

TAMIL NADU PUBLIC SERVICE COMMISSION

Office Order No. 194, dated 30.11.2022

Sub.: Defamation of the Chairman / Members / Secretary / Controller of Examinations / Staff of the Commission's Office, collectively or individually – By Individuals / Associations - By Word or Deed, By Imputation or Assertion – Action to be Taken – Regarding.

A. Relevant Statutory Provisions

The relevant statutory provisions as listed below, are detailed in the Annexure to this office order.

- (a) Article 19 (1) and (2) of the Constitution of India.
- (b) Sections 499, 500, 501 and 502 of the Indian Penal Code.
- (c) Section 199 of the Code of Criminal Procedure.
- (d) Rule 17 of the All India Services (Conduct) Rules.
- (e) Rule 15 of the Tamil Nadu Government Servants Conduct Rules.
- (f) Section 20 (4) (i) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

B. Response to Defamation

- (1) Records of all defamatory material (in any form) shall be filed along with a typed transcription (if required) of the same. In the case of social media, screenshots of the posts, audios, videos, comments, search engine results, or other incriminating pages shall be taken and printouts / recordings shall be made. Any evidence that indicates identity shall also be filed.
- (2) The said records shall be forwarded to the Standing Counsel for the Commission for a legal opinion on whether the said instance constitutes defamation as laid down in Section 499 of the Indian Penal Code. The Standing Counsel shall furnish citations of statutory provisions / judgements, in support of the legal opinion proffered and shall facilitate further action as ordered by the Commission.

(3) On receipt of the legal opinion, the Secretary / Controller of Examinations, as the case may be, shall place the file / records / statutory provisions / precedent cases before the Chairman, who shall decide regarding placing the subject for orders of the Commission.

(4) If the matter is so placed before the Commission, one or more of the following courses of action may be recommended:

(a) Notice to the Intermediary / Host of the Website

A take-down notice may be issued to the social media platforms / intermediaries / host websites in addition to issuing a legal notice to the person who has uploaded / broadcasted / disseminated the defamatory content, calling upon him to delete such posts and warning of strict legal action. A suit may also be filed against the website / social media platform and an interim relief praying to take down the offending content may be sought for.

(b) Rebuttal in the Media

A rebuttal statement may be issued in newspapers or the Commission's website denying / replying to the said allegations / imputations in a brief manner, to induce confidence among the public / candidates / stakeholders in the Commission.

(c) Initiation of Criminal Process for Defamation

Initiation of criminal process for defamation by way of the complaint procedure contemplated under Section 199 (2) or Section 199 (6) of the Code of Criminal Procedure or Sections 499 and 500 of the Indian Penal Code, as the case may be.

(d) Lodging of Complaint with the Cyber Crime Cell

When statements or materials disseminated involve forged documents, false information, information that is intended to incite people to violence, etc. or when statements may have serious ramifications leading to breach of peace, public outcry, etc. and if such material is being disseminated in social media, digital media, online, etc., the Commission through its Secretary may lodge a criminal complaint with the jurisdictional cyber crime cell of the Police, along with the URL

address, screenshot, etc. of the defamatory content, for registration of a criminal complaint:

Provided that the Secretary may assign the concerned Joint Secretary / Deputy Secretary to file such complaint, depending on the issue that was the subject of the defamatory activity.

C. Roles and Responsibilities

- (1) Records of defamatory material shall be filed by the department concerned, depending on the issue that was the subject of the defamatory activity.
- (2) Forwarding of the records to the designated Standing Counsel for the Commission for a legal opinion, shall also be undertaken by the department concerned, through the Legal Cell Department, after approval by the Secretary / Controller of Examinations.
- (3) Further action on orders of the Commission shall be undertaken by the department concerned, facilitated by
 - (a) The Legal Cell Department and the designated Standing Counsel for the Commission - in the matter of issuing notices, filing of suits, initiation of criminal process, lodging of complaint with the cyber crime cell, etc.
 - (b) The Monitoring and Co-ordination Department – in the matter of issuing rebuttal statements in mass media / Commission’s website.
- (4) The Joint Secretary / Deputy Secretary shall ensure that all action undertaken in response to defamatory activities shall be in strict accordance with the statutory provisions governing the same.
- (5) To facilitate the above, the Legal Cell Department shall compile all statutory provisions and legal opinion obtained on the subject of defamation, in a single volume, for reference purposes.

... Annexure

**P. Uma Maheswari, I.A.S.
Secretary**

Annexure

Statutory Provisions

(1) Article 19 (1) and (2) of the Constitution of India state as follows:

19. (1) *All citizens shall have the right—*

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

and

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) *Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.*

(2) Sections 499, 500, 501 and 502 of the Indian Penal Code, 1860, state as follows:

CHAPTER XXI

OF DEFAMATION

499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says— "Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.— It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which express of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier-are within this exception.

Eighth Exception.—Accusation preferred in good faith to authorised person.—*It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.*

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—*It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

501. Printing or engraving matter known to be defamatory.—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

502. Sale of printed or engraved substance containing defamatory matter.—Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

- (3) Section 199 of the Code of Criminal Procedure, 1973, states as follows:

199. Prosecution for defamation.—

- (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be

compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

- (2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.*
- (3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.*
- (4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction— (a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government; (b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State; (c) of the Central Government, in any other case.*
- (5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.*
- (6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.*

- (4) Rule 17 of the All India Services (Conduct) Rules, 1968, states as follows:

17. Vindication of acts and character of members of the Service:—No member of the Service shall, except with the previous sanction of the Government have recourse to any court or to the press for the vindication of official act which has been the subject matter of adverse criticism or attack of a defamatory character.

Provided that if no such sanction is conveyed to by the Government within 12 weeks from the date of receipt of the request, the member of the service shall be free to assume that the sanction sought for has been granted to him.

Explanation.—Nothing in this rule shall be deemed to prohibit a member of the Service from vindicating his private character or any act done by him in his private capacity. Provided that he shall submit a report to the Government regarding such action.

- (5) Rule 15 of the Tamil Nadu Government Servants Conduct Rules, 1973, states as follows:

15. Vindication of acts and character of Government servants

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(1) No Government servant shall, except with the previous sanction of the Government have recourse to the press for the vindication of any official act which has been the subject matter of adverse criticism or an attack of defamatory character.

Explanation - Nothing in this rule shall be deemed to prohibit a Government servant from vindicating his private character or any act done by him in his private capacity and where any action for vindicating his private character or any act done by him in private capacity is taken the Government servant shall submit a report to the head of the Department regarding such action.

(2) No Government servant shall, except with the previous sanction of the Government accept from any person or body of persons compensation of any kind for any malicious prosecution brought against him or for any defamatory attack made on his public acts or

character unless such compensation has been awarded by a competent court.

(6) Section 20 (4) (i) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, states as follows –

(4) No person shall be eligible for appointment to any service by direct recruitment unless he satisfies the Commission in cases where the appointment has to be made in consultation with it or the appointing authority, in other cases—

(i) that his character and antecedents are such as to qualify him for such service;
