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CASE COMMENTARY: IMRAN PRATAPGARHI V. STATE OF GUJARAT

~PREETI R MUGAD

I. INTRODUCTION

On 28th March, 2025, a division Bench of the Supreme Court of India, Justice Abhay S. Oka and Justice Ujjal Bhuyan delivered a landmark judgment in *Imran Pratapgadhi v. State of Gujarat*¹, where they quashed the FIR registered against a sitting Member of Parliament over an Urdu poem shared on social media. The Court held that no cognisable offence was committed as per the provisions of the Bharatiya Nyaya Sanhita, 2023 (“BNS”) and that mere registration of FIR, without any preliminary inquiry, would amount to the abuse of process of law and clarified that the police officers, as the citizens, are bound to abide by the principles of the constitution and hence, in cases which involve freedom of speech and where commission of cognisable offence is alleged, with imprisonment for up to 7 years, before registering an FIR, the police must necessarily conduct a preliminary inquiry under Section 173(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”)². This commentary examines the facts, the legal reasoning of the Court, and Critically analyse the judgment concerning the aspect of free speech under the new criminal laws.

II. FACTS OF THE CASE

On December 29, 2024, Imran Pratapgadhi, a Member of the Rajya Sabha and the appellant in the present case, attended a mass wedding ceremony in Jamnagar, Gujarat. A video of the event was made, in the background of which a poem in Urdu titled “Ae Khoon Ke Pyaso Baat Suno” was recited. The appellant posted this 46-second video clip on his verified account on the social media platform ‘X’ (formerly known as Twitter), following which a complaint was filed at the Jamnagar Police Station, alleging that the poem incited communal disharmony, hurt the religious sentiments, created enmity between communities at the national level, and had a detrimental effect on national unity. Subsequently the Gujarat Police registered an FIR against the appellant under Sections 196³ (promoting enmity between groups), 197(1)⁴ (imputations

¹ Imran Pratapgadhi v. State of Gujarat, (2026) 1 Supreme Court Cases 721 : 2025 SCC OnLine SC 678.

² Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(3), No. 46, Acts of Parliament, 2023 (India).

³ Bharatiya Nyaya Sanhita, 2023, § 196, No. 45, Acts of Parliament, 2023 (India).

⁴ Bharatiya Nyaya Sanhita, 2023, § 197(1), No. 45, Acts of Parliament, 2023 (India).

prejudicial to national integration), 299⁵ (deliberate acts outraging religious feelings), 302⁶ (uttering words to wound religious sentiments), and 57⁷ and 3(5)⁸ of the BNS.

The appellant filed a petition before the Gujarat High Court under Section 528 of BNSS⁹ R/w Article 226¹⁰ of the Constitution seeking to quash the said FIR. The HC, by order dated 17 January 2025, refused to interfere, holding that the investigation was at a nascent stage, that something about “the throne” was referred in the poem and the responses it received on social media certainly indicated that it caused a potential disturbance to the social harmony. The Court also noted that the appellant, being a Member of Parliament, was expected to exercise greater caution, when posting something. Thereby, aggrieved by the decision of the HC, the appellant, filed an appeal before the Supreme Court, which granted interim stay and allowed the appeal.

III. ISSUES BEFORE THE COURT

The issues before the court were to decide:

- i. whether the recitation and sharing of the poem on social media attracted criminal liability under various sections of the BNS?
- ii. whether the registration of the FIR violated the appellant’s fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution?
- iii. whether, in cases where the offence involves spoken or written words and is punishable for three to seven years, the police are obligated to conduct a preliminary inquiry under Section 173(3) BNSS before registering an FIR?

IV. ARGUMENTS OF THE PARTIES

The appellant was represented by Senior Advocate Kapil Sibal, argued that on the plain reading of the poem, it can be made out that none of the ingredients of the offences alleged were made out. The poem clearly promoted non-violence and preached that one must suffer injustice with love. That, the act of police registering FIR was insensitive, violated the appellant’s fundamental right guaranteed under Article 19(1)(a)¹¹ of the Constitution and also that the HC erred in recognising the message conveyed by the poem.

The State, through the learned Solicitor General, took a fair stand and left the matter to the Court’s discretion. It did, however, contend that the authorship of the poem, as attributed by the appellant to be of either Faiz Ahmed Faiz or Habib Jalib was completely wrong. The State refused other contentions made by the appellant.

⁵ Bharatiya Nyaya Sanhita, 2023, § 299, No. 45, Acts of Parliament, 2023 (India).

⁶ Bharatiya Nyaya Sanhita, 2023, § 302, No. 45, Acts of Parliament, 2023 (India).

⁷ Bharatiya Nyaya Sanhita, 2023, § 57, No. 45, Acts of Parliament, 2023 (India).

⁸ Bharatiya Nyaya Sanhita, 2023, § 3(5), No. 45, Acts of Parliament, 2023 (India).

⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, § 528, No. 46, Acts of Parliament, 2023 (India).

¹⁰ INDIA CONST. art. 226.

¹¹ INDIA CONST. art. 19, cl. 1(a).

V. JUDGMENT OF THE COURT

The judgment was authored by Justice Oka, with inputs from Justice Bhuyan, which held that on a plain reading of the poem's text both in Urdu and English translation, clearly highlight that it has nothing to do with any religion, caste, community or language. The court held that the poem promoted non-violence, encouraged to face injustice with love and sacrifice and thereby did not incite enmity, disharmony, or hatred between any communities. Accordingly, none of the offences under Sections 196, 197, 299, 302, or 57 BNS were attracted.

The court also viewed at the provisions of BNSS, and held that Section 173(3) of BNSS introduces a significant departure from Section 154¹² of Code of Criminal Procedure, ("CrPC") and Section 173(1)¹³ BNSS. In case, where a cognisable offence is alleged, punishable for three years or more but less than seven years, as it was with most of the sections invoked in this particular case, the police officer with the prior permission of a Deputy Superintendent of Police, is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case. The Court held in cases where rights provided under Article 19(1)(a) rights are involved, failing to exercise this option, defeats both the object of incorporating Section 173(3) under BNSS and the constitutional obligation of the police under Article 51-A¹⁴ to fulfil the fundamental duties. The court also observed that the higher police officer, must normally grant permission to conduct a preliminary inquiry in such cases.

The Court further relied on various judgments such as *Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar*¹⁵, *Manzar Sayeed Khan v. State of Maharashtra*¹⁶, and *Javed Ahmad Hajam v. State of Maharashtra*¹⁷, and held that the effect of spoken or written words under Section 196 BNS must be judged on the standards of reasonable, strong-minded, firm and courageous individuals, and not on weak and oscillating minds who perceive criticism as a threat to their position. Registration of the FIR was accordingly held to be a mechanical exercise of power and a clear abuse of the process of law. Accordingly, it was quashed.

VI. CRITICAL ANALYSIS

The judgment firstly, by attributing Section 173(3) BNSS as a very necessary provision rather than a mere procedure especially in freedom of speech related matters, raises the threshold for carrying out the criminalising procedure. It further overcame the gap which was left by the general rule of mandatory registration of FIR, as held in *Lalita Kumari v. Govt. of U.P.*¹⁸, and provided a safeguard measure against the misuse of public order offences against dissent. Secondly, the Court by emphasising on mens rea as an essential ingredient of offences under Section 196 BNS, held that on a plain reading of the poem, it can be clearly understood that it preaches non-violence and in no way aims to incite communal agitation. The court showcased rejection to "heckler's veto", by refusing to accept HC's reasoning that the poem offended the

¹² Code of Criminal Procedure, 1973, § 154, No. 2, Acts of Parliament, 1974 (India).

¹³ Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(1), No. 46, Acts of Parliament, 2023 (India).

¹⁴ INDIA CONST. art. 51-A.

¹⁵ *Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar*, 1946 SCC OnLine MP 5.

¹⁶ *Manzar Sayeed Khan v. State of Maharashtra*, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417 (SC).

¹⁷ *Javed Ahmad Hajam v. State of Maharashtra*, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383 (SC).

¹⁸ *Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524 (SC).

public on social media, thereby highlighting that even if majority people dislike the views expressed by a person, it still does not take away that persons right to express his views and that such right must be respected and protected.

Thirdly, the court's indictment of the Gujarat HC's decision is noteworthy. Though the HC was aware that the binding precedents were cited, it still refused to interfere and quash the FIR, citing the ground of nascent investigation. The SC rightly observed that there is no absolute rule which prohibits HC from quashing FIRs at the investigation stage and the HC must exercise its power under Section 528 of BNSS R/w Article 226 to prevent abuse of process.

VII. CONCLUSION

Imran Pratapgadhi v. State of Gujarat acts as a significant one, as it was the first major decision after the enactment of the new criminal laws, where the procedure under these laws and the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution were interpreted by the court. It provides a clarity on the relationship between Section 173(1) and Section 173(3) BNSS, requires that the preliminary inquiry mechanism be used as a constitutional safeguard in free speech cases, and insists that the effect of such speech must be assessed as per a reasonable person's views and not the one who is easily affected. As the Court itself observes that, with 75 years into the republic, the recital of a poem cannot be held to incite animosity between communities, and reminds that "in a healthy democracy, views must be countered with another point of view", and not with criminal prosecution.¹⁹

¹⁹ Amisha Shrivastava, *'Judges Must Protect Freedom of Speech Even If They Don't Like What Was Said': Supreme Court Quashes Gujarat FIR Against Congress MP Over Poem*, LIVE LAW, <https://www.livelaw.in/top-stories/supreme-court-quashes-gujarat-fir-against-congress-mp-over-poem-imran-pratapgadhi-287801> (last visited May 17, 2026).