LEGISLATIVE EVOLUTION: IPC 1860 TO BNS 2023

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The Macaulay Era: Colonial motivations for silencing dissent

The Macaulay period in colonial India was not only related to the area of administrative reform or modernisation, but it was also strongly correlated with the purpose of governing dissent and limiting the freedom of speech and expression. The British rule, especially following the initial stages of resistance, realised that political stability could not be achieved through force only. It needed a political and legal structure that would make speech more disciplined, criminalise dissent, and normalise obedience.

The policies related to Thomas Babington Macaulay should then be interpreted on this large scope of colonial rule. Among the most influential influences of Macaulay[1] was the involvement in the development of the Indian Penal Code, which is a legal tool that provided the colonial state with a structured means of controlling speech. In this context, the laws about the sedition and criminal defamation reached the status of strong instruments to oppose the criticism. Such legislation was developed on apparently neutral terms, but its use was a clear indication of colonial fears of dissent.

Any speech that might incite dissatisfaction with the government was considered a menace, whether it was the peaceful speech or the speech directed toward reform. This essentially implied that one could be criminalised over any criticism to the colonial administration, and the effect was a chilling factor to the discourse of people. One particular way that became the most potent against the voices of nationalism was the law of sedition.

It failed to make a difference between a rebellious outburst of violence and fierce political criticism. Consequently, the leaders, writers, and journalists, who cast doubts as to the colonial policies, were frequently prosecuted. It was not just to punish but also to convey a bigger message, that freedom of expression had clear boundaries in as far as it was concerned to be

[1] Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge University Press 2010).

challenging colonial power. This legal culture dissuaded candid discussion and created a spirit of mildness where people were afraid to voice out their opposite opinions.

There was another criminal defamation law that contributed to this control. Although supposedly aiming at reputation protection, they might be utilized to address the alternative voice challenging authorities and institutions. The colonial state made another level of restriction by making it a criminal offense to say things that might damage the reputations of those in power. This diluted the distinction between in defence of individual dignity and defence of those in authority.

The law in a way favoured retention of power as compared to the open sharing of ideas. More subtly, but with the same effect, other policies of Macaulay, such as in the schools, facilitated this action in suppressing dissent. By advocating the teaching of English and the Western intellectual concepts and diminishing the worth of the native knowledge regimes, the colonial authority aimed at influencing the thinking and verbalization of people[2]. Production of an English-trained elite was not just a matter of convenience in terms of administration but it was also a matter of producing a group of people who would internalise the colonial values and not challenge them. As soon as individuals start perceiving the fighting system as intellectually superior, it will be less likely to become a despotic and rather permissible.

Language also became a key element in not allowing to express. The English language that was used as the language of law and ruling was an obstacle between the rulers and the greater part of the people. This implied that the majority of the citizens could not access legal rights, restrictions and proceedings. This exclusion minimized the chances of popular political enlightenment and engagement. When it is impossible to comprehend completely the language of power, the power of individuals opposing the power or forming the dissent is heavily undermine.

Domination of speech by the colonial mode was not applied by only punitive methods but it also used deterrence and intimidation. Dissenters were prosecuted on large scale to act as cautionary measures to other people. The press that might have become a tool to counter them worked under the fear of prosecution. This climate deterred the investigative journalism and the critical writing leading it even further to the lack of the ability to have a public discussion.

[2] Jyotsna G. Singh, *Colonial Narratives/Cultural Dialogues: "Discoveries" of India in the Language of Colonialism* (Routledge 1996).

This in the long run resulted in some kind of self censorship, with people holding themselves back to prevent legal action.

Notably, these restrictions were explained by the colonial state as the arbiter of order and stability. Any opposition to the status quo was characterized as threatening or chaotic and the legislation limiting speech was justified as needed to maintain governance. Nonetheless, this story neglected the very basic principle of democracy whereby people must criticize authority to be accountable. In assuming that opposition equated to disloyalty, colonial government literally delegitimised it and discouraged the building of a strong public sphere. In spite of this, such attempts to suppress free speech had their own side effect during Macaulay era.

The same laws that were meant to stifle a nation of dissidents actually supported the reasoned anger of there being no freedom when under the colonial rule, which fuelled the nationalism. The prosecuted leaders were the ones who were viewed as the backed by the people and considered as defiant leaders. In that respect, as much as colonial legal system was credited to closing the mouths in the short-run, it led to the development of a political awareness that led to appreciation of freedom of expression in the long-term.

Conclusively, the Macaulay era is an important era in the history of dissenting criminalisation in India. The colonial state established a system through the introduction of laws such as the sedition and criminal defamation, educational and linguistic policies, which limited the freedom of speech both in direct and indirect ways. Such actions were not random but were a part of a premeditated plan to make control and inherent to restrict the space to oppose[3]. On the one hand, they managed to suppress the expression to a considerable degree, on the other hand, they revealed the incompatibilities of the colonial rule and, eventually, led to the demand of more freedoms in the independent India.

Section 499/500 of the IPC constitutes the anatomy of 499/500,

To comprehend its anatomy, it is necessary to dismantle the key ingredients of it and study the functioning of the burden of proof in practice. Fundamentally, the meaning of defamation under Section 499 is that an imputation against a person, being spoken or written or by signs or visible representation, was made intentionally to damage the reputation of the said person, and it was

[3] Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford University Press 2016).

with knowledge or even reasonable cause that the imputation was made to damage the reputation of the tenor. Based on this definition, some essential ingredients are brought out.

First, it has to be imputed about a person, meaning that the statement must mention an identifiable individual or a definite group. The person need not be mentioned by name, but rather what is needed is that reasonable people would know whom he or she is referring to. Courts have also been aware of this principle in T.V. Ramasubba Iyer v. A.M.A. Mohindeen[4], and it was considered that a class or some group of people could be defamed as long as it was sufficiently definite.

Second, the imputation has to be published, which translates to a person other than the libel victim being notified. Reputation is in the mind of other people, and therefore, even when one makes a personal statement to the defamator, it would not amount to defamation. This necessity points to the fact that the crime has nothing to do with injured feelings per se, but with harm to social status. Even one communication to the third party is enough to fulfil this aspect.

Third, the imputation should be intended to damage the reputation of the individual, the person knows, or has a reason to know, that it will damage the reputation of the individual. This adds a psychological aspect, so that deliberate or unintentional words do not necessarily come under the attracting criminal claims. Nonetheless, the motive can be deduced quite commonly based on context, particularly when the words spoken are not favourable.

The law does not insist on evidence of actual injury; on the contrary, it only suffices that the utterance should be of that kind, that it tends to diminish the moral or intellectual character, or the reputation of the person speaking. The section is further elucidated in four explications, and this further broadens its scope. Such explanations ensure that it is extremely clear that defamation may be made to descend into deceased individuals in the event that it interferes with the reputation of family, to business organisations or associations and even insinuations, or imputations.

They also state what constitutes harm to reputation, such as the diminishing of the character of a person in the eyes of others or making him be avoided or shunned. The broad framing is used to guarantee that the law covers different types of reputational injury, as well as the attack in

[4] *T.V. Ramasubba Iyer v. A.M.A. Mohindeen*, AIR 1972 Mad 398 (India)

an indirect or implied manner. Nonetheless, the scope of the definition is compensated for by the ten exceptions, which cover some types of speech. These are truths made in good faith, justifiable bad criticism of people in power, views on questions of the people, and utterances made to authorities in good faith, among others. These exceptions are indicative of the law trying to balance reputation and the freedom of expression.

Notably, they are not involved in the offence, but they serve as defences of the accused. This gives way to the question of burden of proof, which is a very important part of the offence. In criminal law, the principle is that the prosecution should overcome a reasonable doubt of the guilt of the accused. This is the same with defamation. The complainant should prove that the imputation by the accused was created, that it was imputed on the complainant, that the imputation was published and was created knowingly with the necessary intention[5].

The issue with defences comes out only after these elements have been proved. When the prosecution has made the prima facie case, the accused is required to adjust the prosecution's case in one of the exceptions. This burden is not, however, as overwhelming as that of the prosecution. The accused must cross the burden of proving the application of an exception on a preponderance of probabilities and not beyond a reasonable doubt. This rule was made clear in the case of M. Narasimhan v. T. V. Chokkappa[6], where the Supreme Court held that the accused must only demonstrate that his/her defence has a reasonable chance of success.

Practically, it is possible that to prove good faith, truth, or public interest, the accused may use evidence, circumstances and probabilities to prove that the complainant is unable to establish the offence strictly. As an example, when it comes to the first exception (truth for public good), the accused has to demonstrate that the statement in question is true as well as that the purpose of this statement publication was of a public character. Correspondingly, courts consider the issue of due care and caution in the statement made by the accused where there is an aspect of good faith.

Another notable point is that exceptions may also be considered even in the initial stages of the process. Where the complaint as such suggests that the statement is under an exception, the courts might quash the case to avoid the abuse of the criminal process[7]. This is in order to make

[5] *M.A. Rumugam v. Kittu*, (2009) 1 SCC 101 (India
[6] *T.V. Ramasubba Iyer v. A.M.A. Mohindeen*, AIR 1972 Mad 398 (India)
[7] *Shahed Kamal v. State of Maharashtra*, (2025) SCC OnLine SC 61042 (India).

sure that the law is not employed as a scapegoat or one that silences justified criticism. section 500 that punishes underlines the weight of the violation as it grants a criminal punishment for the reputational damages. But even the comparatively moderate disposition of the law, simple imprisonment or fine, points to the fact that libel frequently stands in the too-large-a-space between the personal wrong done and the freely spoken.

In general, the structure of the anatomy of Sections 499 and 500 IPC demonstrates a well-organised offence uniting the broad interpretation and the protective measures it has. The ingredients mean that only statements that actually damage reputation and are made with a guilty state of mind are punished, whereby the burden of proof helps the accused avoid wrongful conviction. Simultaneously, the exceptions give the required room to free speech, in case the law does not choke the honest expression. This is the delicate balance that has been maintained whenever it comes to the workings of criminal defamation in India. *

The New Regime: Section 356 of Bharatiya Nyaya Sanhita (BNS):

1. Retention of Criminality: Why the legislature ignored decriminalization calls[8].

The amendments to the Indian Penal Code, in the Bharatiya Nyaya Sanhita, 2023 (BNS), provided a unique means of questioning the role of criminal defamation in the Indian legal system. However, in the face of consistent academic critique and despite familiar trends of civil redress across the world, fears of a chilling effect on free speech, it was the continuity of the legislature, rather than reform, that led to the retention of defamation as a criminal offence under Section 356 BNS. This ruling indicates a more constitutional and policy point of view which upholds reputational dignity as a legally enforceable interest, despite increasing criminal liability.

a. The Judicial Anchor: Constitutional Justification of Criminal Defamation[9]. - Central argument against legislative action is that the authority to back this solution with the judicial authority of the Supreme Court was given in Subramanian Swamy v. Union of India. In this final decision, the Court adopted the constitutionality of criminal defamation, and that freedom of speech and expression in Article 19(1) of the Constitution can be restricted reasonably, such as defamation, in Article 19(2). Importantly, the Court promoted the right to reputation as

[8] A.G. Noorani, *The Law of Defamation*, Frontline (2016)
[9] Law Commission of India, Rep. No. 285 (2024

natural part of right to life and personal liberty of Article 21. This position in the sacred writings was a robust constitutional support which allowed the legislature to keep criminal defamation. Instead of rehearsing the need to punish, the legislature practically followed the line of reasoning of the Court, where reputation was not an individual concern, but a societal principle, meant to be protected on a state level. This way, it did not deeply engage itself on the issue whether civil remedies were capable of adequately protecting this interest.

b. The Deterrence Tactic: Criminal Law as a Mere Necessity Shield[10]. - Other reasons that uphold the retention of criminal defamation include the perceived ineffectiveness of civil remedies in India. Civil defamation suits are very uncertain, expensive and lengthy. Recovery is still hard; however, damages are awarded to individuals with little or no financial means. It is under this background that the legislature seems to have perceived criminal penalties like the threat of prosecution, stigma and potential imprisonment as a deterrence to evil and irresponsible speech. It is presumed that the lack of punitive action may encourage the occurrence of defamatory behavior among members of society without much restraint to perpetration at least when reputational damage is fast and harsh. But this argument has not gone without criticism. Instead of looking at systemic delays and supporting compensatory mechanisms, it amalgamates the civil justice delivery inefficiency with criminalisation being necessary. And so, the deterrence argument is a pragmatic yet arguably short term legislative reaction.

c. Combating Cyber-Anarchy: Controlling Speech on the Internet[11]-. The emergence of the digital medium has had a great impact on legislative thought. Nowadays, with the proliferation of viral misinformation, anonymous communication, and amplification via algorithms, defamatory information may be propagated quickly and lead to irreparable damage to the reputation. Criminal defamation has therefore been put in context by the legislature as the means of averting what is commonly said to be cyber-anarchy. By keeping the criminal responsibility, the State makes it clear that the freedom of expression does not include uncontrolled and harmful speech. This solution will unify the law of defamation with more general issues regarding the preservation of order in society and the responsible practice of communication in the sphere of the Internet. However, this argument also has the problem of

[10] Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford University Press 2016)
[11] IJLLR Analysis (2026)

overreach. Utilising criminal law in controlling speech on the internet is a danger to the stifling of legitimate unrest, investigative reporting, and critical comment. The boundary between offensive speech and unpopular opinion is getting more blurry, which may increase the area of governmental regulation of speech.

d. The Position of the Law Commission Cautionary Retention[12]- The Law Commission of India strengthened the decision of maintaining criminal defamation further. In its recent deliberations, the Commission has indicated that it would favour the maintenance of the penal provisions because few jurisdictions actually abolished the criminal defamation even though they are hardly enforced. It highlighted the fact that the reputational damage in the contemporary environment of the media, which is instant, extensive, and irreversible, might be the reason why there should be a penal solution. Criminal defamation, according to this perspective, is a normative utterance that reputational harm is not a personal evil but one that is of social concern. This position has however been criticised because of basing it on formal retention in other jurisdictions as opposed to an analysis of actual enforcement trends, which show that many of these trends are moving towards de facto or de jure decriminalisation.

e. Critical Reflection: Lost Reform Opportunity[13]- Although the action by the legislature could be explained through the prism of judicial precedence, deterrence factors, and internet realities, it still represents a conservative and status quo-based solution. The fact that criminal defamation is being maintained under the BNS implies that there is an inclination to provide a protection against reputation through the state rather than free speech revaluation of rights. In the view of reevaluating criminal defamation, this legislative option is seen instead to avoid a more fundamental question, which is whether the goals of safeguarding reputation and responsible speech can be attained via less constraining and more civil means. The broad application of exceptions, the focus on good faith, and the growing judicial reference to the look into the question of the public interest all point towards the fact that the law is already aware of the necessity to safeguard the legitimate expression. In this regard, the rejection of the decriminalisation of defamation does not imply the denial of the reform, but indicates the unwillingness to leave the traditional constitutional interpretations. It is a lost chance to

[12] Law Comm'n of India, Rep. No. 285, The Law on Criminal Defamation (Jan. 31, 2024).
[13] Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution* (Oxford University Press 2016).

reconcile Indian law to the changing democratic standards where the reputation is secured without employing the coercive apparatus of criminal law.

2. Community Service: Reformative Turn or Mimic Motion[14]?

The introduction of community service as an alternative of imprisonment and fine is one of the most discussed innovations in Section 356 of the Bharatiya Nyaya Sanhita, 2023 (BNS). This would seem to be a progressive step in the Indian penal philosophy, more so in defamation- an offence where the damage is not physical but reputational. On closer look, though, an additional tension is evident between normative reform and practical constraints and one might wonder whether this change is really a transformative change or a symbolic one.

In a reformist sense, there is indeed a significant change away of the conventional dependence on incarceration with the inclusion of community service. In what is the initial application of the law regarding defamation, punitive confinement is not necessarily the most suitable measure in response to speech-based injuries. Theoretically speaking, community service is consistent with rehabilitative and restorative justice principles of criminal justice. It does not alienate the offender as an isolated entity but tries to bring them back to the society by ensuring they make some constructive contribution.

In defamation situations, in which the harm consists in the destruction of social status, the requirement to make the defamer perform socially useful labour can be a more reasonable and ethically justified penalty. It also covers some unfairness of the punishments that are in existence. Fines do not work very well as a deterrent for wealthy people, and a brief jail sentence can stigmatize first-time offenders without any real correction. The law provides the courts with discretion to sentence them to community service, and in so doing, it establishes a more gradual and context-sensitive sentence, which is a more nuanced interpretation of criminal liability.

a. The Cosmetic Critique: Conceptual and Structural Lapses- Although it is a normative provision, critics have maintained that it is still more a cosmetic provision in its current form. One of the key issues is the lack of a clear statutory definition of the nature, scope, and boundaries of the concept of community service. The BNS does not identify the work to be

[14] ***Fauzia Shakil, "Community Service" Under the BNS – An Incomplete Yet Promising Penological Advancement,*** **2024**

done, the term of service, and mechanisms of supervision and compliance. This ambiguity gives wide discretion to the magistrates and there is a possibility of inconsistency and arbitrariness of sentencing.

More to the point, India is not the country that has the institutional facilities needed to put such system to work. There is no elaborate compliance and completion checking and monitoring mechanism as well as the provision of a meaningful service rather than a show of symbolism as in jurisdictions with established probation services. The danger with this vacuum is that community service will be reduced to a token punishment, especially for those individuals who may have some influence and can manoeuvre through the system with relative ease. Instead of enhancing accountability, it can inadvertently compromise the apparent gravity of the offence. The Middle Ground: The Symbolic but Important. A more moderate evaluation implies that the implementation of community service is substantive in intent but cosmetic in practice. It represents a significant psychological and legislative change in not focusing on exclusively punitive approaches to punishment, but is an indication of openness to other forms of justice. Simultaneously, its practical effect is not as far-reaching without supportive structures.

This overhaul requires the State to come up with effective guidelines and institutional support mechanisms in order to propel this reform out of mere rhetoric. It may involve the establishment of a formal database of acceptable community service programmes, categories of work, like public health support, educational support, or environmental programmes, and an effective monitoring system that will hold people accountable and transparent.

b. A Little Stride in a Bigger Argument-. The community service introduction fails to leave the more fundamental constitutional and policy issues of criminalisation of defamation alone. It does not take away the chilling effect of the criminal proceedings process, or address the tension between the rights to free speech and reputation protection completely. Nonetheless, it does offer an intermediate sentencing response, which will enable courts to impose responsibility without the need to incarcerate and limit penalties solely to monetary ones. In that regard, it is a timid, gradual step towards a more adaptable and reasonable penal approach. Considered in the context of the larger project of the reevaluation of criminal defamation in India, community service, again, is not a solution, but a preliminary move, which promises of reformative potential, yet also reminds us of the space in terms of which fundamental and more structural change is required.

4. Procedural Loopholes in the BNSS: Multiple summons and jurisdiction harassment[15].

Though the Bharatiya Nyaya Sanhita, 2023 (BNS) still has the criminal defamation as included under Section 356, its procedural counterpart, namely the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) shows a more structural issue. The issue is no longer about the substance of criminal defamation, but what is referred to as the weaponisation of the procedure, wherein the procedure itself is punitive[16]. In the perspective of re-evaluating criminal defamation, these procedural loopholes are a strong argument in persuading the need to decriminalise.

One of the key issues is the issue of jurisdictional overreach. Arbitrarily under the BNSS, a defamation complaint can be brought in any location where the allegedly defamatory statement is published or read. This practically equates to any part of India in the digital age as the complainants are able to pursue a case in a far and rather inconvenient forum. The lack of a statutory prerequisite that the jurisdiction be tied to the residence of the accused or the location where the publication is more likely to be read enables the operation of forum shopping as a type of harassment, which overburdens the accused. The multiplicity of proceedings is also equally problematic. The BNSS does not disallow the fact that complaints can be made because of the same statement. Consequently, one utterance can provoke parallel prosecutions in various states exposing the accused to multiple summons and indeed disjointed trials.

Even though the Supreme Court has at times intervened to halt such proceedings, the remedies are not mandatory and are not available to the majority of people. This is facilitated by there not being a statutory mechanism of consolidation and so what could be called procedural intimidation; when legal fragmentation itself chokes out speech. The implementation of the digital hearings under Section 530 BNSS seems forward-looking but has fewer implications in practice. The issue of virtual appearance is not an issue of right and is left to the discretion of the judge.

Practically, the accused individuals in defamation proceedings, though the offence is not cognizable, and bailable, may be forced to present themselves physically at various levels. The lack of clear exemption of the personal appearance requirement keeps working as a tool of

[15] "Interplay Between The Digital Personal Data Protection Act, 2023 and Criminal Defamation," *Indian Journal of Law and Legal Research*, Vol. VIII, Issue I (March 2026).
[16] *Rakesh Kumar Chaturvedi v. State of U.P.*, 2025:AHC-LKO:43788 (Allahabad High Court)

coercion in terms of procedure.

Moreover, the low threshold for summoning under Section 223 BNSS exacerbates the issue. Though magistrates must first investigate the complainant prior to taking cognisance, such an investigation is superficial. The lack of the strict pre-summoning filter does not filter out the frivolous or vexatious complaints and the criminal process can be set in motion with little to no questioning.

Taken in sum, these process flaws demonstrate that the actual injury of criminal defamation is not just conviction, but being subjected to the process[17]. Recurring subpoenas, remote litigation, and fragmented proceedings cost the accused an enormous amount of money, physical, and psychological. Constitutionally, this becomes very problematic in regard to proportionality and fairness.

In case the goal is to shield a reputation, a regime facilitating procedural harassment violates the very balance that the law is trying to achieve between the freedom of speech and dignity. The BNSS, in the wider project of reevaluating the criminal defamation phenomenon, therefore, points to a highly important fact, namely, procedural weaknesses can transform the law into a repressive instrument despite the substantive protection that may be in place. Lack of explicit jurisdiction boundaries, consolidation processes, and strong pre-summoning scrutiny tips the hat to the argument that reputational damage is more effectively dealt with by civil action as opposed to criminal action.

On that note, the procedural structure of the BNSS does not simply highlight the implementation gaps, but it highlights the incompatibility structural aspect of criminal defamation with a rights-based legal order, which supports the argument that criminal defamation eventually should be decriminalised.

[17] *Sanjabij Tari v. Kishore S. Borcar*, 2025 INSC (Supreme Court of India)