

Public Engagement by Judges & Limitations

Mains: GS-II - Polity & Governance | Judiciary

Why in news?

The recent debate was triggered by Supreme Court judge Justice Ujjal Bhuyan's public remarks on voting rights and examines the limits of extra-judicial speech by sitting judges.

What is the background?

- **Justice Ranjan Gogoi's view on Judicial Voice** – In July 2018, Justice Ranjan Gogoi, months before becoming Chief Justice of India, said democracy sometimes needed “noisy judges”, alongside independent journalists; eight years later, that judicial voice has become contentious.

***Judicial Voice** – Refers to how judges and courts express authority, persuasion, and legal reasoning through their written opinions, oral statements, and public engagement.*

- **Justice Ujjal Bhuyan's View** – On October 4, Justice Ujjal Bhuyan, addressing at NALSAR University of Law, said that
 - The right to vote was constitutional and integral to the basic structure.
 - A process disenfranchising millions would be intrinsically arbitrary and violate Articles 14 and 326.
 - Article 326 “cannot be tinkered with”, and “no court can condone” mass disenfranchisement.
 - *Citing Section 22 of the Representation of the People Act, 1950*, he stressed the need for notice and a hearing before deletion, except in the case of death.
- **Criticism** – Former Chief Justice of India B.R. Gavai objected that “judicial propriety” did not permit a sitting judge to comment on a sub judice matter.
- Former Delhi High Court judges S.N. Dhingra and R.S. Sodhi expressed similar concerns, with Justice Sodhi stressing the statutory framework governing voting rights.

***Judicial propriety** – Refers to the set of ethical rules, standards, and behavioral norms that judges must follow to preserve independence, impartiality, integrity, and public confidence in the legal system.*

- **Justice Vikram Nath's views** - Justice Vikram Nath, while delivering a lecture in Delhi, highlighted that "Impartiality and indifference are not the same thing".
- A judge must be impartial, but need not be insensible to the human consequences of law, he observed.

What does the Indian code require?

- **Guidelines on Public speech** - The main guideline governing judges' public conduct is the **Restatement of Values of Judicial Life**, adopted by the Full Court of the Supreme Court on May 7, 1997.
 - Clause 8 - A judge shall neither enter public debate nor express views on political matters "or on matters that are pending or are likely to arise for judicial determination".
 - Clause 1 - Requires conduct sustaining public faith in judicial impartiality.

Judicial impartiality - *It is the core legal principle that judges must decide cases without bias, prejudice, or favouritism toward any party.*

- The Restatement carries no sanction of its own, but has been reproduced and relied upon in judicial decisions.
- **Connect with Justice Bhuyan's remark** - While addressed at NALSAR, litigation arising from the West Bengal SIR remained before the Supreme Court.
- More than 22 lakh deleted voters had appealed for restoration, the Election Commission of India told the court - Justice Bhuyan neither named the SIR nor sat on those Benches.

But did Justice Bhuyan state something the court had not already held?

- **Supreme Court's earlier position on voting rights** - In *Association for Democratic Reforms v. Election Commission of India* (2026), a Bench headed by Chief Justice Surya Kant upheld the Bihar SIR.
- The court described the
 - Right to vote as constitutional, though neither absolute nor unregulated.
 - Articles 325 and 326 require inclusion of eligible electors and exclusion of ineligible persons.
 - Rule 21A of the Registration of Electors Rules, 1960, it added, requires notice, inquiry, hearing and a reasoned determination before deletion.
- **Justice Bhuyan's remarks** - Justice Bhuyan was therefore on established ground in describing voting as constitutional and stressing a hearing before deletion.
- The more debatable part was his proposition that a process disenfranchising millions would be intrinsically arbitrary and that no court could condone it.
- Yet the proposition was conditional and did not decide whether a particular SIR produces that result.
- The issue turns on how closely those words approached an answer to a live controversy.

Must judges remain silent on questions of public importance?

- **International standards on judges' public remarks** - The international judicial standards do not completely prevent judges from speaking in public.
- **Bangalore Principles** - The Bangalore Principles of Judicial Conduct recognise judicial freedom of expression on legal education, judicial independence and court administration.
 - Principle 2.4 restrains comment that might reasonably affect a proceeding before, or capable of coming before, the judge.
 - Principle 4.11 allows judges to write, lecture and teach on law and the administration of justice.
- **USA** - The U.S. Supreme Court's 2023 Code of Conduct permits Justices to speak, write, lecture and teach, but asks them to refrain from commenting on the merits of a pending or impending matter.
- **Justice Antonin Scalia's Experience** - In 2003, he criticised a lower-court ruling on the Pledge of Allegiance.
- The litigant sought his recusal, and Scalia took no part when the case reached the U.S. Supreme Court, although the Court gave no reason.
- **Britain** - Lady Hale outlined competing arguments in the pending Brexit litigation in 2016, then stopped: "the case is destined for our Court, so I must say no more".
- She later participated in the case, demonstrating judicial restraint while still engaging in public discussion.
- **Justice Ruth Bader Ginsburg** - He crossed a different boundary by criticising presidential candidate Donald Trump, then described her comments as "ill-advised".
- **Indian experience** - Indian practice also counsels against treating every public intervention as improper.
- **Justice B.V. Nagarathna's remark** - At NALSAR in March 2024, she criticised Governors who withheld assent to Bills while related disputes were before the Court.
- **Need for a Balanced View** - Legal scholars such as Jasmin Moran and Christopher W. Schmidt argue that concerns about judicial bias are important. However, they also caution that the solution is not complete silence by judges.

Is Justice Bhuyan exceptionally outspoken?

- **Justice Bhuyan, a growing public figure** - A conservative open-source audit found at least 25 public-facing engagements since he joined the Supreme Court on July 14, 2023.
- It covered institutional archives, Bar events and contemporaneous reports, excluding courtroom remarks, internal programmes and events where only scheduled participation could be established.
- At least nine addresses generated news reports, seven in 2026; the figure is a minimum.
- **Increase public intervention** - In 2026, he questioned executive influence in judicial transfers, cited low conviction rates while discussing
 - Overuse of the Unlawful Activities (Prevention) Act,
 - Criticised restrictive bail conditions,
 - Sought greater transparency in collegium decisions and
 - Criticised frivolous prosecutions arising from food choices, poems, protests and slogans.

- Most generated headlines without a comparable propriety controversy.
- **Two stand-out episodes** -
- After Justice Bhuyan criticised the Supreme Court's 2024 Delhi Metro arbitration ruling, retired Justice Indu Malhotra called the remarks an "indiscretion".
- Former Justice Sudhanshu Dhulia, by contrast, defended another July speech on dissent and criminalisation, while cautioning that sitting judges must exercise restraint because similar issues may later come before them.
- Their disagreement shows why controversy alone is a poor test.

Does his High Court record bear on this?

- **Monowara Bewa v Union of India (2017)** - Justice Bhuyan's Bench upheld a Foreigners Tribunal finding and rejected a Gaon Panchayat Secretary's certificate as an NRC linkage document.
- The Supreme Court later set aside that broader conclusion in *Rupajan Begum v Union of India*.
- **Sirajul Hoque v State of Assam (2019)** - It also reversed a 2017 decision of his Bench where variations in a family name had contributed to rejection of a citizenship claim.
- **Md Anuwar Hussain v Union of India (2014)** - Justice Bhuyan set aside a Foreigners Tribunal order for lack of sound logic and cogent reasons, remanded the case and ordered the petitioner's release from detention to argue it afresh.
- His record contains strict and claimant-protective strands.
- Extrajudicial language about citizenship, liberty or voting cannot safely predict how he would decide a properly argued case.

So, are Justice Bhuyan's critics correct?

- **Justice Bhuyan's Remarks and Constitutional Principles** - India's Restatement uses broader language than the U.S. code.
- His propositions that voting is constitutional and deletion requires procedural safeguards largely track existing doctrine.
- The sentence that "no court can condone" mass disenfranchisement comes closer to stating a constitutional conclusion, although it was conditional and did not decide whether the SIR produces that result.
- **Should Judges speak on public issues?** - The criticism becomes weaker when enlarged into a claim that sitting judges should avoid public discussion of constitutional law, civil liberties, judicial appointments or court administration.
- Indian judges have long occupied that space, and international standards recognise its value.
- If a case presenting the precise issue on which Justice Bhuyan spoke were assigned to him, the Scalia episode shows why recusal could become a question.

What lies ahead?

- Justice Gogoi's "noisy judge" and Justice Nath's formulation that impartiality need not mean indifference can coexist.
- The relevant measures are the subject of the speech, the specificity of the conclusion

and its proximity to adjudication.

- Judicial speech can enrich constitutional conversation, but the lecture hall should not sound like a courtroom deciding a case before the parties are heard.

Reference

[The Hindu | How far can a sitting judge speak outside the courtroom?](#)

