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

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