

PG QUESTIONS –CONSTITUTIONAL AND CRIMINAL LAW – SAMPLE SET FOR MAY 28, 2020

1.

186. One cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the Constitution conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of Sections 499 and 500 IPC is not a restriction on free speech that can be characterized as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest. Thus, we are unable to accept that provisions relating to criminal defamation are not saved by doctrine of proportionality because it determines a limit which is not impermissible within the criterion of reasonable restriction. It has been held in *D.C. Saxena (Dr) v. Hon'ble The Chief Justice of India* ((1996) 5 SCC 216), though in a different context, that if maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious, viz., that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The Court had further observed that the State has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libellous speech or expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation.

[Excerpted from the judgment of the bench comprising Misra, J. (as he then was), and Pant, J., in *Subramanian Swamy v. Union of India, Ministry of Law and Others*, WP (Crl.) No. 184 of 2014]

1.1 Which section of the Indian Penal Code, 1860 (the “IPC”) defines the offence of defamation?

- (a) S. 499
- (b) S. 500
- (c) S. 300
- (d) S. 299

1.2 Which among the following is not an exception to the definition of defamation in the Section of the IPC mentioned in the previous question?

- (a) Imputation of truth which public good requires to be made or published
- (b) Publication of reports of proceedings of courts
- (c) Merits of public performance
- (d) None of the above

1.3 What did the Supreme Court hold as regards the constitutional validity of Sections 499 and 500 of the IPC in *Subramanian Swamy v. Union of India, Ministry of Law and Others*, WP (Crl.) No. 184 of 2014 (the “Criminal Defamation case”)?

- (a) It upheld the validity of S. 499, but struck down S. 500 as unconstitutional.
- (b) It upheld the validity of S. 500, but struck down S. 499 as unconstitutional.
- (c) It upheld the constitutional validity of both, S. 499 as well as S. 500.
- (d) It struck down both, Section 499 as well as Section 500 as unconstitutional.

- 1.4 On which of the following cases did the Supreme Court rely in the Criminal Defamation case for the proposition that for an imputation to fall within the “First Exception to Section 499 of the Indian Penal Code it has to be established that what has been imputed concerning the respondent is true and the publication of the imputation is for the public good”?
- (a) *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661.
 - (b) *Chaman Lal v. State of Punjab*, (1970) 1 SCC 590.
 - (c) *K.M. Nanavati v. State of Maharashtra*, 1962 AIR 605.
 - (d) *Monoranjan Mondal v. Union of India and Others*, 2004 (2) CHN 545.
- 1.5 Upon which of the following did the Supreme Court rely in the Criminal Defamation case to determine the intention of the framers of the Constitution as regards the meaning of the word ‘defamation’ appearing in Article 19(2) of the *Constitution of India*, and to hold that the word has its own independent identity?
- (a) The *Statement of Object and Reasons of the IPC*.
 - (b) The *Report of the Second Press Commission*.
 - (c) The *Constituent Assembly Debates*.
 - (d) The 42nd *Report of the Law Commission of India*.
- 1.6 What did the Supreme Court hold in the Criminal Defamation case as regards the ‘right to reputation’?
- (a) That it is not recognised in any manner under the Constitution.
 - (b) That it is an inextricable aspect of the right to life under Article 21 of the Constitution.
 - (c) That it is an inextricable aspect of the freedoms under Article 19(1) of the Constitution.
 - (d) None of the above.
- 1.7 Which of the following did the Supreme Court adopt in the Criminal Defamation case to resolve the perceived conflict between Article 19(1)(a) and Article 21 of the Constitution in the context of that case?
- (a) Balancing of fundamental rights
 - (b) Doctrine of eminent domain
 - (c) Principle of cooperative federalism
 - (d) Doctrine of colourable legislation
- 1.8 What did the 42nd *Report of the Law Commission of India* state as regards whether defamation as an offence should be retained in the IPC?
- (a) The Commission did not take up the question at all.
 - (b) The Commission did not suggest that it should cease to be an offence.
 - (c) The Commission suggested that it should cease to be an offence.
 - (d) The Commission suggested that defamation should be a civil matter, and not a criminal offence.
- 1.9 Relying *inter alia* on the principles laid down in the Criminal Defamation case, the Madras High Court recently stated “The State should not be impulsive like an ordinary citizen in defamation matters and invoke section 199(2) Cr.P.C. to throttle democracy. Only in cases where there is foolproof material and when launching of prosecution under section 199(2) Cr.P.C. is inevitable, the said procedure can be invoked” in which of the following cases?
- (a) *A.P. Suryaprakasam v. Superintendent of Police, Sangli Distrcit, Maharashtra and Others*, HCP No. 738 of 2020.
 - (b) *A.S. Arumugam v. A.S. Kuthalingam and Others*, AS (MD) No. 20 of 2015.
 - (c) *N. Gowthaman v. The Government of Tamil Nadu*, HCP No. 1441/2007.

(d) *Thiru N. Ram v. Union of India and Others*, WP No. 5129 of 2012.

1.10 Who amongst the following announced, in March 2020, their intention to withdraw the criminal defamation case that they had filed against Union Law Minister Ravi Shankar Prasad, stating that the differences between them had been amicably settled?

- (a) Subramanian Swamy
- (b) Mahua Moitra
- (c) Shashi Tharoor
- (d) Arvind Kejriwal
