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Brij Bhushan Sharma v. State of Delhi: Landmark Case on Freedom of Press

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The case of Brij Bhushan Sharma v. The State of Delhi (1950) is one of the earliest and most significant cases related to the freedom of the press in India. The case arose shortly after India became a republic and when the country's newly adopted Constitution was being tested in various contexts.

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Facts of the Case

In 1950, Brij Bhushan Sharma, a journalist and editor of the newspaper "**Swatantra Bharat**," published an article critiquing the Indian government's policies and certain public officials. Authorities deemed the article seditious and charged Sharma with **sedition under the Indian Penal Code**.

Sharma challenged this charge, arguing that the sedition law violated his fundamental right to freedom of speech and expression, as guaranteed by **Article 19(1)(a)** of the Indian Constitution. The case was brought before a five-judge bench of the Supreme Court of India to determine the constitutionality of the sedition law and to define the boundaries of the right to free speech.

During the proceedings, the court also considered the broader issue of press freedom. Although the Indian Constitution does not explicitly mention freedom of the press, it is implied under the right to freedom of speech and expression. The case also involved another petitioner, K.R. Halkani, editor of "Organizer," who, along with Bhushan, was ordered to submit all communal and Pakistan-related news for pre-publication scrutiny under the **East Punjab Safety Act, 1949**.

The petitioners argued that this order infringed on their fundamental rights and did not fall within the reasonable restrictions allowed by the Constitution. They sought the court's intervention to

revoke the order and affirm their right to free expression. This case was significant as it reinforced that freedom of speech and expression is a fundamental right, subject only to specific, justified restrictions.

Issues Raised

1. The constitutional validity of Section 7(1)(c) of the East Punjab Safety Act, 1949.
2. Whether Section 7(1)(c), which authorizes the imposition of such a restriction, falls within the reasonable restrictions outlined in clause (2) of Article 19 of the Constitution.
3. Whether the articles published by Brij Bhushan Sharma were an exercise of his fundamental right to freedom of speech and expression.
4. Whether the detention of the petitioner violated his fundamental rights under Article 19(1)(a) and Article 21 of the Constitution.
5. Whether the detention order was arbitrary and unreasonable.
6. Whether the petitioner was given a reasonable opportunity to make a representation against the detention order.

Arguments Advanced

Petitioner’s Arguments

The petitioner in Brij Bhushan vs State of Delhi argued that the articles published by Brij Bhushan Sharma were a legitimate exercise of his fundamental right to freedom of speech and expression, as guaranteed under Article 19(1)(a) of the Constitution. They claimed that his detention was unconstitutional, infringing upon his rights under Articles 19(1)(a) and 21, which guarantee freedom of speech and personal liberty.

Furthermore, the petitioner contended that the detention order was arbitrary and lacked sufficient evidence or justification. They also argued that the petitioner was not given a reasonable opportunity to contest the detention order, which violated principles of natural justice.

Respondent’s Arguments

The respondent countered by arguing that the detention order issued under Section 3 of the Official Secrets Act was necessary to maintain the security and integrity of the state. They

contended that there was substantial evidence showing that Brij Bhushan Sharma had accessed and published classified information.

The respondent maintained that their actions were in accordance with the law and did not violate any fundamental rights. They emphasized that freedom of speech and expression is subject to reasonable restrictions under Article 19(2) of the Constitution, and asserted that the Official Secrets Act was a valid piece of legislation enacted in the interest of state security.

Judgement of the Case

Majority Decision

The Supreme Court, led by Chief Justice Kania and Justices Patanjali Shastri, Mehr Chant Mahajan, Mukherja, and Das, ruled that **Section 7(1)(c) of the East Punjab Public Safety Act, 1949**, which allowed for pre-publication censorship, was unconstitutional. The court found that such pre-censorship was a restriction on the freedom of speech and expression guaranteed under **Article 19(1)(a)** of the Constitution.

They determined that these restrictions did not fall within the scope of the reasonable restrictions allowed by **Article 19(2)**, which are meant to protect public order and state security. Thus, **Section 7(1)(c)** was deemed invalid, following the precedent set in ***Romesh Thappar v. State of Madras***.

Dissenting Opinion

Justice Fazl Ali dissented, arguing that “public safety” includes the security of the state and that disturbances to public order can undermine this security. He believed that **Section 7(1)(c)** fell within the permissible restrictions of **Article 19(2)**, as it aimed to maintain public safety and order.

Final Decision

The Supreme Court concluded that imposing pre-censorship on a journal restricts press freedom, an essential part of the right to freedom of speech and expression. The court emphasized that freedom of the press means no prior restraints on publications, citing Blackstone’s commentaries. Consequently, the court lifted the ban on the journal’s circulation and dismissed the Chief

Commissioner's order, reaffirming that any restriction on speech must directly relate to endangering or overthrowing the state.

Conclusion

This case marked a pivotal moment in Indian jurisprudence regarding freedom of speech and press freedom. The Supreme Court's decision reaffirmed that the right to freedom of speech and expression, including press freedom, is a fundamental right guaranteed under **Article 19(1)(a)** of the Indian Constitution.

The court held that any restriction on this right must be reasonable and justified under **Article 19(2)**, which primarily aims to protect public order and state security. Consequently, **Section 7(1)(c) of the East Punjab Public Safety Act, 1949**, which allowed for pre-publication censorship, was deemed unconstitutional as it unduly infringed upon these fundamental rights.

The dissenting opinion argued for a broader interpretation of public safety, but the majority decision emphasized the importance of unrestricted press freedom. Ultimately, the court's ruling reinforced the principle that any limitation on freedom of speech and expression must be narrowly tailored and directly related to safeguarding the integrity of the state, ensuring a robust environment for democratic discourse and the free flow of information.

Read here: Landmark Judgements on Article 19