

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 14th - 20th May 2023**

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## 1. 'Public Interest' Under defamation Tort

The concept of "public interest" plays a significant role in defamation cases in India, as it serves as a balance between the right to freedom of speech and expression and the protection of an individual's reputation. It is crucial in determining the scope of permissible speech, especially when it comes to matters concerning public figures, public authorities, and issues of public importance.

Public interest in defamation cases can be understood in two primary contexts:

1. **Defamation of public figures:** Public figures, such as politicians, celebrities, and other high-profile individuals, are often the subject of intense public scrutiny. Their actions and decisions are likely to have a significant impact on society. In such cases, the public interest in knowing about their conduct or character may outweigh the individual's right to protect their reputation. Therefore, courts are more likely to allow criticism and comments about public figures, even if they are defamatory, as long as they are made in good faith and based on facts.

For example, in the case of **Ram Jethmalani vs Subramanian Swamy**, the court recognized that when public figures are involved, the threshold for defamation is higher, as public interest demands a higher degree of scrutiny of their actions.

2. **Matters of public importance:** The concept of public interest also plays a crucial role when it comes to issues that affect society at large. In such cases, the right to freedom of speech and expression must be balanced against an individual's right to protect their reputation. Courts are more inclined to permit discussions and criticisms on matters of public importance, even if they may be defamatory, provided they are based on facts and

made in good faith.

In the landmark case of **R. Rajagopal vs State of Tamil Nadu**, the Supreme Court of India held that the public has the right to know about matters of public importance, and any criticism made in good faith and based on facts should be protected from defamation claims.

Furthermore, the concept of public interest serves as the basis for certain defenses available to defendants in defamation cases, such as fair comment and qualified privilege. Fair comment allows for honest expressions of opinion on matters of public interest, while qualified privilege protects statements made in the performance of a legal, social, or moral duty, or in the protection of a legitimate interest.

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In conclusion, the concept of public interest is essential in defamation cases in India as it helps balance the competing interests of freedom of speech and the protection of an individual's reputation. Courts recognize the need for public scrutiny of public figures and matters of public importance and generally provide greater latitude for criticism and commentary in such cases, as long as they are made in good faith and based on facts.

## 2. WTO Ruling Against India with Regards to IT products

The World Trade Organization (WTO) has ruled that India violated global trading rules by imposing tariffs on some IT products. The dispute started in 2019 when the EU dragged India to the WTO alleging that it had imposed import duties of between 7.5% and 20% on a wide range of IT products, such as mobile phones and components, as well as integrated circuits, saying they exceeded the maximum rate. Japan and Taiwan filed similar complaints that same year.

The WTO panel said that India had violated its obligations under the **\*\*Information Technology Agreement (ITA)\*\***, which requires members to eliminate tariffs on certain IT products. The panel also said that India could not justify its tariffs by invoking the **\*\*General Agreement on Tariffs and Trade (GATT)\*\*** provisions on balance-of-payments difficulties, infant industry protection or national security.

- The ITA was signed in 1996 and India became a party in 1997. The ITA covers products such as computers, telecom equipment, semiconductors and scientific instruments. The ITA

is based on the **Harmonized System (HS)** of product classification, which is updated every four to six years by the World Customs Organization to keep up with new innovations and products.

**Indian Position:** India argued that some of the products on which it imposed tariffs were not covered by the ITA because they were not included in its original schedule or they had evolved technologically since then. India also argued that it had the right to impose tariffs under the GATT provisions for various reasons, such as safeguarding its balance-of-payments position, promoting its domestic industry or ensuring its national security.

**Decision:** The WTO panel rejected India's arguments and found that all the products challenged by the EU, Japan and Taiwan were covered by the ITA and that India had committed to eliminate tariffs on them. The panel also found that India did not meet the conditions for invoking the GATT provisions and that its tariffs were inconsistent with its WTO obligations.

The panel recommended that India bring its measures into conformity with its WTO obligations. India has the right to appeal against the ruling, but if it does, the case will sit in legal purgatory since the WTO's top appeals bench is no longer functioning due to U.S. opposition to judge appointments.

### 3. Treaty Text agreed for a UN high Sea treaty

The UN High Seas Treaty is a historic agreement that aims to protect the marine biodiversity and resources of the areas beyond national jurisdiction, which cover about two-thirds of the world's oceans. The treaty was finalized by an intergovernmental conference at the UN headquarters in New York on 4 March 2023, after five years of negotiations and two decades of discussions. It is an instrument of the United Nations Convention on the Law of the Sea (UNCLOS), and is also known as the Biodiversity Beyond National Jurisdiction (BBNJ) treaty.

The treaty has four main objectives:

- The establishment of marine protected areas (MPAs) to conserve and restore the ecosystems and species of the high seas. The treaty sets a global goal of protecting 30% of the oceans by 2030, which was agreed at the 2022 UN biodiversity conference. The MPAs will be proposed by countries and approved by a conference of the parties (COP) that will meet periodically to review the implementation of the treaty.
- The regulation of commercialization of marine genetic resources, which can be used for the development of pharmaceuticals, cosmetics, biotechnology and other products. The treaty aims to ensure that the benefits derived from these resources are shared equitably among all countries, especially developing countries, and that the rights and interests of indigenous peoples and local communities are respected.

- The equitable access to research conducted in international waters, which can contribute to scientific knowledge and innovation for sustainable development. The treaty encourages cooperation and coordination among countries and stakeholders, and promotes the dissemination and exchange of data and information.
- The setting of global standards for environmental impact assessments (EIAs) on commercial activities in the ocean, such as fishing, shipping, mining and tourism. The treaty requires that any activity that may have significant adverse effects on the marine environment or biodiversity must undergo an EIA before it is authorized, and that the results of the EIA must be made public and taken into account by decision-makers.

The UN High Seas Treaty is expected to enter into force after it is signed and ratified by at least 50 countries. It is seen as a milestone for ocean governance and conservation, as it will provide a legal framework for safeguarding the common heritage of humankind and ensuring its sustainable use for present and future generations.

#### **4. Intermediary liability under IT act - Safe harbor Clause**

In the digital age, intermediaries, such as internet service providers, web-hosting providers, search engines, social media platforms, and e-commerce platforms, play a crucial role in facilitating online communication and commerce. Given their significant role, the question of intermediary liability for unlawful content or activities conducted through their platforms has become a pivotal issue in the realm of cyber law.

##### **Safe harbor**

In India, intermediary liability is primarily governed by the Information Technology Act, 2000 ("IT Act"), and the rules promulgated thereunder. Section 79 of the IT Act provides a "safe harbor" to intermediaries, protecting them from liability for any third-party information, data, or communication link made available or hosted by them.

- The safe harbor protection is subject to intermediaries observing "due diligence" while discharging their duties, and they must not have conspired, abetted, aided, or induced the commission of the unlawful act. If the intermediary has knowledge of any illegal content on its platform, it must act swiftly to remove or disable access to such content.
- To further clarify the concept of "due diligence", the Information Technology (Intermediaries Guidelines) Rules, 2011 were issued. These guidelines mandate intermediaries to publish terms of use, privacy policy, and inform users of the platform not to host, display, upload, modify, publish, transmit, update or share any information that is harmful, objectionable, unlawful, or infringes upon the rights of others.

- The issue of 'knowledge' has been a contentious one. While the original provision required 'actual knowledge', the 2011 guidelines expanded it to include situations where intermediaries are required to take down content based on a court order or being notified by the government or its agency. This led to criticisms, asserting the provision could lead to private censorship and abuse.

### **Court's Interpretation**

The landmark case of **Shreya Singhal v. Union of India** in 2015, the Supreme Court of India clarified that the term 'actual knowledge' in Section 79 of the IT Act and the 2011 guidelines means an intermediary must receive a court order or a government notification about the specific unlawful content, thereby restricting arbitrary takedowns.

### **Rules Framed**

In 2021, the Government replaced the 2011 guidelines with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The new rules impose additional due diligence requirements on intermediaries and introduce a distinction between social media intermediaries and significant social media intermediaries based on the number of users.

The IT Rules 2021 specify the due diligence requirements for intermediaries, such as publishing terms of use, privacy policy and user agreement, appointing grievance officers, enabling traceability of originators of information, and implementing mechanisms for voluntary verification of users.

The IT Rules 2021 also classify certain intermediaries as significant social media intermediaries (SSMIs) based on the number of users or the impact on public order or security. SSMIs have to comply with additional obligations, such as appointing chief compliance officers, nodal contact persons and resident grievance officers, deploying automated tools for proactive identification and removal of unlawful content, and publishing periodic compliance reports.

The intermediary liability framework in India seeks to strike a balance between promoting freedom of speech and expression, protecting users' rights, and aiding law enforcement. While the safe harbor provision provides necessary protection to intermediaries, the due diligence requirements aim to ensure that such platforms are not misused for illegal activities. However, the balance is delicate, and policymakers must be vigilant to prevent undue restrictions on digital freedoms.

## **5. International criminal court : Is it failing?**

There have been debates about the effectiveness and influence of the International Criminal Court (ICC). Several factors contribute to these perceptions:

**1. Limited jurisdiction:** The ICC's jurisdiction is limited to the 123 states parties to the Rome Statute as of 2022. Some of the world's most powerful nations, including the United States, Russia, China, and India, have not ratified the Rome Statute, thereby limiting the ICC's global reach and influence.

**2. Accusations of Bias:** The ICC has been accused of disproportionately targeting African nations, the majority of its cases concerned African countries, leading to claims of neocolonial bias. This perception was reinforced when countries like Burundi, South Africa, and The Gambia announced their intention to withdraw from the ICC, although South Africa and The Gambia later reversed their decisions.

**3. Enforcement Difficulties:** The ICC lacks its own enforcement mechanism and relies on the cooperation of states to arrest and surrender suspects. This reliance often results in significant delays, and in some cases, failure to apprehend indictees.

**4. Political Pushback:** The ICC has faced opposition from powerful states. For instance, the United States imposed sanctions against ICC officials investigating alleged war crimes by U.S. military personnel in Afghanistan, further challenging the court's authority and credibility.

**5. Slow Judicial Process:** The ICC's proceedings have often been slow and lengthy, leading to criticisms about the efficiency of its judicial process.

However, the ICC continues to represent an important step in the development of international criminal law, providing a permanent institution for holding individuals accountable for the most serious international crimes. Advocates argue that despite its challenges, the ICC plays a vital role in establishing norms of accountability and deterring future atrocities.

## 6. Case of the week: Kaushal Kishore v State of UP

### Kaushal Kishor v. State of UP

The case of Kaushal Kishor v. State of UP is a landmark judgment by the Supreme Court of India on the scope and limits of the freedom of speech and expression guaranteed by Article 19 (1) (a) of the Constitution. The case arose from a writ petition filed by the victims of a gangrape incident that took place on a national highway in Uttar Pradesh in 2016.

The petitioners sought action against a state minister who had made a statement terming the incident as a political conspiracy against the state government. The petitioners argued that the minister's statement violated their right to life and personal liberty under Article 21 of the Constitution and also amounted to contempt of court.

- The main issue before the five-judge constitution bench was whether the freedom of speech and expression of public officials can be restricted on grounds other than those

specified in Article 19 (2) of the Constitution, such as constitutional sensitivity, constitutional compassion or fundamental rights of other citizens.

- Article 19 (2) enumerates eight grounds on which reasonable restrictions can be imposed on the freedom of speech and expression, namely, sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation or incitement to an offence.

## Decision

- The constitution bench unanimously held that the grounds to restrict free speech under Article 19 (2) are exhaustive and no other grounds can be invoked to curtail this fundamental right.
- The bench also held that the state has an obligation to protect the fundamental rights of citizens even against non-state actors such as other private persons.
- The bench further held that statements made by public officials can be attributed to the government if they are linked to state affairs and that governments can be held responsible for such statements if they result in constitutional rights violations.
- The bench observed that the freedom of speech and expression is one of the most cherished rights in a democracy and that it enables citizens to participate in public affairs and express their opinions on matters of public interest.
- The bench also noted that the freedom of speech and expression is not absolute and that it must be exercised with responsibility and respect for the rights and dignity of others. The bench cautioned that any attempt to restrict this freedom on grounds outside Article 19 (2) would amount to an unconstitutional encroachment on this right and would undermine the democratic fabric of the nation.

## 7. Repeated PYQ Model Answer of the Week

**Question:** Though both Sections 34 and 149 of the Indian Penal Code provide for imposition of constructive criminal liability, there are substantial points of difference between the two.  
**Comment**

Sections 34 and 149 of the Indian Penal Code (IPC) do provide for the imposition of constructive criminal liability, but there are significant differences between the two.

Section 34 of the Indian Penal Code (IPC) operates on the principle of joint liability in the doing of a criminal act, i.e., the act is a joint activity where the degree of participation of each member is not relevant. The essence of this section is the existence of a common intention animating the

accused leading to the doing of a criminal act in furtherance of such intention. As a result, this provision is invoked where the intention of all the members of the group is clear and can be ascertained.

For example, in the case of '**Mohandas & Ors. vs The State of Rajasthan**' [2002 CriLJ 1514], the Supreme Court held that the presence of common intention among the participants in a crime is the essential element for the application of this section.

Section 149 IPC, on the other hand, differs from Section 34 in that it primarily deals with the punishment of an offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object. The provision imposes a constructive penal liability, meaning, the liability of all, over the acts of one or more.

In the landmark case of '**Masalti vs State of Uttar Pradesh**' [AIR 1965 SC 202], the Supreme Court observed that to attract Section 149, it is not necessary that there should be a pre-concert in the sense of a meeting of the members of the unlawful assembly. The common object could develop on the spot.

Criteria	Section 34 IPC	Section 149 IPC
Principle	Joint liability in the doing of a criminal act	Constructive liability for offence committed by any member of an unlawful assembly
Group Requirement	Any group	Unlawful assembly (five or more individuals)
Mental Element	Common intention	Common object
Degree of Participation	Active participation is not necessary, but common intention is mandatory	Active participation is not necessary, but knowledge of the common object is mandatory
Offense Linkage	Act done in furtherance of the common intention	Offense committed in prosecution of the common object or such as the members knew likely

In conclusion, both sections deal with group liability in criminal offences, but they differ in terms of the requirements for group formation, the mental element involved, and the nature of the offence committed.

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