

CASE COMMENTARY

BRIJ BHUSHAN SHARMA VS. THE STATE OF DELHI

TEAM CODE: T088

ABSTRACT

Press freedom is a prerequisite for political freedom and a successful democracy. The Brij Bhushan Vs State of Delhi, in which the fundamental right of the person was infringed due to the ultra vires order of the authority. Media freedom is the freedom of communication and expression through the media, including various electronic and printed media, and this freedom primarily means freedom from interference from the overarching state. In this paper, the important aspect of freedom of speech and expression are discussed.

Our Constitution has no explicit right to press freedom. As it is implied that editors and managers of the press have the same freedom of speech and expression as provided for in Article 19(1)(a) of the Fundamental Rights of Indian Citizens, Constitutional law does not give specific rights to the press. In this case, the restriction on the freedom of speech and expression was also discussed and it aims to the superiority and legality of the constitution of India.

In this case Commentary on the defense of public order to stop the activity of the individual in the name of threat is also taken into consideration whether it covers under article 19 (2) of the Constitution of India. Disturbance of public order is to be distinguished from conduct directed against or directed against persons who do not disturb society to the extent or extent which causes disturbance of public order in general. It is the scale of the disturbance and its impact on community life at the location that determines whether the disturbance is merely a violation of law and public order.

KEYWORDS: Freedom, Speech, Peace, Media, Constitution, Public Order.

IN THE SUPREME COURT OF INDIA

Name of the Case	Brij Bhushan and Another v. The State of Delhi
Citation	1950 AIR 129,1950 SCR 605
Year of the Case	1950
Petitioner	Brij Bhushan and Another
Respondent	The State of Delhi
Bench/ Judges	Fazal Ali, Saiyid; Kania, Hiralal J. (CJ); Sastri, M. Patanjali; Mahajan, Mehr Chand; Das, Sudhi Ranjan; Mukherjea, B.K.
Acts Involved	Constitution of India, East Punjab Public Safety Act, 1949.

I. INTRODUCTION

In today's free world, freedom of the press is important to social and political relationships. The press has now taken the role of mass educator making formal and non-formal education possible on a large scale, especially in developing countries where television and other forms of media and other modern media are still in a developing phase.

The purpose of the press is to serve the public interest by publishing facts and views without which a democratic constituency cannot make responsible judgments. The press, as a provider of information and opinions influencing public administration, often contains information that is unacceptable to governments and other authorities.

In this case, the Fundamental Rights of the petitioner were infringed by the Respondent. The petitioner was an editor of the media house, and an order was passed by the Police Officer, in this order the petitioner was guided to submit the published article to the officer before publishing it in a Magazine, to check the relevancy of the article. This case deals with Article 19 (1) (a) of the Constitution of India. Article 19 guarantees 6 freedom to the citizens of India. In this case, the order passed by the officer is infringing the fundamental rights of the petitioner, Under 19 (1) (a) freedom of speech and expression is guaranteed to the citizens.

II. FACTS OF THE CASE

An application was filed under Article 32 of the Constitution praying for the issue of writs of certiorari and prohibition to the respondent, the Chief Commissioner of Delhi, to examine the legality of and quash the order made by him regarding an English weekly Magazine of Delhi, called the Organizer of which the first applicant is the printer and publisher, and the second is the editor.

This case was based on the ground that it violates the freedom of speech and expression guaranteed by Section 19(1)(a) of the Constitution. In this case, the petitioners have applied to the Supreme Court under Article 32 of the Constitution of India. Brij Bhushan is the publisher and printer of K.R. Halkani the editor of the Organizer, an English weekly newspaper based in Delhi. The petitioners received the order from the Chief Commissioner of Delhi on 2nd March 1950, under Section 7(1)(c) of the East Punjab Security Act 1949¹. Under the order, the petitioners were to submit a copy of all public affairs, news, and opinions about Pakistan, including photos and cartoons, not from official sources or provided by news agencies, before publication for review.

According to the defendants, the articles published on Magazines, endanger the security and public order of the State. The plaintiffs argue that the order violates basic freedom of expression and that order is not within reasonable limitations outlined in Article 19(2) of the Constitution of India². Accordingly, the petitioners asked the court to issue an injunction and restraining order against the defendant, as well as to investigate the legality of the defendant's order.

Now, to exercise the powers conferred under Section 7(1)(c) of the East Punjab Public Security Act 1949, as extended to the province of Delhi, Shankar Prasad, Chief Commissioner of Delhi, has ordered Shri Brij Bhushan, Printers and Publishers, and Shri K.R. Halkani, Editor of said document, submits for review, reproduction, before publication, until further notice, all public affairs, news and views on Pakistan, including images and cartoons that are not from official sources or provided by news agencies, viz., Press Trust of India, United Press of India and United Press of America to the Provincial Press Officer or, as in his absence, the Press Branch Manager at his office at 5, Alipore Road, Civil Lines, Delhi, from 10 am to 5 pm on working days.

¹ East Punjab Public Security Act 1949

² Article 19 of the Constitution

III. ISSUES OF THE CASE

- A. Whether the validity of section 7(1)(c) of the East Punjab Safety Act, 1949 as extended to the province of Delhi is valid.
- B. Whether section 7(1)(c) which authorizes the imposition of such a restriction falls within the reservation of clause (2) of article 19.

IV. PETITIONER'S ARGUMENT

The petitioners claim that this provision infringes the fundamental right to the freedom of speech and expression conferred upon them by article 19 (1) (a) of the Constitution in as much as it authorizes the imposition of a restriction on the publication of the journal which is not justified under clause (2) of that article.

It was contended that section 7 (1)(c) of the Act, under which the impugned order has been made, cannot be saved by clause (2) of article 19 of the Constitution, because it does not relate to any matter which undermines the security of, or tends to overthrow, the State.

Thus, the main ground of attack is that the impugned law is an infringement of a fundamental right and is not saved by the so-called saving clause to which reference has been made. There can be no doubt that to impose pre-censorship on a journal, such as has been ordered by the Chief Commissioner in this case, is a restriction on the liberty of the press which is included in the right to freedom of speech and expression guaranteed by article 19 (1) (a) of the Constitution.

V. RESPONDENT ARGUMENT

It is argued that it concerns the constitutional effect of Section 7(1)(c) of the East Punjab Safety Act, 1949, which, as is clear from its preamble, was enacted to provide special measures to ensure public safety and maintain public order. Section 7(1)(c), the provincial government or any agency authorized for this purpose, if satisfied that such action is necessary for preventing or combating any activity that causes prejudicial to public safety or the maintenance of public order, may, by request in writing addressed to the printer, publisher or publisher, request any matter concerning an owner. Specific topics or a group of topics must be submitted for review before publication.

VI. JUDGMENT

The decision was taken by Judge Patanjali Sastri, who said that it is certain that the pre-censorship of a newspaper is a restriction on freedom of the press, which is confirmed by article 19 (1) (a) of the Constitution of India. Freedom of the press includes not imposing prior restrictions on publications. The court said, citing Blackstone's comments. Every free person has the undeniable right to publicly express the feelings he or she desires, forbidding is to destroy the freedom of the press. The Court's primary question was whether Article 7(1)(c), which grants the right to impose restrictions on publication, is subject to the reservation of Article 19 paragraph (2).

The decision in the *Romesh Thappar v. State of Madras*³ was used by the Court to make its decision. In exercising the power conferred by the illegal act, the State of Madras prohibited the importation and circulation of the petitioner's newspaper within the State. According to the Court, the right to freedom of speech and expression, including the freedom to impart ideas, is guaranteed by circulation; without distribution, a publication would have little value.

The Court concluded that under the illegal act, public security or public order means the security of the province, i.e. "security of the State". Section 12 of the Constitution defines "State", which includes, among other things, the legislature and government of each former province. In other words, paragraph (2) of Article 19 of the Constitution only allows restriction of freedom of speech and expression in cases where there is a violation of public order or if the objective is to sabotage or subvert the security of the state. Nothing other than endangering the state or threatening to overthrow it can justify restricting freedom of speech and expression. In the end, the court granted the request and the ban on publication of the newspaper was lifted. Due to the grounds outlined in the aforesaid judgment, the court granted the petitioner's request.

VII. CONCLUSION

In this case, the Supreme Court held that restricting freedom of the press is a restriction of freedom of speech and expression within the meaning of Article 19(1)(a) of the Indian

³ *Romesh Thappar v. The State of Madras* 1950 AIR 124

Constitution unless it poses a threat to the State. It emphasized Section 7(1)(c) does not constitute an appropriate limitation imposed by the Delhi Chief Commissioner as it is not inconsistent with any of the foregoing cases. Parties who believe they have been harmed may appeal to the court only after the broadcast or publication. The law intervenes in matters based on indications that a crime has been committed. Demanding content regulation is logically absurd, as self-regulation is the only practical strategy supported by central governments and news broadcasters. Reporters, editorial staff, and editors should be trusted to do their jobs unless and until they break that trust.

In my opinion, the press and media play an important role in our daily lives. Because it contains the principles of communication and speech and everyone has the right to free access to published materials. But sometimes the media and press releases come across certain materials and facts that undermine our country. To ensure these important points, the Indian government should take certain precautions.

VIII. REFERENCE

- A. Blackstone's Commentaries, Vol. IV, pp. 151, 152.
- B. Romesh Thappar v. The State of Madras 1950 AIR 124.
- C. Article 19 Constitution of India.