



## **Supreme Court Decision in SC FR 91/2023 – Challenging the Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021**

On the 21st of March 2021, the Government published in the Gazette regulations purportedly made under the Prevention of Terrorism Act, namely the Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021. Through these regulations, the Government attempted to set up a system of 'rehabilitation' for categories of persons holding 'extremist' ideologies, to which they could be referred even before they had been found guilty of an offense by a court of law. The scheme would deny parties of due process and had the potential for abuse and the restriction of personal liberties. The court's finding is that PTA "(De-radicalization from holding violent extremist religious ideology) Regulations No.1 of 2021 are in violation of the fundamental rights of the Petitioners.

In April 2021, The Centre for Policy Alternatives (CPA) and its Executive Director, Dr. Paikiasothy Saravanamuttu, challenged the validity of the regulations by way of a Fundamental Rights Application (SC FR 91/2021), along with two other similar Applications (SC FR 106/2021 and SC FR 107/2021), and this set of cases was heard by the Supreme Court. In January 2022, the Supreme Court granted the Petitioners leave to proceed in the case and, recognizing the serious potential for abuse under the guidelines, also issued interim relief which prevented the scheme from being put into force until the final hearing of the Application.

On the 13th of November 2023, the Supreme Court delivered its final judgment in the Application (<https://www.cpalanka.org/centre-for-policy-alternatives-v-attorney-general-sc-fra-91-2021/>), and found that the Regulations contained in the scheme violated Articles 10 (the Freedom of thought, conscience and religions), 12(1) (equal protection of the law) and 13 (Freedom from arbitrary arrest, detention and punishment etc.) of the Constitution. The court thus declared the scheme under the Regulations null and void. In a symbolic gesture, the State was also directed to pay each Petitioner Rs. 25,000/- as costs.

Important Findings in the Judgment

**On the objection of the Attorney General that the Application should be dismissed as the Petitioners were not personally affected by the Regulations;**

*"The contours of fundamental rights jurisdiction have expanded over the years, and public interest litigation in response to violations and imminent violations of fundamental rights is no longer a new phenomenon in the global arena.... (page 8)*

...

*...every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement by executive or administrative action, of a fundamental right to which such person is entitled under the provisions of Chapter 3 of the Constitution. (page 8)"*

**On the importance of the freedom of thought, guaranteed by Article 10 of the Constitution;**

*"The freedom of thought, as enshrined in our fundamental rights, stands out as a cornerstone of democracy. The freedom of thought ensures that a person's mind remains beyond scrutiny. To infringe upon the freedom of thought is to undermine the very essence of a democratic society, for it is within the realm of individual*

*thought that the roots of self-expression, personal liberty, human dignity and the flourishing of all other fundamental rights are nurtured. (page 11)*

...

*According to Article 10, the State cannot prevent a person from thinking or believing in some religious ideology on the basis that such thinking or belief is irrational or extreme. As I have already stated, Article 10 sets an absolute bar against such infringements. (page 11)"*

### **On the danger of abuse of the vague term ‘extremist religious ideology’;**

*"The definition of “extremist religious ideology” presents inherent difficulties as religious beliefs may vary widely among individuals, with one person’s religious ideology potentially appearing extreme to another. In the absence of clarity, there is a risk of arbitrary decisions being made where certain attitudes, behaviors, attire, etc. can also be deemed as signs of extremist religious ideologies. (page 11)*

...

*People cannot be prosecuted, nay persecuted, for merely “holding religious ideology” which the State thinks to be “violent and extremist”. (page 14)"*

### **When can the state step in to address a threat of violence;**

*"All seem to be in agreement that when there is an imminent threat in pursuit of “violent extremist religious ideology”, the State can step in to prevent the harm for the greater benefit of all others. However, prevention of harm cannot be the pretext for arbitrary use of power to curb the rights of the People. (page 14)"*

### **On the need for clarity in the law;**

*"If the stated objective of the Regulations is not clear, how can their impact and applicability be properly assessed or understood? The existence of such real uncertainties within legal provisions may give rise to subjective interpretation and arbitrary enforcement of the law, which may undermine the rule of law and legal predictability. This violates Article 12(1) of the Constitution which states “All persons are equal before the law and are entitled to the equal protection of the law.” (page 15)"*