



Supreme Court on Freedom of Speech of Ministers

For Prelims: Supreme Court, Fundamental Rights, Supreme Court on Freedom of Speech of Ministers

For Mains: Important Judgements, Freedom of Speech of Ministers

Why in News?

Recently, a Constitution Bench of the [Supreme Court](#) unanimously and rightly **ruled out any additional curbs on free speech by ministers.**

What is the Background?

- The case (*Kaushal Kishor v the State of UP*), relates to the Bulandshahar rape incident of 2016, in which the then Minister of the State termed the incident a ‘political conspiracy and nothing else’.
- A [writ petition](#) was filed by the survivors before the SC and the court raised an important question: “Can restrictions be imposed on a public functionary’s freedom of speech and expression?”.

What is the Judgement of the Court?

- **Majority Judgement:**
 - **On Reasonable Restrictions:**
 - Like other citizens, **ministers are guaranteed the right to freedom of expression** under Article 19(1) (a), governed by the reasonable restrictions laid out in Article 19(2) — and those are enough.
 - Because “**The role of the court is to protect [fundamental rights](#) limited by lawful restrictions** and not to protect restrictions and make the rights residual privileges.”
 - **On Collective Responsibility:**
 - The majority ruling also **made a valid distinction on the government’s vicarious responsibility for ill-judged or hateful remarks** made by its individual ministers.
 - The **flow of stream in [collective responsibility](#)** is from the Council of Ministers to the individual ministers.
 - The flow is **not on the reverse**, namely from the individual ministers to the Council of Ministers.
 - It is **not possible to extend the concept of collective responsibility to “any and every statement orally** made by a Minister outside the House of the People/Legislative Assembly”.
 - **Statement by an Individual Minister:**
 - The court also **addressed the question of whether the statement of a minister**, that is inconsistent with the fundamental rights of citizens, can result in a **constitutional tort.**

- A **constitutional tort** is a **legal tool that provides for the state to be held vicariously accountable** for the actions of its agents.
- A mere statement by a minister that **goes against an individual's fundamental rights may not be actionable**, but becomes actionable if it results in actual harm or loss.
- **Dissenting Judgement:**
 - **Over a Hateful Public Discourse:**
 - The **minority judgment expresses concern over a hateful public discourse** - **"hate speech**, whatever its content, denies people dignity".
 - It speaks of the **special duty of public functionaries and other persons of influence** to be more responsible and restrained in their speech, to "understand and measure their words".
 - **On Collective Responsibility:**
 - It is **possible to attribute vicarious responsibility to the government** if a minister's view represents that of the government and is related to the affairs of the state.
 - If such a statement is not consistent with the view of the Government, then it is **attributable to the Minister personally**.
 - **Statement by an Individual Minister:**
 - It holds the view that **there should be a proper legal framework to define acts** and omissions that amount to 'constitutional tort'.

What is Article 19?

- **Article 19 of the Constitution of India guarantees the right to freedom of speech** and expression, and is typically invoked against the state.
 - Article 19(1) in The Constitution Of India 1949, 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
 - (f) omitted
 - (g) to practise any profession, or to carry on any occupation, trade or business.
 - **Article 19(2) in The Constitution of India 1949,**
 - 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.

Way Forward

- There are **enough provisions in the statute book to deal with speech that promotes enmity and violence** or results in cramping the freedoms of others.
 - **A lack of political will and a lack of political resolve by governments to act on hate speech**, particularly when it involves one of their own, is the major problem, and there are no legal shortcuts to overcome it.
- A government can **weaponize the same legal provisions that are designed to curb hate speech against citizens who disagree or dissent**.
- The **Parliamentary privileges** are conferred on the members for the smooth functioning of the parliament. But these rights should always be in conformity with the **fundamental rights** because they are our representatives and work for our welfare.
 - If the privileges are not in accordance with the fundamental rights, then the very essence

of democracy for the protection of the rights of the citizen will be lost.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Q. What do you understand by the concept of “freedom of speech and expression”? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss. **(2014)**

[Source: IE](#)

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