



IMRAN PRATAPGADHI V. STATE OF GUJARAT AND ANR.: BALANCING RIGHT TO FREEDOM OF SPEECH AND CRIMINAL PROSECUTION

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There is a saying that ‘free speech and democracy go hand in hand’. The expression is clear of the idea of a democratic setup where the right to free speech is valued and cared for. While democratic principles have carved India's identity from the very inception of the Constitution, nowadays, the dearth of free speech has created a stir in the evolving digital society. Recently, India has also celebrated 75 years of drafting its own Constitution. This one document shapes the landscape of governing bodies and governance in our country, while also guaranteeing fundamental rights to every citizen, as well as non-citizens. Of all these rights, the most notable is the right to free speech and expression, which is guaranteed with reasonable restrictions.¹

The right to free speech and expression (Article 19) is always in integral conjunction with the other two rights provided in our Constitution, i.e. Article 14 and Article 21. Thus, the golden triangle principle² is to be followed while dealing with any case arising out of the violation of any of the mentioned fundamental rights. The right to free speech and expression of an individual ultimately guarantees his/her right to live with dignity (Article 21). The court in the present case stated that artistic freedom enriches human life and must be respected and protected.

Nonetheless, the right to free speech and expression is declining day by day, either due to arbitrary state censorship or legislative regulations that have a chilling effect on it. With the increasing number of cases of national unity concern, whether it be artistic freedom or freedom of the press, each faces a trial for exercising their rights. According to the Global Expression Report 2024, India's expression score has dropped, and it has moved from the ‘highly

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¹ Constitution of India 1950, art 19(2)

² Zia Mody, 10 Judgements that Changed India (Penguin Random House India Pvt. Ltd. 2013)

restricted' to the 'crisis' category.³ Thus, the present case had the same issue of whether the appellant rightfully exercised his right to free speech (by posting a video on the social media platform 'X') or incited a feeling of enmity among communities that can affect national unity, ultimately facing criminal prosecution.

FACTS OF THE CASE

The case ensued from the appellant's (who is a Member of Rajya Sabha) action of posting a video of an event with a poem (in Urdu) recited in its background on 'X' formerly 'Twitter' with the title 'Ae Khoon Ke Pyaso...' on 29th December 2024. Following this, the respondent (number 2) filed an FIR under Sections 196, 197(1), 302, 299, 57 and 3(5) of BNS⁴ in Jamnagar Police Station. According to the respondent, the appellant was invited to a mass marriage function on the eve of one Altaf Ghafarbai Khafi, a member of the Municipal Corporation of Jamnagar. The appellant made a video of the same and posted it on 'X' with the poem/song being recited in its background from his verified account. The respondent alleged that the spoken words of the poem incite people of one community against another, hurting the religious and social sentiments of the community. The lyrics incited enmity, hatred and ill will by encouraging people from one community to fight for their rights. This had a detrimental effect on national unity.

Following this, the appellant filed a petition under Section 528, BNSS 2023⁵ read with Article 226, Constitution of India, praying for quashing the FIR (first information report).⁶ The Gujarat High Court directed the appellant to file an affidavit disclosing the poem's source. The appellant stated in the affidavit, through a review of sources available in public domains and Chat GPT, that there are divided opinions on determining the origin of the poem, and it may be attributed to Faiz Ahmed Faiz or Habib Jalib. The appellant pleaded that he had not written the poem/song, and the plain reading of the poem provides the message of non-violence and love. The High Court did not hear the contention and rejected the petition, stating that the investigation of the case was at a nascent stage.

³ Global Expression Report, 'More than half of the world's population are living through a freedom of expression crisis' (Article 19, May 2024) <<https://www.globalexpressionreport.org/2024-press-release>> accessed 11 June 2025

⁴ Bharatiya Nyaya Sanhita 2023

⁵ Bharatiya Nagarik Suraksha Sanhita 2023

⁶ Bharatiya Nagarik Suraksha Sanhita 2023, Section 173

ISSUES RAISED

The issues about the case to be adjudged by the Apex Court are as follows:

1. Whether the contents of the poem/song recited in the background of the video amount to offences under relevant Sections 196, 197, 299, 302, 57 and 3(5) of BNS,2023?⁷
2. Whether the FIR filed against the appellant is legally valid or would it restrict his freedom of speech and expression under Article 19 (1) (a) of the Constitution?
3. Whether a preliminary enquiry under Section 173 (3) BNSS,2023⁸ be made by the police officers before registering an FIR in these cases to ensure their accountability towards law enforcement?

SUBMISSION ON BEHALF OF THE APPELLANT

The appellant submitted before the Hon'ble Court that a plain reading of the poem does not make out the ingredients that are essentially needed in the relevant Sections mentioned in the FIR.⁹ He stated that responses against and for the video have arisen after the posting of the video on the social media site 'X'. Thus, it did not cause any social disharmony amongst the general masses. The plain reading of the poem suggests that one must suffer injustice with love and prevent oneself from violence, which proves the fact that it also did not promote any feelings of enmity, hatred or ill will between religious, racial, language or regional groups and castes or communities. The police have shown insensitivity while filing the FIR, violating the appellant's fundamental right under Article 19 (1) (a) of the Constitution. Even the High Court has not attempted to clearly understand the message conveyed by the poem while adjudging the case.

SUBMISSION ON BEHALF OF THE RESPONDENT

The respondent submitted that the appellant's claim of the author of the poem/song being either Faiz Ahmed Faiz or Habib Jalib is entirely wrong. The police authorities are under an obligation to register an FIR where an offence is of such a nature that it needs immediate cognisance for better law enforcement. The High Court has followed the lawful process while rejecting the petition of the appellant, and the criticism of the senior counsel is not correct.

⁷ Bhartiya Nyaya Sanhita, 2023 (n 4)

⁸ Bhartiya Nagrik Suraksha Sanhita, 2023 (n 5)

⁹ Bhartiya Nagrik Suraksha Sanhita, 2023 (n 6)

JUDGMENT AND OBSERVATION OF THE APEX COURT

The case was adjudged by a division bench comprising Justice Abhay S Oka and Justice Ujjal Bhuyan with no dissenting opinion. Both the judges had assented to the opinion mainly rendered by Justice Oka (with ‘valuable inputs’¹⁰ given by Justice Bhuyan) of allowing the appeal to provide relief.

After translating the poem/song to English (to contemplate the message that it is conveying), the court stated that the poem is a message of love and peace. The poem mentions that if one faces injustice while securing one’s rights or seeking justice, one shall embrace it with love. Thus, it does not spread any type of enmity, hatred or ill will among any community, religion, race or general mass. It also does not affect the national unity, which is indicative of the fact that it does not attract Section 196 of BNS.¹¹ It neither harms religious sentiments nor is a deliberate attempt to cause such disharmony.

Here, the court significantly states that the police had performed a very ‘mechanical exercise’¹² while registering the FIR. They shall bear sensitivity while registering an FIR against any individual for matters of free speech and expression. They shall first conduct a preliminary inquiry with the permission of the head officer to ensure that the filing of frivolous complaints is prevented. The court mentions that Section 173(3) is an exception to 173(1) of BNSS,2023¹³ as per the judgement of *Lalita Kumari v. Govt of U.P.*¹⁴ Where the Court dealt with Section 154 of CrPC,1973 (similar to Section 173, BNSS,2023). The police should carefully read or hear the words written or spoken, respectively, to draw an inference if a cognisable offence can be made out or not before registering an FIR.¹⁵ The court mentioned that this very practice by the authorities could be a step towards the protection of the right to freedom of speech and expression.

The protective measures are to ensure that the Constitutional values are upheld in the evolving society. The court stressed the fact that police authorities come under the State machinery, as mentioned in Article 12 of the Constitution. So, they shall come under the obligation to perform their duty to respect the ideals and constitutional values as mentioned in Article 51-A (a) of the

¹⁰ Imran Pratapgadhi v. State of Gujarat and Anr. 2025 INSC 410 [43]

¹¹ Bhartiya Nyaya Sanhita 2023 (n 4)

¹² Imran Pratapgadhi (n 10) [36]

¹³ Bhartiya Nagrik Suraksha Sanhita, 2023 (n 5)

¹⁴ [2014] 2 SCC 1

¹⁵ Bhartiya Nagrik Suraksha Sanhita, 2023 (n 6)

Constitution. This ensures that the individuals are protected from arbitrary state action or criminal prosecution for exercising their right to free speech.

The court stated in its judgement that the reasonable restrictions should be reasonable enough and ‘not fanciful and oppressive’¹⁶, which means the restrictions should be implemented judiciously and not arbitrarily according to whims and fancies. The court emphasised that the Constitution is more than 75 years old, which implies that the citizens (especially the State authorities, which includes the police officers) shall abide by it or be ‘sensitised’ about respecting the ideals of the Constitution. If at this stage the police officers are not at all aware, they shall be given proper training programs or be ‘sensitised’ about the same.¹⁷

The court in its judgement cited the case of *Bhagwati Charan Shukla v. Provincial Government, C.P. & Berar*,¹⁸ which stressed the fact that the effect of the spoken or written words will have to be considered based on “standards of reasonable and strong-minded individuals and not from the point of view of weak or vacillating minds who think every opinion or every criticism of them as a threat to their power or position.”¹⁹ Again, the court cited its judgment of *Javed Ahmad Hajam v. State of Maharashtra*,²⁰ where it dealt with Section 153 A, IPC, 1860²¹ (similar to Section 196 BNS, 2023). The judgement²² was decided based on the ‘yardstick laid down by Justice Vivian Bose’²³, which is to judge the effect of the words, spoken or written, in the context of Section 153-A IPC, 1860.

The court observed that every protest for the actions of the State or criticism should not be held as an offence, or it would end democratic values. The right to dissent is also a fundamental right under Article 19 (1) (a).²⁴ Everyone should respect each other's right to dissent. It should be treated as a part of the right to lead a dignified and meaningful life (under Article 21), but

¹⁶ Imran Pratapgadhi (n 10) [29]

¹⁷ Ibid [30]

¹⁸ [1946] SCC OnLine MP 5

¹⁹ Imran Pratapgadhi (n 10) [32]

²⁰ [2024] 4 SCC 156

²¹ Indian Penal Code 1860, Section 153 A

²² Bhagwati Charan Shukla (n 16)

²³ The yardstick being referred to here was laid down in Bhagwati Charan Shukla Judgement. It was also referred to in the judgement of Manzar Sayeed Khan v. State of Maharashtra 5 SCC 1 (2004). This is to determine whether the words spoken or written tend to create public disorder, disturbance of law and order or public tranquillity. This is sine qua non of the offence under Section 153A IPC (Section 196 BNS, 2023). The mens rea behind the offence has to be taken into consideration for proving the same and can be judged from the language of the piece of writing and the circumstances when it was written or published.

²⁴ Imran Pratapgadhi (n 10) [34]

the same shall be within the ‘permissible corners’²⁵ in a democracy. Hence, the observation was that the appellant had not crossed the line.

The court emphasised the view that the Constitutional courts should be at the forefront to protect the fundamental rights of the citizens guaranteed by the Constitution, criticising the stance of the High Court in this matter. It stressed the very ideals given in Article 19, the Preamble and the previous decisions to conclusively protect the right of the appellant (by citing the judgement of *Shreya Singhal v. Union of India*).²⁶ Thus, the court has emphasised the role of courts to protect the constitutional scheme of liberty of thought and expression (a basic human right) by quashing the FIR against the appellant.

ANALYSIS

The judgment given by the court is of paramount importance in the recent evolving scenario where every voice is throttled for being expressed.²⁷ The judgment has made a paradigm shift in the landscape of the right to free speech and expression. It categorically stressed the fact that the Police authorities should not hastily take any decision to register the FIR. They shall first make a preliminary enquiry about the offence with the permission of the head officer to chalk out if any offence has been committed or not in the cases of speech and expression (Section 173 (3) of BNSS, 2023). This should increase their sense of ‘accountability’²⁸ while performing law enforcement duties, being part of the State (under Article 12 of the Constitution).

In the digital era, the police should be responsible enough to prevent the filing of frivolous complaints against anyone without judging. The court’s description of Police personnel as citizens of the country is up to the point of giving the mandate to perform the duty of protecting the fundamental rights of other citizens (Article 51A (a)). It has also emphasised the role of courts (especially Constitutional Courts) to protect the rights of citizens and the Constitutional ideals that are the very basis of the democratic set-up in our country. Certainly, the judgment

²⁵ Constitution of India 1950, art 19 (2)

²⁶ [2015] SCC 1

²⁷ ‘Free speech is a distant dream in these countries, finds study; this is where India stands in the list’ (Times of India, 20 March 2025) (<<https://timesofindia.indiatimes.com/etimes/trending/free-speech-is-a-distant-dream-in-these-countries-finds-study-this-is-where-india-stands-in-the-list/photostory/119243217.cms?picid=119243241>> accessed 13 June 2025)

²⁸ ‘Supreme Court of India’s Landmark Judgment on Speech and Expression: *Imran Pratapgarhi v. State of Gujarat & Anr.*’ (Chandrawat & Partners Law Firm, 31 March 2025) (<[Supreme Court of India’s Landmark Judgment on Speech and Expression: Imran Pratapgarhi v. State of Gujarat & Anr. - Chandrawat & Partners Law Firm](#)> accessed 13 June 2025)

would act as a precedent for future cases on how they are handled by the Police or adjudged by the Courts.

Whatever the case, the right to free speech and expression is time and again misused for personal vendetta or gains, where it crosses the line of restrictions mentioned in Article 19 (2). In this evolving scenario, the police authorities lack the training or expertise to handle cases in which the violation or lawful upholding of these rights is involved. The legislature, being the sole framer, is also maintaining dormancy to set up proper guidelines or laws to decide what can be the permissible limits of using the right to free speech and what is not. The new criminal laws need new implementation techniques and sensitisation programs so that the cases are better handled. Thus, policies should be implemented by taking into consideration every aspect to protect the rights effectively.

CONCLUSION

The judgement is a milestone in the line of judgements that have stood for the protection of fundamental rights and Constitutional values in the country. It will prevent police overreach, ensure accountability of law enforcement agencies and act as a check in the handling of future cases where the right to free speech and expression is a matter of concern. The judgement has broad implications not only on the courts to perform their function of protecting the foundation of our Constitutional scheme, but also acts as a yardstick for State authorities on how to handle these types of cases with the help of the new Criminal laws. There are issues in the system, and these could be resolved with the authorities enhancing law enforcement, taking into consideration positive aspects which can bring about reforms and changes in the system.