

## Legislator's Freedom of Speech

### Why in news?

*A five-judge Constitution bench of the Supreme Court gave a verdict on the right to freedom of speech of the MPs and MLAs.*

*This decision was given by the same five-judge Constitution bench that upheld the Central government's demonetisation decision. Click on the below link to read about [Supreme Court Judgment on Demonetisation](#)*

### What was the case about?

- The case, *Kaushal Kishor v the State of Uttar Pradesh*, relates to the Bulandshahar rape incident of 2016.
- In this case, the then Minister of the State of Uttar Pradesh Azam Khan termed the incident a 'political conspiracy and nothing else'.
- The survivors then filed a writ petition before the Supreme Court seeking action against Khan.
- While directing him to submit an unconditional apology, which he did, the Court also noted that the case raises serious concerns regarding state obligation and freedom of speech and expression.
- An important question here was "whether restrictions can be imposed on a public functionary's right to freedom of speech and expression".

### What did the Supreme Court say about the legislators' freedom of speech?

- The Supreme Court said that a statement made by a minister, including MLAs and MPs, cannot be attributed vicariously to the government even when applying the principle of collective responsibility.
- This holds true even if the statement said was traceable to any state affairs or for protection of the government.

*Article 19 is about 'freedom of expression' and Article 21 is about 'right to life'.*

- The Supreme Court also said that no additional restrictions against free speech can be imposed except those mentioned under Article 19 (2) of the Constitution.
- It said while citizens had the right to petition the Court for violations of Article 19 and Article 21, a statement made by the Minister, inconsistent with the rights of the citizens, may not by itself be actionable.
- But if it leads to omission or commission of offence by a public official, then remedies

can be sought against it.

### **What was government's response?**

- The government argued that the issue being considered by the bench was largely academic and very abstract.
- It also said that the possibility of a law being drafted to deal with areas of hate speech or other kinds of remarks, if needed, would be the responsibility of the Parliament.

### **What are the other clarifications made by the Supreme Court?**

- In the course of the discussion, the court has clarified several principles, including that of constitutional tort, or a civil wrong that is actionable.
- The main opinion concludes that 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.
- One judge held the view that there should be a proper legal framework to define acts and omissions that amount to 'constitutional tort'.
- The court's overall view that fundamental rights are enforceable even against private actors is indeed a welcome one.
- This largely settles the question of whether these rights are only 'vertical', that is, enforceable only against the state, or 'horizontal' too, that is enforceable by one person against another.

### **Reference**

1. [Indian Express | SC verdict on MPs, MLAs' right to freedom of speech](#)
2. [The Hindu | Freedom in authority: On the right to free speech](#)