

Bill No. XIX of 2023

THE DECRIMINALIZATION OF DEFAMATION BILL, 2023

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to decriminalize the offence of defamation.

BE it enacted by the Parliament in the Seventy-fourth Year of the Republic of India as follows:—

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| 1. (1) This Act may be called Decriminalization of Defamation Act, 2023. | Short title and commencement. |
| 5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. | |
| 2. The enactments specified in the Schedule are hereby amended to the extent and the manner mentioned in the fourth column thereof. | Amendment of certain enactments. |
| 10 3. This Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing. | Savings. |

THE SCHEDULE

(See Section 2)

Amendments

Year	No.	Short Title	Amendments
1860	45	The Indian Penal Code, 1860	Sections 499 to 502 shall be omitted.
1974	2	The Code of Criminal Procedure, 1973	Section 199 shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Indian Penal Code, 1860 (IPC) states that defamation is a criminal offence. The law of criminal defamation is more than 160 years old and is present in our statutes without any substantial legislative change till date. It was a tool in the hands of the British to curb the liberty of a subject nation. A change in times should, ideally, lead to a change in law.

Our Constitution guarantees the right to free speech, through article 19(1)(a). This provision is a testament to our vibrant and evolving democracy. A fine balance needs to be maintained to ensure that this right is not misused to damage the reputation of a person or entity. We need to establish a fine legislative balance between free speech and the right to reputation.

The Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly on 10th December, 1948, guarantees the right to freedom of expression under article 19. Further, the Law Commission in its 2014 report also noted that threats of legal action with punitive damages under the laws of defamation lead to a 'chilling effect' on the publication of free and independent news articles and put undue pressure on journalists and publishing houses. Any change in the laws on defamation in India must balance these two considerations. It further noted that Media bodies such as the Editors' Guild of India have also demanded decriminalization of defamation with regard to journalists.

According to a research undertaken to study the criminal defamation judgments delivered in the High Courts in 2018, it was found that out of all the judgments delivered pertaining to section 499 of IPC, only 14.29 per cent. resulted in the defendant being found guilty of criminal defamation. In comparison, 57.14 per cent. of the judgments resulted in a dismissal.

If we look around the world, there is an emerging global trend to abolish criminal defamation. Many countries such as the United Kingdom, Sri Lanka, El Salvador and Jamaica have decriminalized defamation. United Kingdom, the country that gave us the Indian Penal Code in its original form, has repealed criminality in its defamation law in 1996 and, in its place, passed a reasonable law in the year 2013.

This Bill attempts to repeal the substantive offence of defamation and its punishments. It provides for comprehensive protection of speech and reputation as per the Constitution. It seeks to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 with an intent to bring them in line with the international jurisprudence on defamation and repeal provisions which are relics of a colonial past to ensure free flow of ideas without any fear of criminal suit.

Hence, this Bill.

RAGHAV CHADHA.

ANNEXURE

EXTRACTS FROM THE INDIAN PENAL CODE

ACT No. 45 OF 1860

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CHAPTER XXI
OF DEFAMATION

Defamation.

499. 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.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes, it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character, so far as his character appears in that conduct and no further.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and other concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or

respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.—Accusation preferred in a good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. Punishment for defamation.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. Printing or engraving matter known to be defamatory.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a terms which may extend to two years, or with fine, or with both. Sale of printed or engraved substance containing defamatory matters.

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EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE, 1973

ACT No. 2 OF 1974

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45 of 1860. **199.** (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence: Prosecution for defamation.

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf.

45 of 1860. (2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code is alleged to have been committed against a person

who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the fact which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the Previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of the Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

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(Shri Raghav Chadha, M.P.)