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Indian Express Newspapers (Bombay) Pvt. Ltd. and Others v. Union of India (UOI) and Others (1986)

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ABSTRACT

The case of Indian Express Newspapers (Bombay) Pvt. Ltd. and Others v. Union of India (UOI) and Others (1986) involved a writ petition filed under Article 32 of the Indian Constitution. The Supreme Court recognized the significance of freedom of expression and the press, stating that any fiscal imposition on the newspaper industry should be subject to judicial review.

The Court emphasized that curtailments on freedom of speech and expression are not justified in the general public's interest. The judgment upheld the importance of a free press in a democratic society and called for prudence when imposing taxes on the newspaper industry.

This paper conducts analytical study on the landmark case law Indian Express Newspapers (Bombay) Pvt. Ltd. and Others v. Union of India (UOI) and Others (1986)

Keywords: Writ, Petition, Speech, Expression, Industry

I. INTRODUCTION

The case of **Indian Express Newspapers (Bombay) Pvt. Ltd. and Others v. Union of India (UOI) and Others (1986)**² originated as a writ petition filed under Article 32 of the Indian Constitution, presented before the esteemed Supreme Court of India. The petitioners, including Indian Express Newspapers (Bombay) Pvt. Ltd. and various entities associated with the newspaper industry, invoked the prerogative of a writ of certiorari. Notably, the distinguished justices O. Chinnappa Reddy, A. P. Sen, and E. S. Venkataramiah undertook an astute analysis of the pertinent provisions within the Constitution of India and the Customs Act of 1962, culminating in their comprehensive adjudication of the substantive matters in contention.³

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² 1986 AIR 515

³ Soli J. Sorabjee, 'Freedom of the Press, its Contents and Facets' (1986) 13 JSTOR 173-184.

II. ANALYTICAL STUDY

(A) Facts

In this instance, a collection of corporations, employees, shareholders, and newspaper trusts collectively lodged a formal petition contesting the imposition of import duty and auxiliary duty on newsprint, a departure from its prior exemption from customs duty. Their contention centered around the adverse ramifications of these duties on both their constitutionally safeguarded freedom of expression and trade entitlements enshrined in Article 19 of the Constitution. The petitioners asserted the absence of a valid public interest rationale behind the imposition of these duties, further highlighting concerns regarding the categorisation of newspapers based on their size, which they argued contravened the equality principle encapsulated in Article 14. Conversely, the government stood firm in its defence of these duties, asserting their role in revenue generation as a justifiable expression of public interest and discrediting the pertinence of potential financial encumbrances or foreign exchange reserves.

(B) Issues

1. Whether the imposition of import and auxiliary duty on newsprint infringes upon the constitutionally protected freedom of expression under Article 19(1)(a) and the constitutionally guaranteed freedom to practice any trade, business, or occupation as per Article 19(1)(g)?
2. Whether the categorisation of newspapers by size, as examined in the case, raised concerns about the potential violation of the equality principle under Article 14?

(C) Rule of Law

Constitution of India, Article 19(1)(a): This segment of the Constitution guarantees individuals the right to express their thoughts and opinions freely. It affords the freedom to communicate, write, and share ideas without undue government intervention.

Constitution of India, Article 19(1)(g): This provision ensures that individuals can select their preferred profession, trade, or occupation. It grants people the autonomy to decide their career path without unjustified limitations from the government.

Constitution of India, Article 14: This article establishes the principle of equal treatment for all under the law. It mandates that the government must treat all individuals fairly and impartially. Any governmental rules or decisions must be equitable and not exhibit bias towards particular groups without valid reasons.

Cases Referred:**Romesh Thappar vs state of Madras⁴:**

In Romesh Thappar's case, the Supreme Court strongly favored the freedom of the press. The Court stated that the freedom to express oneself and distribute information is vital for preserving a free society. It emphasized the importance of protecting the national right of freedom of thought, speech, and assembly.

Bennett Coleman and Co. vs Union of India⁵:

The issue in Bennett Coleman's situation concerned the legality of a restriction imposed by the newsprint policy. A few unpleasant aspects of the restriction included restrictions on beginning new newspapers or editions by a standard ownership unit, even within the permitted newsprint quota. The court rejected the argument that the restriction was necessary to encourage education through the press. It went against the Constitution's provision of freedom of speech and expression under Article 19(1)(a). The court emphasized the importance of a free press as an interpreter between the government and the people. It declared the restriction as a deliberate and calculated device to limit the circulation of information.

III. ANALYSIS

The Supreme Court recognises the significance of freedom of expression within a democratic framework, duly enshrined in Article 19(1)(a) of the Constitution. Acknowledging the intrinsic link between newsprint and the freedom of the press, the Court underscores that evaluating the validity of a statute taxing newsprint diverges from the scrutiny applied to other taxing provisions. While ordinary taxation laws may be scrutinised for confiscatory tendencies or devious mechanisms, a tax assessment on newsprint pivots on its distinct and conspicuous impact traceable to the tax itself. A hallmark of the Court's stance is that any fiscal imposition upon the newspaper industry remains subject to judicial review under the Constitution's provisions.⁶

The Court argues that the imposition of customs duty on newsprint encroaches upon the freedom of expression. It acknowledges that while curtailments on freedom of speech and expression are permissible for national security, international relations, public order, or matters of morality and defamation, they are not justified in the general public's interest. The Court

⁴ AIR 1950 SC 124

⁵ (1973) 2 SCR 757

⁶ Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* 125-131 (Bloomsbury Publishing 2017).

unequivocally asserts that the grounds outlined in Clauses (3) to (6) of Article 19 cannot validate a law directly impinging on freedom of speech. It vehemently underscores that citizens are entitled to enjoy the full spectrum of freedoms enshrined in Article 19 in unison.

In addition, Entry 92 of List I in the Seventh Schedule to the Constitution gives Parliament the authority to enact taxes on the acquisition, sale, and publication of newspaper advertisements. This constitutional provision, however, does not render such taxation immune to scrutiny. The Court contends that these taxes, too, must undergo constitutional review, with an acute focus on the freedom of speech and expression. The Court urges the government to exercise prudence when imposing taxes on the newspaper industry, recognising society's profound stake in the realm of free expression.

The judiciary is responsible for demarcating when taxation traverses from the domain of profession, trade, and business into the freedom of expression, thereby potentially infringing upon it. In light of this, the constitutionality of duties on newsprint hinges on their reasonableness and avoidance of stifling freedom of expression.

The Court acknowledges that the decline in circulation could emanate from various factors, including economic shifts, shifting consumer behaviors, or editorial changes, rather than solely attributing it to customs duty. In the case, the petitioners did not conclusively demonstrate that the tax was unreasonably burdensome to warrant its nullification. Thus, rather than annulling the impugned legislation, the Court instructs the Government to reconsider, within a stipulated period, the broader matter of import duty or auxiliary duty, as payable by the petitioners.

The court conducted a thorough analysis of the classification of newspapers according to size, ultimately determining that this categorization did not contravene the equality principle enshrined in Article 14 of the Constitution. The classification was rooted in aiding smaller and medium-sized newspapers in mitigating their production expenses, given their relatively limited advertisement revenue and emphasis on rural readership. The court discerned no underlying malevolent intent in this objective and upheld that it lacked discriminatory traits. Consequently, categorizing newspapers based on size did not engender apprehensions concerning an infringement upon the principle of equality.

IV. CONCLUSION

The import charge and auxiliary levy on newsprint used for printing newspapers and magazines will be reviewed by the Indian government in six months. The petitioners and others in the newspaper business will provide the necessary information for the review. If any changes are decided upon, the government will take steps to implement them. In the interim, the government

would continue to grant concessions to medium and small newspapers while only collecting Rs. 550 per MT in customs duty and auxiliary duty on imported newsprint. Any petitioners who are deemed to owe a deficit amount are required to make payment within four months of getting a demand letter. The petitioners may use whatever bank guarantee or security they offer to recoup any deficiency monies. If any petitioners are entitled to a refund, the government will make the refund within four months of the redetermination. A writ will be issued accordingly, and each party will bear their costs.

I concur with the verdict as it demonstrates a commendable interpretation of freedom of expression, particularly within the press's role as a public educator. A significant portion of society remains devoid of modern communication channels, reinforcing the purpose of the press in advancing public interest through disseminating facts and opinions necessary for an informed democratic electorate. The Supreme Court's assertion that the freedom of the press falls within the ambit of Article 19(a) underscores its crucial role.

It is evident that critical perspectives conveyed through articles have the potential to challenge those in power, an essential element of a democratic society. However, it is pertinent to acknowledge that the government has made efforts to curtail such criticisms through the press, given its influential impact on the populace. The authority conferred by Entry 92 of List 1 in the Seventh Schedule empowers the government to enact laws related to taxes on aspects like buying, selling, and publishing. Still, this power should undoubtedly be subject to rigorous judicial scrutiny.

The term "subservient" aptly captures the notion of readiness to comply, sometimes resulting in certain entities being perceived as less significant. While taxes may be imposed on the press, it is crucial to note that as long as they remain within reasonable limits and undergo court oversight, they should not impede its operation.

Furthermore, the multifaceted purpose of freedom of expression encompasses personal fulfillment, truth discovery, enhancing individual participation in decision-making, and establishing a balance between stability and societal evolution. The government should exercise caution while levying taxes on newspapers, as these directly impact the social imperative of people's freedom to express themselves.

In conclusion, the judgment aligns with a comprehensive understanding of freedom of expression, acknowledging the press's role as an educator and its challenges, particularly concerning taxes. The careful balance between regulating taxes and safeguarding the press's vital role should be paramount in upholding democratic principles.