

Constitutional Bench Update

Kaushal Kishor v. State of Uttar Pradesh

**Freedom of Speech And Expression of
Law Makers**



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Bench

**Justices S. Abdul Nazeer,
B.R. Gavai, A.S. Bopanna,
V. Ramasubramanian,
B.V. Nagarathna**

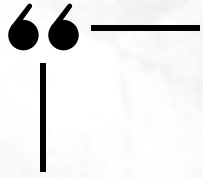
**Case Admitted on
October 23, 2019**

**Last Date of Hearing
September 28, 2022**

**Next Date of Hearing
November 15, 2022**

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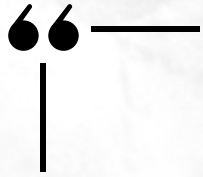
Background



- An unfortunate incident of rape of a girl and her mother took place on a highway in the State of Uttar Pradesh.
- Samajwadi Party Leader Azam Khan termed it a ‘political conspiracy’ and made certain other insensitive comments as well.
- In August, 2016, the victims approached the Supreme Court against those comments and also requested that the case be transferred to a state other than UP. The Court ordered a stay on the investigation.



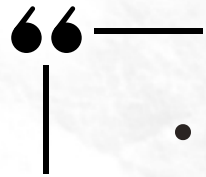
Background



- In November, 2016, Mr. Khan was ordered by the Court to tender an unconditional apology for his statements.
- On 20th April 2017, the Court referred the matter to a five-judge constitution bench and requested the Amicus Curiae to formulate questions of law for the Bench to consider.



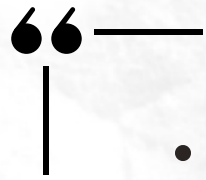
Issues under Consideration



- Are grounds specified in Article 19(2) of the Constitution in relation to which reasonable restrictions on right to free speech can be imposed by law, exhaustive or can restrictions on right to free speech be imposed on grounds not found in Article 19(2) of the Constitution by invoking other fundamental rights?
- Can a fundamental right under Articles 19 or 21 of Constitution be claimed against Person other than ‘State’ or its instrumentalities?
- Whether State is under a duty to affirmatively protect rights of citizen under Article 21 of the Constitution even against a threat to liberty of citizen by acts or omissions of another citizen or private agency?



Issues under Consideration



- Can statement made by Minister, traceable to any affairs of State or for protecting Government, be attributed vicariously to Government itself, especially in view of principle of Collective Responsibility?
- Whether a statement by a Minister, inconsistent with the rights of a citizen under Part III of Constitution, constitutes a violation of such constitutional rights and is actionable as ‘Constitutional Tort’?



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