

Indra Das v. State of Assam, (2011) 3 SCC 380

Constitution of India

Arts. 13, 19 and 21 - Reading down of statute to save it - Statute violating fundamental rights - Held, where statute violates constitutional provisions, primarily an attempt would be made to read it down to make it constitutional, or else it can be declared unconstitutional - Further held, ordinarily literal rule of interpretation while construing a statutory provision should be followed but where such interpretation makes provision unconstitutional it can be departed from and statute would be read down to make it constitutional - On facts held, S. 3(5) of TADA or S. 10 of Unlawful Activities (Prevention) Act, 1967 which on plain language make mere membership of banned organisation criminal, have to be read down so as not to violate Arts. 19 and 21 of the Constitution, (2011) 3 SCC 380-A

Constitution of India

Arts. 19(1)(c) & (a) and 21 - Right to form associations and freedom of expression - Scope of - Membership of banned organisation - Inference therefrom - Reiterated, mere membership of a banned organisation will not make a person criminal unless he resorts or incites people to violence or creates public disorder by violence or incitement to violence - Hence, S. 3(5), TADA and S. 10, UAPA read down, (2011) 3 SCC 380-B

Criminal Law

Terrorist and Disruptive Activities (Prevention) Act, 1987

S. 3(5) - Membership of banned organisation - Inference - Held, mere membership of a banned organisation cannot incriminate a person unless he is proved to have resorted to acts of violence or incited people to imminent violence, or does an act intended to create disorder or disturbance of public peace by resorting to imminent violence - Further held, statutory provisions cannot be read in isolation, but should be read in consonance with fundamental rights guaranteed by Constitution - Even assuming that appellant was a member of ULFA, which is a banned organisation, there is no evidence to show that he indulged in any of the abovementioned acts or was an active member of the organisation - Hence, his conviction under S. 3(5) unsustainable, (2011) 3 SCC 380-C