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Case Comment: Newsprint Restrictions and Press Freedom: The Bennett Coleman Case

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INTRODUCTION

Freedom of speech has been regarded as the very foundation of civil liberty in the constituent assembly debates. A high regard has been given to free speech, for it would have been impossible for the general public to make their voices feel heard by the state without it.¹ Benjamin Franklin once said, “Without freedom of thought, there can be no such thing as wisdom and no such thing as public liberty, without freedom of speech; which is the Right of every man, as far as by it he does not hurt or control the right of another: and this is the only check it ought to suffer, and the only bounds it ought to know.”² This phrase not only underlines a connection between intellectual freedom and societal progress but it also claims that public liberty stems from the ability to express one’s thoughts. Freedom of speech ensures the existence of a democratic society. Therefore, the constitution of India also recognises the freedom of speech and expression as a fundamental right under Article 19(1)(a).³ Over the years, this right

¹ Lok Sabha Secretariat, *Constituent Assembly Debates: Official Report* (2014)

² Benjamin Franklin, ‘The Silence Dogood Essay’ (*Literature in Context*)

<<https://anthologydev.lib.virginia.edu/work/Franklin/franklin-dogood-1>> accessed 10 August 2024

³ Constitution of India 1950, art 19(1)(a)

has been proven vital for protecting the rights of individuals, ensuring a democratic society, and supporting and fostering societal progress. However, this is not an absolute right. The first sub-clause of this article grants the freedom to speak, while the subsequent sub-clause imposes certain restrictions on it. According to article 19(1)(b), the right to free speech can be restricted if it becomes a threat to the public order or state security, affects friendly relations with other countries, prevents the operation of an existing law or making of a new law by the state, leads to defamation or incitement of an offence.⁴

Article 19(1)(a), which talks about the freedom of speech and expression, also extends to the 'freedom of the press'⁵. Although the Indian constitution does not explicitly talk about freedom of the press, it is still a well-recognized right and has been interpreted by the Apex Court of India in many cases. One case that comes up while discussing press freedom is *Romesh Thappar v State of Madras*. In this case, the Supreme Court declared Section 9(1-A) of the Madras Maintenance of Public Order Act,⁶ which empowered the state to limit or restrict the supply of the petitioner's journal on the grounds that it was a threat to 'public order' as unconstitutional.

Similarly, in the case of *Bennet Coleman v Union of India*, the Newsprint policy of 1972-73 was held unconstitutional because it imposed unreasonable restrictions on the freedom of the press.⁷ This paper aims to critically analyse the issues raised in this case and the judgement delivered by the court. It also delves into the concepts and reasoning used in conveying that judgment.

FACTS OF THE CASE

The petitioners, *Bennet Coleman & Co. & Ors.*, are media conglomerates who had challenged the restrictions laid on the import of newsprint under the Import Control Order 1955⁸. They had also challenged the provisions governing the use of newsprint, which were mentioned under the Newsprint Order, 1962⁹. These orders restricted the use of newsprint, which tended to curtail press freedom. Moreover, the Newsprint Policy, 1972-73, continued to curtail the free speech of

⁴ Constitution of India 1950, art 19(1)(b)

⁵ Constitution of India 1950, art 19(1)(a)

⁶ Madras Maintenance of Public Order Act 1949, s 9

⁷ *Bennet Coleman & Co. & Ors v Union of India & Ors* (1973) 2 SCR 757

⁸ Import Control Order 1955

⁹ Newsprint Order 1962

the press by imposing further restrictions, mainly based on four criteria: the first one prohibited the establishments running more than two newspapers from introducing new newspapers, provided that one of the newspapers owned by that establishment is daily; the second one imposed a page limit of ten and it couldn't be exceeded; thirdly, newspapers with pages less than ten were not permitted to make an increase of above 20% in the number of pages and it was done to prevent any sudden rise in the consumption of newsprint; and lastly, it stopped the interchangeability of newsprint among different newspapers of the same unit. So, the companies owning different newspapers could not allot newsprint of one newspaper/Edition to another Newspaper/edition and each newspaper had to operate strictly within their respective quota. Varieties in newspaper magazines enable the citizens not to restrict their knowledge and views to a certain newspaper but to discuss and criticize the various views and expressions of different newspapers. However, the restrictions on pages made it impossible for the smaller newspapers to discuss public affairs with the citizens, leading to the monopolisation of a certain newspaper, which ultimately limited the choices of the people consuming news. That is why this policy was challenged in court on the grounds of violating the Right to Freedom of Speech as provided by Article 19(1)(a) of the Indian Constitution.

LEGAL ISSUES

1. Whether the petitions were maintainable since the petitioners were corporate entities.
2. Whether or not Article 358¹⁰ could bar the petition regarding the violation of fundamental rights by the newsprint policy.
3. Whether the Newsprint Policy infringed the Right to freedom of speech & expression of the press as per Article 19(1)(a).

PETITIONERS' ARGUMENTS

The counsel for the petitioners asserted that the Newsprint policy was a violation of their right to freedom of speech and expression. They argued that this policy barred the newspapers with less than 10 pages to increase the number of pages by more than 20%. The petitioners contended that this approach lacked proper reasoning and was discriminatory in nature. So, it violated

¹⁰ Constitution of India 1950, art 358

Article 14 of the Indian constitution.¹¹ It was also contended by the counsel that rather than doing direct censorship, this policy indirectly controlled the newspapers by putting a limit on the amount of newsprint they could import. They also argued that the newsprint policy went against Entry 9, List 1 of the import control order, which authorised the parliament to regulate imports, but the parliament exceeded its power by exercising indirect control on the newspapers rather than just governing the imports. Another key argument made by them was that Article 358 of the Indian constitution, which suspends the provisions of Article 19 during emergencies¹², was not applicable in this case as the newsprint policy existed before the declaration of emergency. It was a continuation of the previously existing policy and therefore, the provisions under Article 358 should not affect the challenge raised by the petitioners against this policy. According to the petitioners, this policy failed to take into consideration the different needs of different newspapers & thus tended to treat them unequally. For instance, it treated large English newspapers, which require more than 10 pages, in the same way as the smaller ones, which require fewer newsprints. Further, the quota allocated to newspapers for newsprints was not based on actual figures of the sold newspapers but based on notional circulation, which is an estimation of the copies sold out in a year. The learned counsel for petitioners didn't find this method effective for allocating the quotas as the actual figures of sold newspapers could be more or less than the figures calculated to assign the quotas. Lastly, Remark VIII of the newsprint policy didn't let the common ownership of the newspapers reallocate or share the newsprint of one newspaper with another newspaper. According to the petitioners' counsel, this prohibition was unreasonable.

RESPONDENT'S ARGUMENT

The first argument presented by the respondent in this case was that the petitioners were not in the position to plead fundamental rights because they were business entities. They also asserted that since the emergency had been proclaimed & the fundamental rights were temporarily suspended due to the proclamation, the petitioners could not challenge the newsprint policy on the grounds of infringement of fundamental rights. They further argued that the right to import

¹¹ Constitution of India 1950, art 14

¹² Constitution of India 1950, art 358

newsprints is a special right governed by several legislations like the Imports and Exports Act of 1947¹³, the Imports Control Act 1955¹⁴, and the Newsprint Control Order 1962¹⁵. If the newspapers wanted a newsprint quota, they were to follow the conditions established for the same. Next, the Additional Solicitor General argued that the press didn't enjoy any special rights under Article 19(1)(a) of the constitution¹⁶ and that they had the same rights under this provision as ordinary citizens. They further presented a key argument in the court that the newsprint policy didn't infringe on Article 19(1)(a). They asserted that the newsprint policy aimed at governing the use of newsprint and not at restricting the freedom of newspapers. They argued that this policy shouldn't be deemed to infringe constitutional rights as the aim of a statute or law is important and not the side effects of that law. They said that the newsprint policy didn't lead to monopolisation in the newspaper industry. They also said that the policy restricted the import & utilisation of newsprint and that it didn't restrict the newspaper companies from using other types of papers.¹⁷ Finally, they contended that the commercial activities of newspapers are not exempt from the provisions embodied in the newsprint policy and any subordinate effect of any restriction as per those provisions can't be deemed to violate press freedom.

COURT'S DECISION

The case was heard by a five-judge bench. The court believed that Article 358 couldn't prohibit the petitioners from seeking relaxation for violation of fundamental rights. The Court further decided that though it was reasonable to assign the quotas in order to deal with the scarcity of newsprint, it was unjustifiable to directly influence the page limits. The court also discussed two aspects of press freedom: quantitative (number of pages in newspapers, length of the content etc.) and qualitative (quality of the content, type of information provided in a newspaper). The Court said that by restricting the number of pages to be used by newspapers (a quantitative approach), the newsprint policy restricted press freedom.¹⁸ It was also decided that these restrictions couldn't be justified by lack of newsprint and, thus they were unreasonable. That is

¹³ Imports and Exports (Control) Act 1947

¹⁴ Imports Control Act 1955

¹⁵ Newsprint Order 1962

¹⁶ Constitution of India 1950, art 358

¹⁷ *Bennet Coleman & Co & Ors v Union of India & Ors* (1973) 2 SCR 757

¹⁸ *Ibid*

why the Court declared the Newsprint policy, 1972-73, as unconstitutional. However, the court didn't strike down the Newsprint order and the Import Control order, for they were not the source of the discussed restrictions. Justice Beg added that the Newsprint policy exceeded the scope of authority given to the government under the Import Control Order, which only dealt with assigning quotas and not with the other aspects. Justice Beg said that for this reason, the government's actions lacked legal basis, so the restrictions were unreasonable. The majority declared the newsprint policy unconstitutional. However, Justice Mathew disagreed with the majority. Justice Mathew stated that the limit on the number of pages can't be deemed to restrict the freedom of the press. He further said that the Newsprint Policy was important to prevent monopolies of a few newspapers in the market. However, the majority saw the Newsprint Policy as an infringement of freedom of the press. So, the Newsprint Policy of 1972-73 was held unconstitutional.

ANALYSIS

The Judiciary of India has always played an important role in interpreting the scope of Article 19(1)(a). One such instance could be the case of *Shreya Singhal v Union of India*, wherein the Apex Court decided to strike down section 66A of the Information Technology Act 2000¹⁹ for it infringed the freedom of speech.²⁰ The concept of freedom of speech is wide and has been interpreted in various matters in different ways. Like, in the case of *Romesh Thappar v State of Madras*, the interpretation by judiciary observed that freedom of the press is a part of Article 19(1)(a).²¹ Further development in the understanding of Article 19(1) was seen in the case of *Prabha Dutt v Union of India*²². It was held in this case that being aware of the administration of the government also formed an essential part of Freedom of the Press but it comes with reasonable restrictions. To be able to invoke the right to participate in the democratic system of the country, the citizens should be able to know the administration of the government. Press, due to the freedom provided to it by our constitution, makes it possible by acting as a bridge between the citizens and the state. There have been many instances wherein the higher

¹⁹ Information Technology Act 2000, s 66 (a)

²⁰ *Shreya Singhal v Union of India* (2015) 5 SCC 1

²¹ *Romesh Thappar v The State of Madras* (1950) 1 SCR 594

²² *Prabha Dutt v Union of India & Ors.* (1982) 1 SCR 1184

authorities have tried to curtail the freedom of the press in order to prevent their wrong acts from getting exposed. In a recent Case of *Vinod Dua v Union of India*,²³ the petitioner was a journalist who was accused of charges of sedition and defamation, but the court quashed those FIRs and upheld the press' right to criticise the government. Article 19(1)(b) talks about some restrictions on freedom of speech. Any law which imposes those restrictions which are not included in Article 19(1)(b) or are unreasonable is deemed to be unconstitutional. The case of *Bennet Coleman v Union of India* was decided along similar lines. In this case, the Newsprint Policy of 1972-73 was declared unconstitutional. The Supreme Court noted that this policy indirectly curtailed press freedom and therefore, it was unreasonable. The Court accepted the view that fixing quotas was crucial to tackling newsprint shortage, but the Court also observed that directly interfering with the number of pages in a newspaper was unfair as it harmed the quantitative freedom of the press. Press freedom comprises two elements: The qualitative element is the content of the news report, & quantitative element deals with the number of pages in a newspaper and other quantitative aspects. If either one of the two is influenced negatively, then press freedom will be curtailed. For instance, if policies to regulate or control the content in newspapers are made, like censorship laws, then the quality of the information a newspaper could give would be hampered. That is why such policies pose a threat to the Qualitative element of press freedom and therefore, ultimately violate freedom of expression. Similarly, the newsprint policy aimed at regulating the usage and utilisation of newsprint by directly limiting the number of pages and therefore hampering the quantitative freedom of the press. This reasoning used by the court delves deep into the understanding of the word expression in the phrase 'Freedom of speech and expression'. The word expression implies that the communication of ideas is not limited to speech but also includes actions, writings and all such ways through which ideas, criticism, and thoughts can be conveyed. The court approached this case with an empathetic view where it stepped in the shoes of the newspaper companies and observed that limits on the number of pages in newspapers would leave less space for advertisements, which are a crucial source of income for newspapers, making the companies increase the cost of newspapers to compensate for their income and losing their economic value. The court also noticed that fewer pages resulted in less space for information. All these things

²³ *Vinod Dua v Union of India & Ors* (2020) 14 SCC 51

combined would affect the supply of newspapers, stopping the information from reaching the consumers. That is why these were seen as quantitative restrictions on the press. The court tried to find a legal basis for the actions of the state & there they noticed that the Newsprint policy went against the provisions of the Import Control Order, which only comprised of regulations about assigning the quotas. And the newsprint policy exceeded that authority by making further interferences. That is why J. Beg said that the policy itself had no legal basis as it conflicted with the provisions of the Import Order, rendering the question of the reasonability of restrictions irrelevant. The majority ruled in favour of the petitioners.

CONCLUSION

In *Bennett Coleman v Union of India*, the Supreme Court declared certain sections of the Newsprint Policy as unconstitutional because it infringed Article 19(1)(a) of the Indian Constitution, which talks about free speech. The court observed that this policy implemented certain quantitative controls with respect to the number of pages in newspapers. The court found such restrictions to be unreasonable and unjustifiable. It was also held by the court that the Newspaper Policy 1972-73 went against the Import Control Order and that's why it lacked legal basis from the beginning. The court struck down the Newsprint policy. However, these limits were not attributed to the Newsprint Order or the Import Control Order, and they were not overturned. Through the judgement in this case, the court reinforced a principle that restrictions on freedom of speech must be reasonable and legally justified. This case acts as an essential precedent for matters concerning press freedom.