Assessing Defamation Law - #MeToo Movement

What is the issue?

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The response to the #MeToo movement in the form of defamation cases calls for a relook at the relevance and validity of the Indian defamation law.

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What is the recent development?

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- Accusations of sexual harassment have leveraged criminal defamation law as a way of striking back.
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- E.g. M.J. Akbar made criminal defamation complaint against Priya Ramani, Alok Nath filed criminal and civil defamation complaints against Vinta Nanda
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- The #MeToo movement thus seems to emphasise that defamation was the first refuge of the powerful.
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- **Dispute** - No legal system can allow false and slanderous statements to be made publicly, with impunity.
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- In this line, the defamation law is certainly the balancing tool.
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- But there is a concern that in the guise of protecting reputation, the freedom of speech and expression are often silenced.
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How is defamation dealt in India?

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- Unlike many other countries, defamation in India is **both civil and criminal offence.**
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- Under the civil law, the person defamed can move either the high court or trial court.
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- The complainant can seek damages in the form of monetary compensation from the accused.
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- On the other hand, the Indian Penal Code also gives an opportunity to the defamed individual to move a criminal court.
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- It is a bailable, non-cognizable and compoundable offence i.e. no police can register a case and start investigation without the court's permission.
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- Under sections 499 and 500 of the IPC, a person found guilty can be sent to jail for two years.
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- Since the law is compoundable, a criminal court can drop the charges if the victim and accused enter into a compromise (even without the permission of the court).
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What are the concerns with defamation law?

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- **Relevance** - India's criminal defamation law largely falls in the category of silencing the freedom of speech and expression.
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- Section 499 of the Indian Penal Code provides an ideal weapon for powerful individuals to silence critical or inconvenient speech.
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- It is a colonial relic that was introduced by the British regime to suffocate political criticism.
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- **Conviction** - Unlike many other countries, defamation in India is a criminal offence (and not just a civil wrong).
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- So it is a conviction that entails both social stigma and potential jail time.
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- **Process** - There is a very low threshold for a prima facie case of defamation to be established by a complainant.

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- S/he must only show that an “imputation” has been made that could reasonably be interpreted as harming reputation.
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- On the other hand, an accused has multiple defences open, but they are effectively available only after the trial commences.
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- So an accused individual would have to undergo the long-drawn-out trial process, where the procedure in itself is punishment.
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- **Disproportionality** - Even the defences open to an accused are insufficient to protect free speech.
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- In a civil defamation case, a defendant need to only show that her statement was true in order to escape liability.
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- But in a criminal defamation proceeding, an accused must show that her statement was true and in the public interest.
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- This is paradoxical as the legal system is more advantageous towards those at the receiving end of civil defamation proceedings.
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- On the other hand, it is harsher towards those who have to go through the criminal process.
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- **Court** - In 2016, the constitutionality of criminal defamation was challenged in the Supreme Court.
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- But it was largely ignored by the court and was held that Sec 499 was constitutional as it protected individual reputation.
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- The disproportionality of criminalising what is essentially a civil wrong was not considered by the court.
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What is the new challenge?

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- Much has changed in the last two years and the most significant change has

been brought by the #MeToo movement.
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- The #MeToo movement has brought submerged experiences to the surface and given a fresh vocabulary to express what, for years, seemed simply inexpressible.
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- But powerful men filing criminal defamation cases to silence this new mode of public expression remains a concern.
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- It has the threat of preserving and perpetuating the old hierarchies that the #MeToo movement has now challenged.
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How was it dealt in the U.S.?

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- The U.S. Supreme Court, in 1960s, made substantial modifications to defamation law.
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- It was to ensure that it could no longer be used as a tool of harassment and blackmail.
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- Articulating a very high threshold of “actual malice”, the court ensured that journalists and others could go about their job without fear.
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- But this is as long as they did not intentionally or recklessly make outright false statements.
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What lies ahead in India?

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- The courts must now address the above challenges and concerns.
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- It is no longer about an abstract challenge to the constitutionality of criminal defamation.
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- It is rather about a live issue on the relationship between legal system and a social movement that publicly redresses long-standing injustices.
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- The courts can choose to revisit the constitutionality of criminal defamation, but even without that, there are enough ways to judicially interpret Sec 499.
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- This is to ensure that it no longer remains the tool of the powerful to blackmail, harass, and silence inconvenient speech.
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Source: The Hindu, Hindustan Times

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