

## CASE COMMENTARY – BRIJ BHUSAN SHARMA VERSUS THE STATE OF DELHI

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### ABSTRACT

Media is the foremost pillar of vibrant democracy. The right exerted by the media is to convey things to the public without any intervention or pressure from any side. Indian constitution holds the provision for the freedom of speech and expression which cannot be suppressed by others to behold the political freedom to be exerted by the media. Supreme Court states down about the freedom of speech and expression under Article 19(1) of Indian Constitution.

**KEYWORDS:** Constitution, Media, Freedom, Court, Democracy.

<b>Author of the Judgment</b>	S Fazal Ali
<b>Appellant</b>	Brij Bhushan And Another
<b>Respondent</b>	The State Of Delhi
<b>Counsel For Appellant</b>	Mr. Ravi Gupta, Senior Advocate with Mr. Ashish Dholakiya, Mr. D. Kishore Kumar, Mr. Gautam Bajaj & Ms. Bhoomija Verma.
<b>Acts and Section Involved</b>	<ul style="list-style-type: none"> <li>Constitution of India</li> <li>East Punjab Public Safety Act, 1949</li> <li>Article 19(1)(a)</li> <li>Article 19(2)</li> <li>Section 7(1)(c)</li> </ul>

<b>Case Title</b>	Brij Bhushan And Another Vs The State Of Delhi
<b>Case Number</b>	Criminal Appeal No. 64 of 1949
<b>Date of the Order</b>	26 May, 1950
<b>Citation</b>	1950 AIR 129, 1950 SCR 605
<b>Court</b>	Supreme Court Of India
<b>Quorum</b>	<ul style="list-style-type: none"> <li>The Hon'ble Chief Justice Harilal Kania</li> <li>The Hon'ble Justice Saiyid Fazl Ali</li> <li>The Hon'ble Justice Patanjali Sastri</li> <li>The Hon'ble Justice Mehr Chand Mahajan</li> <li>The Hon'ble Justice Mukherjea</li> <li>The Hon'ble Justice Das</li> </ul>

### I. INTRODUCTION AND BACKGROUND OF JUDGMENT

Brij Bhushan Sharma V. Delhi is a landmark judgment held by the Supreme Court regarding the issue of freedom of speech and expression in India. The freedom of press is to exert their freedom of communication. There is no specific provision available for the right to press to express their view; but the editor and the manager holds the rights to edit and reach out the people however they want it to be. This comes under Article 19(1) (a) which a fundamental right that could be exerted by the press for their freedom of speech and expression.

The petitioner claims about the infringement freedom of speech and expression and demands to submit the scrutiny in duplicate before publishing it in the news until the further

order prevails which also includes the views on Pakistan.

## **II. FACTS AND ISSUE**

Brij Bhushan Sharma, a journalist and editor of newspaper namely "Swatantra Bharat". In the year of 1949, he publishes an article in the newspaper which criticizes the Government of India and the other public officials under their governance. The article issue became sensitive and was filed under the Indian Penal Code and was charged for sedition as it was against the ruling government in India. Bhusham Sharma argued with the constitutionality of the provision of sedition under IPC as it violated his fundamental right to freedom of speech and expression under India Constitution. This case was brought before the five-judge bench of the Supreme Court of India, to examine the constitutionality of sedition law and regarding the provision of freedom of speech and expression.

## **III. ISSUES RAISED**

The issues raised based on the facts are:

- A. Whether the article published in the newspaper by Birj Bhushan Sharma actually depicts his fundamental right to freedom of speech and expression?
- B. Whether section 7 (1) (c) which excercises restriction regarding the publication of opinions about Pakistan comes under reservation of clause (2) of Article 19?
- C. Whether detention order was arbitrary and unreasonable?
- D. Whether the petitioner was given chance to prove his detention wrong?

## **IV. ARGUMENTS**

### **A. Arguments in favour of petitioner:**

1. The articles published in the newspaper by Birj Bhushan Sharma actually depict his fundamental right to freedom of speech and expression,

which is covered under the Article 19(1) (a) of the Indian Constitution.

2. Bhushan Sharma being charged under sedition is unconstitutional as it just involved his fundamental rights under Indian Constitution ( Article 19 (1)(a) and Article 21)
3. There was no material in record to justify the detention thereby; the detention order is arbitrary and unreasonable.
4. The petitioner was not given a chance to justify against his detention and to represent himself which concludes to be the violation of Article 21 (Rights of natural justice).

### **B. Arguments in favour of respondent:**

1. The trial judge passed the order under Section 3 of the Official Secrets Act that it was necessarily implemented to maintain the security and integrity of the state.
2. The petitioner has already shown about the news that has been already published in the newspaper by Birj Bhushan Sharma; therefore, it is evident that the fundamental right of right to freedom and expression has not been violated by the respondent by any provisions under law.
3. The violation of freedom of speech as stated by the petitioner has got tally by the importance of Official secrets Act enacted to safeguard the security of the state in all norms.
4. The respondent had acted fairly and impartially throughout the proceedings and the petitioner has not made any arguments to state that the trial judgment is to be wrong.

## **V. JUDGMENT**

The Supreme Court ruled that the provisions of the Public Safety Act did not violate the

fundamental right to freedom of speech and expression, as long as they were reasonable and necessary to maintain public order. The Court observed that the right to the freedom of speech and expression was not an absolute right, and the state could force sensible limitations on it in light of a legitimate concern for the overall population. The Court additionally held that the grounds of confinement given by the state government were adequate to explain Sharma's detainment. The court noted that the state government had to demonstrate a connection between the detention grounds and the suspicion of a breach of public order. Due to the fact that the appropriate authority had not signed the order of detention, the Court determined that Sharma's detention was unlawful. The Court noted that the authority that signed the order was not authorized to do so, resulting the order to be invalid.

Supreme Court also highlighted that conditions laid down towards the liberty of press is valid unless it creates a danger to the State, which results in demerit and is not considerable as provided under Article 19 (1) (a) of the Indian Constitution. This is also covered under the United Nations Declaration of Human Rights, 1948 standards of freedom of opinion and expression.

## **VI. CONCLUSION**

Brij Bhushan Sharma v. Delhi is an important case that established the principles of preventive detention and the reasonable restrictions on right to freedom of speech and expression all over India. The case also emphasized the significance of adhering to the rule of law and due process when it comes to detention and arrest.

## **VII. REFERENCE**

- [https://www.constitutionofindia.net/constitution\\_of\\_india/fundamental\\_rights/articles/Article%2019](https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2019)
- <https://indiankanoon.org/doc/237273/>

- <https://www.lawyerservices.in/Romesh-Thappar-Versus-State-of-Madras-1950-05-26>
- <https://indianlawportal.co.in/brij-bhushan-v-the-state-of-delhi/>
- <https://legalvidhiya.com/brij-bhushan-sharma-v-delhi-1950-scr-605-fundamental-right-to-freedom-of-speech-and-expression-and-reasonable-restrictions/>

## **VIII. RELATED CASE LAW**

- A. Ramesh Thapper v. State of Madras, 1950 AIR 124.
- B. S. Khushboo v. Kanniammal and Anr, AIR 2010 SC 3196.
- C. Union of India v. Association for Democratic Reforms and Anr, 2002(3) SCR 294.
- D. Dr. Ram Manohar Lohia v. State of Bihar and others, 1996 AIR 740.
- E. Rex v. Governor of Wormwood Scrubbs Prison, [1920] 2K.B. 305.
- F. Virendra v. State of Punjab, AIR 1958 SC 986.