory attack from criticism, dissent by speaking for tolerance to criticism, dissent and discordance but professed no tolerance to defamatory attack.

### Shreya Singhal Vs. Union of India

- The decision was considered a landmark judicial pushback against state encroachment on the freedom of speech and expression.
- The Supreme court declared Section 66A of the IT ACT-2000(Amended in 2008) unconstitutional for “being violative of Article 19(1)(a) and not saved under Article 19(2).”
- Article 19(1) (a) gives people the right to speech and expression, whereas 19(2) accord the state the power to impose “reasonable restrictions” on the exercise of this right.
- The court in its judgement held that- “Section 66A is cast so widely that virtually any opinion on any subject would be covered by it ...and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total.”
- It read down Section 79, concerned with “intermediary liability” and spelling out rules for engagement between governments and commercial internet platforms, frequently in news due to the tussle between Centre and microblogging platforms.
- Section 79 states that an intermediary shall not be legally or otherwise liable for third-party information, data, or communication, posted or hosted on its platform.

## Conclusion

Defamation is antithetical to reputation, fame, public image, earned by a person in his or her lifetime and therefore a valued asset for an individual. Damages are to be dealt with in consonance with the prevailing law of the land, The courts have rightly balanced the freedom of speech, expression with reasonable restriction to that of the right to life with dignity for an individual, equally important, and no less valued in public life.

The wisdom of the lawmakers are reflected in treating slander and libel at par with each other, by necessarily checking the misuse of weaker provisions. Similarly, malicious intent to harm and test of criminality in a statement for criminal defamation is meant to dissuade persons to resort to such practices. It is the brilliance and collective wisdom of our institutions that has upheld the principles guaranteeing the rights, and ensuring

continuity, progress and righteousness with balance by ensuring justice.