

**DEVIDAS RAMACHANDRA TULJAPURKAR v. STATE OF  
MAHARASHTRA – AN OXYMORON OF FREEDOM OF SPEECH AND  
EXPRESSION**

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***Abstract***

*The evolution of freedom of speech and expression in our country, if represented on a graph, would certainly be in a sine wave with momentous ups and downs. The interrelation of media and freedom of speech and expression has been pivotal in not just expanding the interpretation of Article 19(1)(a) but also in bringing forth different dimension of the same. Different forms of media have undergone varied challenges to sometimes emerge victorious and also at times to face limitations. Nonetheless, the restrictions imposed on media under Article 19(2) have been debated since the inception of the Constitution, with the judiciary being the ultimate authority which decides the fate of any form of media.*

*In the light of this background, the objective of this paper is to review the decision of the Supreme Court in **Devidas Ramachandra Tuljapurkar v. State of Maharashtra**, which tests the validity of a poem on a 'historically respected personality' written in an allegedly obscene manner. The relevance of the judgment lies in the fact that while it is flexible and liberal in interpreting the bearing of obscenity, at the same time it oddly restricts freedom of speech and expression. In a particularly peculiar manner, this case both protects as well as curbs Article 19(1)(a).*

**Keywords:** *Obscenity; Historically respected personality; Freedom of speech and expression; Poetic licence; Contemporary community standard*

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## INTRODUCTION

Freedom of media, the fourth estate of a democracy, is paramount in dispensing truth, opinions and engaging in fair comments shaping the perspectives of readers or viewers. Media has a very wide connotation today as opposed to how it initially was, restricted only to newspapers. As is the common misconception that media means only news or is news-related, media in fact signifies a plethora of modes such as books, paintings, poetry, cartoons, cinema, advertisements, social media and more. The influence that each of these forms of media have cannot be undermined. Hence, there has been a transition from ‘freedom of press’ to ‘freedom of media’. The freedom guaranteed to media applies equally to each kind of media with the same set of restrictions. While there is no express provision guaranteeing freedom of media per se, the same falls under freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. Not conferring an exclusive freedom does not undermine the importance of freedom of media, rather as stated by the Constitution-makers, refrains from giving them superiority over any other ordinary citizen. Hence, media is subjected to reasonable restrictions enlisted under Article 19(2), meaning thereby that whenever a restriction is invoked against any form of media, the courts play a crucial role in upholding their freedom. In current times, where freedom of media has been going back and forth from being protected to being caged, in this case of *Devidas Ramachandra Tuljapurkar v. State of Maharashtra*<sup>1</sup>, the Supreme Court delivers a very interesting decision on the ‘test of obscenity’ as applicable to media.

## BACKGROUND AND FACTS OF THE CASE

The petitioner was the writer of a Marathi satirical poem titled ‘*Gandhi Mala Bhetala*’ (Gandhi Met Me), which was published in a magazine in the year 1994, for private circulation amongst members of the All India Bank Association Union. A complaint was filed against the author, printer and publisher by a member of Pune-based ‘*Patit Pawan Sangathan*’ under Sections 153-A<sup>2</sup>, 153-B<sup>3</sup> and 292<sup>4</sup> of the Indian Penal Code (IPC) for being obscene and offensive to the Father of the Nation, by projecting Mahatma Gandhi in improper and profane light. While the lower courts dropped charges under Sections 153-A

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<sup>1</sup> 2015 (6) SCALE 356

<sup>2</sup> Section 153-A, Indian Penal Code: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony

<sup>3</sup> Section 153-B, Indian Penal Code: Imputations, assertions prejudicial to national-integration

<sup>4</sup> Section 292, Indian Penal Code: Sale, etc., of obscene books, etc.

and 153-B, Section 292 was held a valid ground for objection. Hence, the present appeal was filed in the Supreme Court.

### **ISSUE INVOLVED**

The main issue before the apex court, in this case, was whether a historically respected personality can be used in a poem or a write-up symbolically or through an allusion, which might be obscene.

### **ARGUMENTS**

Counsel for appellant categorically divided his submissions into the following five questions:

- Whether at all a reference can be made to a historically respected person
- If such a reference is made, can it be in the form of an allusion or symbol?
- Whether such an allusion can be part of a written material, poem or otherwise
- Whether ‘poetic licence’ permits the writer to adopt an allusion
- If any of the above four are resorted to, then can a historically respected person be depicted in a manner, which might be obscene to the reader?

He further argues that owing to ‘poetic licence’, the idea of poetic freedom is a part of freedom of speech and expression and the writer has the ‘liberty of perception and expression’, which is a sanctified fundamental right guaranteed not only under the Indian Constitution but also under International Covenants.

However, the Amicus Curiae appointed in this case, put forth that the limits of artistic freedom are transgressed when a renowned person is deformed using imaginary elements, without definite reasons to show that it aimed at satire – it has to be based not on what the author intends to convey but rather on the effect it has on the reader. He adds that a write-up does not become satirical if the reader is unable to comprehend it as one. Hence, artistic freedom is not absolute allowing them to use historically respected persons in a lewd manner under the garb of poetic licence.

### **DECISION OF THE COURT**

This 145-page extensive judgment delivered by a two-judge bench took note of several decisions on obscenity, across national and international courts, and laid down that when deciding a work on grounds of obscenity, the following three facets should be considered –

- Morals of contemporary society
- Fast changing scenario in our country
- Impact of the book/write-up on a class of readers and not an individual

The court expressly upheld the importance of artistic freedom and stated that the Hicklin Test has been long abandoned and has given way to the ‘Contemporary Community Standards Test’, which is to be applied when judging a work of the grounds of obscenity and indecency. Social morality itself is a subjective notion and thus, there needs to be ‘tolerance of unpopular views’. Therefore, verifiability of obscenity has to be from the perspective of an average person of contemporary socio-cultural space. The court further adds that ‘one can express his views freely about a historically respected personality showing his disagreement, dissent, criticism, non-acceptance or critical evaluation’ upholding artistic freedom.

Nonetheless, stepping aside from this view, the court specifically opines that, however, in case of Mahatma Gandhi, the test needs to be applied with greater degree and more stringently. Therefore, what would perhaps be considered not obscene for an ordinary man, the same can turn otherwise when used in the context of Mahatma Gandhi by ‘putting words or showing him was doing acts, which are obscene’. Consequently, the decision was in two parts, wherein charges against the printer were quashed but the appeal by the author of the poem was disposed and charges under Section 292 of IPC were upheld.

## CONCLUSION

The judgment is a double-edged sword portraying both progressive and regressive attitude of the judiciary. While it endorses artistic freedom to the extent of expressly permitting freedom of expression pertaining to ‘historically respected persons’, yet it simultaneously pulls the reins by putting Mahatma Gandhi as an exception. The problem with this decision is two-fold,

Firstly, nowhere in the judgment does the court define a ‘historically respected personality’ leaving it as an open-ended subject open to several interpretations, which is likely to curb artistic freedom in the future as well. All historical personalities hold different degrees of

respect – the same person may be revered by some and may not be so by others. Hence, there can essentially be no specific definition of a historically respected personality. A judgment in the future could similarly exclude any other such person, for example, Jawaharlal Nehru, Netaji Subhas Chandra Bose, Akbar, Shahjahan, Mohammad Ali Jinnah, Indira Gandhi or anyone who has ever graced the pages of history.

Secondly, it ignores the fact that poetry is an expression, which can be interpreted in more than one ways, satire being one of them. The power of a poet lies in his imagination and perception, and restraining the same is as good as no freedom of expression. Unlike other forms of media, poetry is one of the few which thrives on interpretation – the same poem may be interpreted in two different ways, which could also be completely different from the poet's original thought, idea and intention.

Taking parts of the judgment pertaining to obscenity in isolation, the decision paves the way for a reduced threshold of test for obscenity recognizing changing stance and perspective of the society. At the same time, if taken as a whole, the same gets diluted at the end. The court, although, has taken a liberal attitude and encourages artistic freedom and creativity, the ultimate exclusion of Mahatma Gandhi defeats the purpose of what it tried to achieve through the judgment. At the end of a voluminous judgment, the reader is left pondering over whether the decision was an upholder of free speech or an anti-thesis of it.