

Building A Pact On Free Speech

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Paper - II
(Indian Polity)

The top court's order on remarks by politicians defines the contours of free speech, shows why a code of conduct on hate speech is needed.

Do ministers and politicians bear personal responsibility for what they say in public, and should additional fetters be put on their speech given the high constitutional or political positions they hold? In a significant judgment, the Supreme Court on Tuesday rejected petitions calling for an institutional framework to deal with offensive comments made by lawmakers or politicians.

Supreme Court Verdict

The majority judgment, authored by Justice V Ramasubramanian, made three major points. One, a statement made by a minister can't be attributed vicariously to the government by invoking the principle of collective responsibility. Two, no additional restrictions, other than the ones already mentioned in Article 19(2) of the Constitution (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 offense) can be imposed on their speech. And three, the protection of fundamental rights relating to free speech, and life and liberty, can be used against private persons and nonState actors too— which means these politicians can be sued.

In a separate verdict, justice BV Nagarathna disagreed on all three aspects. She found that on some occasions — especially when ministers are talking in their official position as representatives of the government — their comments can be seen as the views of the government; it is for Parliament to bring additional restrictions on free speech; and common law remedies are enough for free speech violations by private individuals.

What Was The Matter

- The case of Kaushal Kishor v. State of Uttar Pradesh relates to the 2016 Bulandshahr rape incident, in which Azam Khan, the then state minister of Uttar Pradesh and Samajwadi Party leader, termed the incident as a 'political conspiracy'.
- In this case, in the Constitution Bench of the Supreme Court, Justice S. Abdul Nazir, B.R. Gavai, A.S. Bopanna, V. Ramasubramanian, and B.V. Nagarathna and the Supreme Court ruled by a majority of 4:1 that statements made by a minister, even if known to be in defense of any matter of state or government, could not be attributed. The additional restrictions found in Article 19(2) cannot be imposed on the right to freedom of expression.

The majority verdict is significant because it etches the contours of free speech in India and ways to safeguard it. It remains to be seen whether this pushes ordinary citizens to take political representatives to court for intemperate remarks (since their personal comments are not representative of government views, they can be seen as private individuals), or opens the door for legal action against fringe elements and non-State actors whose majoritarian comments have threatened to rupture the country's social fabric.

Now What Next

The majority and dissenting judgments show the way forward on both fronts — by paving the way for stronger legal action on fundamental rights and underlining the dangers of hate speech in a democracy. It is now up to the political class to forge a compact and a code of conduct that can be uniformly enforced to ensure no inflammatory remarks can be made for expediency, though the current state of polarised discourse doesn't hold out hope for such an eventuality.

Constitutional Bench

Whenever a matter of law arises which requires the interpretation of a provision or provision of the Constitution or involves a "substantial question of law", it shall be decided by a Bench consisting of at least five judges of the Supreme Court is necessary to be done. Such a bench is called a constitutional bench. However, the judiciary has so far not determined what are "substantial questions of law" that "involve constitutional interpretation".

When does the Supreme Court constitute a constitutional bench?

- Article 145(3), which deals with the Rules of the Court, provides for the establishment of Constitution Benches.
- Article 145(3) provides that "for the purpose of deciding any matter involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing a reference under article 143, the minimum number of judges to be The number will be five".

Other scenarios in which a constitution bench can be constituted-

- If a Bench of two or three Judges of the Supreme Court has given conflicting judgments on the same point of law
- If a subsequent three-judge bench of the Supreme Court doubts the correctness of a decision given by an earlier bench and decides to refer the matter to a larger bench for reconsideration of the previous decision.
- The largest constitution bench ever constituted was of 13 judges in the Kesavananda Bharati vs State of Kerala case.

Freedom Of Speech And Expression

Freedom of speech and expression means the right to freely express one's views through speech, writing, printing, pictures or any other means.

- Under Article 19(1), the Constitution of India guarantees the right to freedom of speech and expression to all its citizens. However, this freedom is not absolute and reasonable restrictions may be placed on the exercise of this right for certain purposes under Article 19(2).
- Article 19 (2) deals with the powers of the State to impose reasonable restrictions on the exercise of the right to freedom of speech and expression in the interest of the sovereignty and integrity of the country, public order, decency, morality etc.

Expected Question

Que. We adopted parliamentary democracy on the basis of the British model, but how is our model different from that model? (2021)

1. With respect to legislation, the British Parliament is supreme or sovereign but in India, the law-making power of the Parliament is limited.
2. In India, matters relating to the constitutionality of an amendment to an Act of Parliament are referred by the Supreme Court to a Constitution Bench.

Select the correct answer using the code given below :

- (a) Only (b) Only 2
(c) Both 1 and 2 (d) Neither 1 nor 2

Answer : C

Mains Expected Question & Format

Que.: “The right to free speech and expression is a fundamental right of a democracy” Is there a need for a separate institutional framework to deal with objectionable comments made by politicians? Discuss.

Answer Format :

- ❖ The right to free speech and expression is a fundamental right of a democracy.” Explain.
- ❖ State whether there is a need for a separate institutional framework to deal with objectionable comments made by politicians.
- ❖ Give a balanced conclusion keeping in view the recent issue.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.