

It happens only in India: flying tricolour atop house is an offence

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The Times of India News Service

NEW DELHI: Strange but true. A citizen can fly any other country's flag atop his house or building but he cannot fly the tricolour, for, if he dares to unfurl the national flag, he will be liable to suffer penal action for showing "disrespect" to national pride.

Although no law prohibits showing respect to the tricolour, authorities, however, assert that as per the Flag Code, unfurling of the flag, except on national days, will mean showing disrespect to the symbol of freedom struggle and independence.

As the issue, which involves a question of fundamental rights, including the freedom of speech and expression, awaits a supreme court decision, the Vajpayee government has said it will soon take a decision and "resolve the controversy". But Naveen Jindal, who has sought the court's intervention to restore his fundamental right to fly the tricolour atop his residence and factory at Rajgarh, Madhya Pradesh, is facing contempt action.

Armed with the Delhi high court's 1995 ruling that the government cannot deprive a citizen of his fundamental rights through an executive order (i.e. the Flag Code), Mr Jindal, a 35-year-old MBA from the University of Texas, insisted on exercising his right to fly the flag. As president of the Texas University students' union, he had earlier displayed the tricolour in the Union's office without any objections from any quarter.

When the supreme court in 1997 stayed the high court order on the Union government's appeal, Mr Jindal got a galaxy of constitutional experts to argue his case. Counsels such as K.K. Venugopal, Shanti Bhushan, Harish Salve, who is now the solicitor general, Arun Jaitley, who is the law minister, and Soli Sorabjee, who is now the attorney general, had pleaded that a citizen could not be prevented from flying the national flag throughout the year atop his office or residence, provided he did not show disrespect to the symbol of free India.

Mr Shanti Bhushan argued that the apex court's stay did not mean that Mr Jindal could be prevented by the district authorities from flying the flag in a respectful manner. Mr Bhushan said the high court was right in holding that the Flag Code was unforeseeable. The stay meant that there was no high court judgment, he remarked, adding, "It has not restrained any person from flying the flag nor would it mean committing contempt of the court."

Yet the Union government sought contempt action against Mr Jindal on the basis of the Rajgarh district authorities' complaint that "flying of the national flag at Jindal's office continues on the advice of lawyer Shanti Bhushan. Therefore Jindal has committed contempt of the apex court."

Submitting that he never intended to disobey the order, Mr Jindal said his action in flying the flag in a dignified manner did not amount to wilful violation of any order.

Be that as it may, even after 52 years of independence, citizens continue to look to courts for enforcement of their right to cherish national symbols. Apart from the Flag Code, various jail manuals stipulate that wearing of a Gandhi *topi* by any undertrial or convict is an offence.