

SC TO WEIGH BETWEEN 'NATIONAL SECURITY', JUDICIAL SCRUTINY

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The question whether the state can use 'national security' as a ground to limit judicial scrutiny has come up for scrutiny again in the MediaOne TV channel case barely weeks after the Supreme Court, in its Pegasus case order, observed that the Centre cannot expect a 'free pass' from the courts as soon as it raises the 'spectre of national security'.

The government has cited national security reasons in the Kerala High Court for cancelling telecast permission to the Malayalam news channel.

"It is a settled position of law that in matters pertaining to national security, the scope of judicial review is limited. However, this does not mean that the state gets a free pass every time the spectre of 'national security' is raised. National security cannot be the bugbear that the judiciary shies away from, by virtue of its mere mentioning. Although this court should be circumspect in encroaching upon the domain of national security, no omnibus prohibition can be called for against judicial review... The mere invocation of national security by the state does not render the court a mute spectator," a three-judge Bench led by Chief Justice of India N.V. Ramana observed in the Pegasus case order in October 2021.

The order is a significant one considering the oft-repeated refrain of the government, while banning or curtailing rights of citizens, that it is being done for the sake of 'national security'.

One of the major concerns raised by citizens recently is the "chilling effect" such state actions endure to have on free speech, especially in the media. The principle of 'chilling effect' is based on comparative harm.

"One possible test of chilling effect is comparative harm. In this framework, the court is required to see whether the restrictions, due to their broad based nature, have had a restrictive effect on similarly placed individuals during the period," the Supreme Court explained in the Anuradha Bhasin case, which concerned Internet restrictions in Jammu and Kashmir in the backdrop of the abrogation of Article 370. In short, the test is whether action of the state on one entity freezes others in their footsteps or deters them from following the same course.

Order backed by reasons

Any order of the state which restricts the fundamental rights of speech or expression should be backed by reasons. The courts should be convinced that the state acted in a responsible manner and did not take away rights in an "implied fashion or a casual or cavalier manner", the Supreme Court has said in its 130-page judgment in the Anuradha Bhasin case.

"Democracy entails free flow of information," the Supreme Court had declared.

"There is no dispute that freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial," the Supreme Court has observed in judgments like Secretary, Ministry of Information & Broadcasting Government of India v. Cricket Association of Bengal and Shreya Singhal v. Union

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