BLOGS

Romesh Thappar v. State of Madras: Landmark Case on Freedom of Speech

Khushi Malviya · 23 Jan 2025

The case of Romesh Thappar v. State of Madras addresses the scope and limitations of freedom of speech and expression under Article 19(1)(a) of the Constitution. Read more here!

Edit TABLE OF CONTENTS Introduction Facts of the Case Issues Identified Arguments Advanced Judgement of the Case Analysis of the Case Conclusion

Introduction

In the landmark case of ***Romesh Thappar v. State of Madras (1950)***, the Indian judiciary confronted critical constitutional issues regarding freedom of speech and expression against the backdrop of governmental actions aimed at maintaining public order.

Romesh Thappar, a prominent communist figure, found himself at odds with the Madras government's imposition of restrictions on his magazine, Crossroads, invoking **Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949**.

This case unfolded against the broader canvas of India's nascent democracy, underscoring the delicate balance between state interests in preserving order and individual liberties, particularly the freedom of the press.

The Supreme Court's deliberation on this case not only shaped the contours of fundamental rights jurisprudence but also delineated the boundaries within which governmental powers could operate in a democratic society.

Facts of the Case

The petitioner, Romesh Thappar, a notable communist figure, faced government-imposed restrictions on his magazine, Crossroads, due to its critical stance on Prime Minister Jawaharlal Nehru's foreign policy.

The Madras government, invoking Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, banned the entry and circulation of the magazine in specific areas, citing concerns about public safety and order amidst a burgeoning communist movement.

Thappar, aggrieved by this action, approached the Supreme Court, asserting that the ban infringed upon his fundamental right to free speech and expression enshrined in the Constitution.

This case marked a pivotal moment in Indian jurisprudence, highlighting the delicate balance between state interests in maintaining order and individual liberties, particularly regarding freedom of the press.

Issues Identified

1. Whether the order under Section 9(1-A) of the Madras Maintenance of Public Order Act violates Article 19(1)(a) of the Constitution or falls within the restrictions of Article 19(2)?
2. Whether the impugned provision is void under Article 13(1) of the Constitution for violating the fundamental right of free speech and expression?
3. Whether the petitioner must exhaust remedies under Article 226 of the Constitution before approaching the Supreme Court?

Arguments Advanced

Petitioner's Arguments:

- The order issued by the Governor of Madras, banning the entry, publication, and distribution of Cross Roads, violated the petitioner's fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution.
- Section 9(1-A) of The Madras Maintenance of Public Order Act, 1949, was argued to be inconsistent with Article 13(1) of the Constitution as it encroached upon the petitioner's fundamental rights.

Respondent's Arguments:

- The Advocate-General of Madras contended that the petitioner should have initially sought redress from the High Court of Madras under Article 226 before approaching the Supreme Court under Article 32.

- It was argued that established procedural practices, such as seeking relief from lower courts before approaching higher courts, supported the contention that the petitioner should have first approached the High Court.

Judgement of the Case

The Supreme Court, in its judgment on Romesh Thappar v. State of Madras, clarified that approaching the High Court was not a prerequisite for seeking remedy in the Supreme Court regarding fundamental rights enforcement.

Regarding the ban on Thappar's magazine, the Court affirmed that freedom of speech and expression encompassed the freedom of propagation, essential for the circulation of ideas.

While scrutinizing the validity of Section 9(1-A) of the Madras Maintenance of Public Order Act, the Court examined its historical origins and invoked the Doctrine of Severability. Ultimately, the majority ruled Section 9(1-A) void under Article 13(1) of the Constitution, finding it inconsistent with Part III.

However, Justice Fazal Ali dissented, arguing that the Act's restriction was reasonable for maintaining state security by ensuring peace and tranquility.

Analysis of the Case

The Supreme Court grappled with crucial constitutional questions revolving around fundamental rights and governmental powers.

Firstly, it deliberated on whether the petitioner had the prerogative to directly approach the Supreme Court under Article 32 without first seeking relief from the High Court under Article 226.

The Court underscored the significance of Article 32 as a fundamental right itself, providing a guaranteed remedy for the enforcement of fundamental rights. It elucidated that both Article 32 and Article 226 remedies were analogous, granting the petitioner the liberty to choose either route without hierarchical precedence.

Secondly, the Court scrutinized the validity of the Government of Madras' order under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949. Central to this issue was the balance between public safety and the preservation of individual freedoms, particularly the freedom of

speech and expression.

The Court discerned the nuanced distinction between maintaining public order and safeguarding the security of the State. It emphasized that restrictions on fundamental rights, such as freedom of speech and expression, should be proportionate to the severity of the threat posed to public safety or the State's security.

Lastly, the Court examined the constitutional validity of Section 9(1-A) under Article 13(1) of the Constitution, which prohibits laws inconsistent with fundamental rights. Here, the Court emphasized the need for legislative restrictions on freedom of speech and expression to be delineated clearly, especially concerning offences against public order versus actions aimed at undermining the State.

It underscored that restrictions must only apply to activities posing a genuine threat to national security or the government's stability, rather than mere criticisms or dissent. Consequently, the Court held that Section 9(1-A) overstepped the permissible scope of restrictions outlined in Article 19(2) and was therefore unconstitutional.

Conclusion

The case stands as a landmark in Indian legal history, reaffirming the primacy of fundamental rights, particularly freedom of speech and expression, in a democratic society. The Supreme Court's judgment elucidated the nuanced interplay between individual liberties and state interests, emphasizing the need for proportional restrictions on fundamental rights to safeguard public order and national security.

By affirming the petitioner's right to directly approach the Supreme Court under Article 32 and declaring Section 9(1-A) of the Madras Maintenance of Public Order Act unconstitutional under Article 13(1), the Court underscored the judiciary's pivotal role in upholding the constitutional ethos of India. This case not only set a precedent for future interpretations of fundamental rights but also served as a beacon of hope for the protection of democratic values in the Indian legal landscape.

Note: This post was updated and published on 16.11.2024.