

Constitutional Bench Update

CBI v. R.R. Kishore

**Retrospective Application of
Immunity Against Arrest for
Lawmakers**



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Bench

**Justices S.K. Kaul, Sanjiv Khanna,
Abhay S. Oka, Vikram Nath,
J.K. Maheshwari**

**Case Admitted on
November 3, 2015**

**Last Date of Hearing
September 20, 2022**

**Next Date of Hearing
November 2, 2022**

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Background

Dr. R.R. Kishore, the Chief District Medical Officer, Government of NCT of Delhi, was charged of demanding a bribe.

Central Bureau of Investigation (CBI) took him into custody for accepting the bribe. He challenged his arrest on grounds that it was pre-planned and did not qualify the exception provided by Section 6A(1) of Delhi Special Police Establishment Act, 1946.

Delhi High Court in R.R. Kishore v. CBI (MANU/DE/9433/2006) held that CBI's probe had begun prior to the arrest and not fall under the exception of Section 6A(1) of Act. Therefore, accused is entitled to the benefits under the provision. The Court has directed CBI to seek the Union government's consent and begin reinvestigation.

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CBI filed a Special Leave Petition before the Supreme Court against the Delhi High Court judgment.

The Supreme Court in CBI v. R.R. Kishore (MANU/SC/0378/2016) has observed that Section 6A(1) of the Act was declared unconstitutional by a Constitution Bench of a present Court in Subramanian Swamy v. Director, Central Bureau of Investigation and Anr. (MANU/SC/0417/2014). However, the Court was silent as to whether its decision would operate prospectively or have a retrospective effect.

Thus, the matter was referred to a five judge Bench to decide the application of Supreme Court decision.

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Issues under Consideration

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- Would the removal of immunity to Central government employees at the Joint Secretary level under the Delhi Police Special Establishment Act, by declaring Section 6A(1) of the Act unconstitutional, apply retrospectively?
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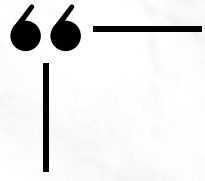


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Position in Major Countries



| COUNTRIES | EUTHANASIA | ASSISTED-SUICIDE |
|--------------------------|------------|----------------------|
| Australia | Illegal | Illegal |
| Canada | Legal | Legal |
| China | Illegal | Illegal |
| France | Illegal | Illegal |
| Germany | Illegal | Legal |
| Japan | Unclear | Illegal |
| United Kingdom | Illegal | Illegal |
| United States of America | Illegal | Legal in some States |



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Recently, the United States Court of Appeals for the 5th Circuit speaking through Andrew S. Oldham, Circuit Judge in the case of NetChoice, LLC vs. Ken Paxton (Attorney General of Texas), MANU/FEFT/0001/2022 on 17th September, 2022 upheld a Texas social media law that bars social media platforms from removing posts based on a person’s ideology.

Judge Oldham while upholding the First Amendment which guarantees every person’s right to free speech held that the Amendment doesn’t guarantee corporations the right to “muzzle speech”.

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Background of the Verdict

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Federal District Court temporarily halted State officials from enforcing the HB 20 Texas law, stating that it likely violates the First Amendment.

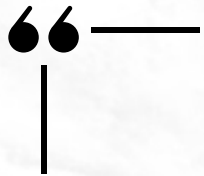
Later a divided panel of the 5th U.S. Circuit Court of Appeals allowed the enforcement to proceed, and the law went into effect on 11th May 2022.

On 13th May 2022, Lobbying groups representing Facebook, Twitter, Google, and other tech companies i.e. Netchoice, LLC had filed an emergency request with U.S. Supreme Court, seeking to block a Texas law that prohibits large social media platforms from banning users based on their political views.

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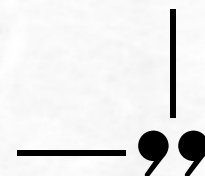


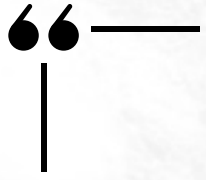
What is the law?



HB20, Texas Statute regulating large social media platforms with more than 50 million active users such as Facebook, Twitter & YouTube, particularly Section 7 of the Statute which states that social media platform will not censor user or user's ability to receive expression of another user based on:

- Viewpoint of user or any other person,
- Viewpoint represented in user's expression or any other person's expression





If social media platform violates this Section 7 with respect to a user, such user may sue for declaratory and injunctive relief and may recover costs & attorney's fees. However, for invocation of Section 7, user must reside or carry on business or share or receive expression in Texas.



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