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# LEX FORTI

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**Administrative Law Case Comment on : Gaurav Gupta v. State Of U.P.**

**Kushagra Khetan**

**BENCH:**

Hon'ble Amreshwar Pratap Sahi,J., Hon'ble Sanjay Harkauli,J.

**COUNSEL FOR PETITIONER:**

Gaurav Gupta (In-person)

**COUNSEL FOR RESPONDENT:**

Learned Chief Standing Counsel Shri Mohd. Mansoor

**SECTIONS**

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- |   |                               |  |
|---|-------------------------------|--|
| 1 | Indian Penal Code, 1960       | Sections 294, 354A, B, C, & D as well as Section 509 |
| 2 | Criminal Procedure Code, 1973 | Section – 149  |
| 3 | The Police Act, 1861          | Section – 12 read with Section – 23 & Section – 34   |
| 4 | U.P. Police Regulations       | Regulation – 194 of Chapter – XVIII                  |
| 5 | Constitution of India.        | Article – 51A (e)(j)                                 |

**BRIEF FACTS**

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This writ petition in public interest has been brought forward highlighting the recent steps taken by the State Government by calling upon the police authorities to take appropriate steps of policing in order to prevent such crimes that outrage or insult the modesty of female citizens of this State. The petition, however, prays for a direction that the State should not commit excesses so as to invade the private rights of couples or adults that are suspiciously viewed by the police to be indulging in any unauthorized or unlawful act by exhibiting knee-jerk reactions that may disturb the ordinary peace and harmony prevailing in the society.

**ARGUMENTS OF THE PETITIONER**

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The general atmosphere of the society is likely to be disturbed on account of the utilization of the words “Anti Romeo Squad” and create a panic so as to prevent lawful youth couples also from exercising their right to freedom of movement and expression.

No action can be taken by the State in excess of authority so as to impinge the fundamental rights guaranteed under the Constitution and invade the privacy of any individual or curtail liberty even if such an individual is in a lawful assembly.

No guidelines have been framed in order to ensure the proper application of any such surveillance stated to be in public interest and therefore, there is every likelihood of excesses being committed including the nature of the excess as indicated in the writ petition in the name of moral policing. Therefore, authorities including the police should be restrained from acting on such administrative instructions that may have been issued by the Police Department as they do not appear to be any authority in law.

The manner in which this policing is being done, for example, taking of photographs through mobile phones and then making it viral on the social media offends the private rights of citizens male or female and this being not regulated, the same would amount to the invasion of the right of privacy of a citizen.

### **ARGUMENTS OF THE RESPONDENT**

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The directions issued by the Director-General of Police are clearly intended to enforce the existing law as prescribed under the statute namely, the Indian Penal Code read with Criminal Procedure Code, the Police Act, the U.P. Police Regulations as well as such other laws that for the time being are in force.

There is a clear prescription of law and therefore, the action being authorized and backed by statutory provisions cannot be said to be either unlawful or beyond the purview of law.

Such restrictions by way of a proper policing are clearly protected and guaranteed under the Constitution itself and any regulations made in order to prevent the happening of any offence or otherwise also to maintain law and order is clearly within the realm of the State Authority which cannot be said to be beyond the bounds of the Constitution.

The activities of the police are clearly within the bounds and the guidelines that have been issued by the Director General of Police are sufficiently framed so as to protect the liberties of the citizens of the State without impinging on any of their fundamental rights.

The allegation of invasion of privacy, the allegation of disturbing a lawful assembly or restricting the freedom of movement or expression is unfounded and cannot be a ground to maintain the writ petition.



## RATIO

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There is a clear distinction between morality and law. It is something different that law itself has a moral force, but at the same time the law as indicated by the legislature or by the executive which still holds the field is to be respected and has to be enforced by the executive as it exists. It has to be enforced in order to prevent the commission of any offence as well. This can be clearly inferred from the nature of the incidents that are likely to occur or do occur in the circumstances in which the present policing has begun, they are of the nature of offences as described in Sections – 294, 354A, B, C, & D as well as Section – 509 of the Indian Penal Code. The offences under the aforesaid sections are cognizable offences, and, Section – 149 of the Criminal Procedure Code enjoins upon the police authorities to take all such action that may be required for the prevention of any such offence.

Not only this, apart from the offences defined under the Indian Penal Code, the Police Act, 1861 read with U.P. Police Regulations also authorize the patrolling and policing through methods as prescribed therein. Section – 12 of the Police Act, 1861 read with Section – 23 & Section – 34 clearly indicate the powers which are available to the police to formulate such schemes subject to the approval of the State Government in order to implement and enforce the laws as defined under the Penal Code and also under the Criminal Procedure Code by defining the manner in which it is to be executed and also prescribing the duties of the police officers.

The Police Act, 1861 also prescribes the punishment for certain offences and the seventh explanation to Section – 34 of the 1861 Act also is an indicator in relation to such offences, the policing whereof is now being enforced under the directives of the Director General of Police. The police are also authorized to patrol in plain clothes as per Regulation – 194 of Chapter – XVIII of the U.P. Police Regulations. Shadow surveillance or open surveillance of a suspect is, therefore, permissible, subject to the fundamental rights guaranteed under the Constitution.

It is observed that surveillance also may include at times the capturing of images, for example through CCTV Cameras or even mobile phones in order to track any unlawful activity. If the said tracking is with a lawful intention and for a lawful purpose then in that event, it cannot be said that it has been done with the intention of trying to invade the privacy of a person so as to constitute an offence.

It is the duty of every citizen as well as of the State to come to the aid of women keeping in view the provisions contained in Article – 51A (e)(j) of the Constitution of India.

### **HELD**

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The court was unable to gather any lawful or otherwise constitutional defect in the attempt so made by the respondents in proceeding to form the squads for the purpose of policing. It is something different that there may be a dispute with regard to the name of the squad or any objection relating thereto but the court was not called upon to adjudicate on the said issue as it is always open to the State Government to rename the squad appropriately so as not to offend the feelings of any person.

### **CONCLUSION**

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There is a clear distinction between morality and law. It is something different that law itself has a moral force, but at the same time the law as indicated by the legislature or by the executive which still holds the field is to be respected and has to be enforced by the executive as it exists. It has to be enforced in order to prevent the commission of any offence as well.

Here, the court was unable to gather any lawful or otherwise constitutional defect in the attempt so made by the respondents in proceeding to form the squads for the purpose of policing.

Therefore, the decision of court was on point.