Polity & Governance · GS - II

The criminal defamation framework in India seeks to balance an individual's reputation with the constitutional freedom of speech and expression. Critically examine this balance, with reference to the role of courts in preventing misuse of criminal process.

EXAM YEAR	PAPER	SUBJECT
DAILY PRACTICE 23/11/2026	GS - II	Polity & Governance

MARKS	WORD LIMIT
15	~250 words

Answer Hint

Article 19(1)(a), Article 19(2), right to reputation, criminal defamation, procedural safeguards, non-bailable warrants, judicial discretion, freedom of the press, proportionality

Model Answer

Introduction

Freedom of speech and expression is essential to democracy, while protection of reputation safeguards individual dignity. Indian law recognises both interests, requiring courts to balance legitimate criticism and public discussion against legally actionable defamatory statements.

Constitutional and Legal Framework

1. **Freedom of expression:** Article 19(1)(a) guarantees freedom of speech and expression, including political criticism, journalism and public debate.

2. **Reasonable restrictions:** Article 19(2) permits reasonable restrictions on this freedom in relation to defamation, public order and other specified grounds.

3. **Right to reputation:** The Supreme Court has recognised reputation as an aspect of the right to life and personal liberty under Article 21.

4. **Criminal defamation:** Section 356 of the Bharatiya Nyaya Sanhita, 2023, criminalises defamation, subject to its statutory provisions and exceptions.

Concerns Regarding Criminal Proceedings

1. **Chilling effect:** Frequent criminal proceedings may discourage journalists, commentators and citizens from expressing legitimate criticism.

2. **Procedural hardship:** Repeated court appearances, legal expenses and coercive processes can impose significant burdens even before guilt is established.

3. **Judicial discretion:** Non-bailable warrants should be issued after careful consideration of circumstances and should not become routine responses to every non-appearance.

4. **Public interest:** Courts must distinguish genuine defamatory conduct from fair criticism, opinion and legitimate scrutiny of public affairs.

Way Forward

1. Ensure reasoned judicial orders before issuing coercive processes.
2. Apply statutory exceptions and constitutional protections carefully.
3. Prevent frivolous or retaliatory litigation through appropriate judicial scrutiny.
4. Promote timely trials and proportionate procedures while protecting the complainant's right to seek justice.

Conclusion

A democratic society requires both free expression and protection of reputation. Fair investigation, proportionate judicial processes and constitutional scrutiny are essential to ensure that criminal defamation law protects dignity without suppressing legitimate public discourse.

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