

**DE JURE NEXUS LAW JOURNAL**

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**BRIJ BHUSHAN SHARMA VS. THE STATE OF DELHI**

**Court-** The Supreme Court of India

**Citation-** 1950 AIR 129,1950 SCR 605

**Year of the case-** 1950

**Petitioner-** Brij Bhushan and Another

**Respondent-** The State of Delhi

**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

**Relevant Sections/Act-** Article 19 (1) (a), Article 19 (2), Section 7 (1) (c)

**Facts Of the Case-**

Media is a medium for getting information. The Freedom of the press or freedom of the media is the freedom of communication and expression through mediums including various electronic media and publishing materials, while such liberty primarily implies the absence of interference from an overbearing state. Our constitution makes no mention of a specific right to freedom of the press. Although it is implied that the editor and manager of a press have the same freedom of speech and expression as provided under Article 19(1)(a) of an Indian citizen's fundamental right, there is no specific right provided for the press in our constitution.

The case involves the right to free speech and expression guaranteed by Article 19 (1) (a) of the Constitution. In this case, the petitioners approached the Supreme Court under Article 32 of the Indian Constitution. Mr. Brij Bhushan is the publisher and printer, K.R. Halkani is the editor of the Organizer, a Delhi-based English weekly. The petitioners were served with an order by the Chief Commissioner of Delhi on March 2, 1950, under Section 7(1)(c) of the East Punjab Safety Act, 1949.

According to the order, the petitioners must send a duplicate copy of all communal matters and news and views about Pakistan, including photographs and cartoons, other than those derived from official sources or supplied by the news agency, before publication for scrutiny. According to the respondents, the articles published in the Organizer endanger the state's public safety and order.

The petitioners contend that the order violates the fundamental right to free expression and that the respondent's order does not fall within the reasonable restrictions enshrined in Article 19 (2) of the Indian Constitution. As a result, the petitioners asked the court to issue writs of certiorari and prohibition to the respondent, as well as to investigate the legality of the respondent's order.

#### **Issues Of The Case-**

- 1] The constitutional validity of Section 7(1) (c) of the impugned Act.
- 2] Whether or not Section 7(1) (c) which authorizes the imposition of such a restriction falls within the reservation of clause (2) of Article 19 of the Constitution.

#### **Judgement-**

The decision was delivered by the Honorable Justice Patanjali Sastri, who stated that there is little doubt that pre-censorship on a journal is a restriction on the press's liberty, which is confirmed under Article 19 (1) (a) of the Constitution's freedom of speech and expression. Freedom of the press consists in imposing no prior restraints on publications, not in freedom from censure for criminal matters when published. The Court said, citing Blackstone's commentaries. Every free man has an undeniable right to express whatever sentiments he wishes in public, to forbid this is to destroy press freedom.

The Court's main question was whether section 7 (1) (c), which authorised the right to impose restrictions on publication, falls within the reservation of Article 19 clause (2). The decision in Romesh Thappar v. The State

of Madras was used by the Court to make its decision. In exercising the power conferred by the impugned Act, the State of Madras prohibited the entry and circulation of the petitioner's journal in the State. According to the Court, freedom of speech and expression includes freedom of idea propagation, which is ensured by circulation; without circulation, a publication would be of little value.

The Court held that, under the impugned Act, public safety or public order means the security of the Province, that is "security of the State". Article 12 of the Constitution defines 'the State', which includes, among other things, the legislatures and governments of each of the former provinces. In other words clause (2) of Article 19 of the Constitution allows for the restriction of freedom of speech and expression only in cases where there are offences against public order or the goal is to undermine the security of the state or overthrow it. Nothing less than endangering the state or threatening to overthrow it could justify the restriction of freedom of speech and expression. Finally, the Court granted the application, and the ban on the journal's circulation was lifted.

As a result of the reasons stated in the above said judgement, the Court granted the petitioner's application and dismissed the impugned order of the Chief Commissioner of Delhi regarding imposition upon publication.

### **Analysis Of the Case-**

Fazl Ali J. disagreed with his decision in the case of Romesh Thapar v. Brij Bhushan v. State of Delhi, where the issue was essentially the same, elaborated on the State of Madras and the reasons for his dissent. In this case, S. 7(1)(c) of the East Punjab Public Safety Act was challenged, which allowed for pre-publication scrutiny of material "prejudicial to public safety" or the maintenance of public order, essentially pre-censorship. The decision and reasoning in the Romesh Thappar case were followed by the majority. Fazl Ali J., on the other hand, held that "public order," "public safety," "sedition," and "undermining the security of the State" all amounted to the same thing. Using somewhat convoluted logic, he concluded that because sedition "undermines the security of the State, usually through the medium of public disorder," it is difficult to argue that public disorder or disturbance of public tranquility are not matters that undermine the security of the State.

Article 19(2) of the Constitution empowers the government to impose reasonable restrictions on freedom of speech and expression through legislation "in the interests of public order." To comprehend the Supreme Court's public order jurisprudence, it is necessary to break down the sub-clause into its component parts and concentrate on their individual meanings. Three key terms are 'in the interests of ', 'public order' and 'reasonable restrictions'.

In *RamjiLal Modi v. State of UP*, the Supreme Court interpreted the newly minted Article 19(2). A challenge to S. 295A of the Indian Penal Code, which criminalized insulting religious beliefs with the intent to offend religious feelings of any class, was at issue. The challenge made an overbroad argument, claiming that while some instances of outraging religious beliefs would result in public disorder, not all would, and thus the Section was unconstitutional. This argument was rejected by the Court, and the Section was upheld. It focused on the phrase "in the interests of" and argued that because it was significantly broader than a term like "for the maintenance of", it gave the government broad leeway in restricting speech. In other words, it would be constitutional as long as the State could demonstrate a link between the law and public order. The Court went on to rule that the calculated tendency of any speech or expression aimed at inciting religious feelings was in fact, capable of causing public disorder and thus the Section was constitutional.

The Court rejected the argument in *Ramji Lal Modi* and *Virendra* that the State can only impose restrictions on freedom of speech and expression if there is a direct link between speech and public order. The Supreme Court had concentrated on the broad meaning of the phrase "in the interests of," but had not examined the reasonable requirement. In *Lohia*, the Court also emphasized that "public order" had a narrower scope than "law and order" and would require the State to bear a high burden of proof in addition to evidence.

Lastly, in 2015, the CrPC's Section 144 was applied to online speech for the first time. In Gujarat, the broad wording of the section was used to pre-emptively block mobile internet services in the aftermath of Hardik Patel's Patidar agitation for reservations. Despite the fact that Section 69A of the IT Act and its accompanying rules specifically provide for website blocking, the Gujarat High Court upheld the state action.

### **Conclusion-**

The Supreme Court emphasized in this case that limiting press freedom unless it poses a threat to the state is a restriction on freedom of speech and expression, as provided under article 19 (1) (a) of the Indian Constitution. Section 7(1)(c) does not contradict any of the preceding cases and thus does not constitute a reasonable restriction imposed by the Chief Commissioner of Delhi. Parties who believe they have been harmed may approach the courts only after the broadcast or publication. On the basis of a complaint that an offence has been committed, the law intervenes in other matters. There is no reason to treat speech acts differently. Demands for the regulation of content are logically absurd because self-regulation is the only practical strategy, a position supported by the central government and the News Broadcasters Association. Reporters, newsroom staff, and editors should be trusted to do their jobs until and unless they breach that trust.

The publisher and editor of the Organizer can now freely publish any material that does not jeopardise the state's security, friendly relations with foreign states, decency, public order or morality, defamation, incitement to an offence, contempt of court or India's integrity and sovereignty. The Chief Commissioner of Delhi cannot obstruct the Organizer. This decision also confirms the 1948 United Nations Declaration of Human Rights standards of free expression and opinion. The freedom of the press is recognized in our country's constitution. In today's world, it is critical to liberate the media from all forms of prejudice and allow the work to be done in a free and honest manner. The media is referred to as the fourth pillar of the constitution, upon which our entire democracy is built.

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