



THE ROMESH THAPAR CASE: A TURNING POINT IN THE HISTORY OF FUNDAMENTAL RIGHTS: GS - II



The story of India's democracy is intertwined with its Constitution, which guarantees fundamental rights to its citizens. Among these rights, **freedom of speech and expression** stands as a cornerstone of democracy.

However, the journey to secure and define these rights has been marked by landmark legal battles. One such significant case is **Romesh Thapar v. State of Madras (1950)**, which tested the resilience of India's democratic ideals in their nascent stage. This article delves into the case, its significance, the government's response, subsequent legal developments, and the present status of fundamental rights in India.

Defining the Romesh Thapar Case

In the summer of 1950, the Madras government banned the circulation of *CrossRoads*, a weekly magazine edited by **Romesh Thapar**, citing the **Madras Maintenance of Public Order Act**. The reason for the ban was an article critical of police violence that had killed 22 Communists in a Salem prison. The government claimed the article threatened "public order." Thapar, who had strong faith in the Constitution, challenged the ban in the **Supreme Court**, arguing that it violated his right to free speech under **Article 19(1)(a)**.

On **May 26, 1950**, a six-judge bench of the Supreme Court declared the ban unconstitutional. The Court ruled that the state could not impose such restrictions unless they were specifically designed to address threats to the "security of the state." The broad and vague scope of the Madras law, which allowed restrictions for maintaining "public order," was deemed arbitrary and void.



This case, alongside the judgment in **Brij Bhushan v. State of Delhi**, where a ban on the RSS magazine

Organiser was struck down on similar grounds, became a landmark moment for press freedom in India.

The Significance of the Romesh Thapar Case

The **Romesh Thapar** case is celebrated as one of the first major decisions protecting **freedom of speech and expression** in independent India. Its significance lies in several areas:

1. Clarification of Free Speech Limits:

- The Court drew a clear distinction between “security of the state” and “public order,” narrowing the scope for the government to curb free speech arbitrarily.

2. Judiciary as a Guardian of Rights:

- The case demonstrated the judiciary's role in upholding the Constitution and protecting citizens' rights against executive overreach.

3. Precedent for Future Cases:

- The principles established in this case became foundational for subsequent judgments on free speech and press freedom.

4. Early Assertion of Judicial Independence:

- Coming just months after the adoption of the Constitution, the ruling reinforced faith in the judiciary as a bulwark against authoritarian tendencies.

Government Response: The First Amendment

The government, dissatisfied with the Supreme Court’s rulings in **Romesh Thapar** and **Brij Bhushan**, amended the Constitution. The **First Amendment (1951)** introduced “reasonable restrictions” on the right to free speech under Article 19(2). These restrictions included grounds such as:

- Public order
- Incitement to an offense
- Friendly relations with foreign states
- Contempt of court, defamation, and decency

The First Amendment marked a pivotal moment, balancing the need for free speech with concerns over national security and public order. Critics, however, viewed it as a step back from the ideals of absolute freedom envisioned by the framers of the Constitution.



Further Cases: From Romesh Thapar to Kesavananda Bharati

The journey of fundamental rights in India saw several landmark cases that expanded, refined, and sometimes curtailed these rights. Here are some key milestones:

- 1. A.K. Gopalan v. State of Madras (1950):**
 - This case tested the right to personal liberty under Article 21. The Court upheld preventive detention laws, but it laid the groundwork for a broader interpretation of fundamental rights in future cases.
- 2. Sakal Papers v. Union of India (1962):**
 - The government's attempt to regulate newspaper pricing was struck down as unconstitutional. The Court reinforced the idea that freedom of speech includes the freedom of the press.
- 3. Kameshwar Singh v. State of Bihar (1952):**
 - This case addressed property rights under Article 31 and land reforms, showcasing the evolving tension between individual rights and state policies.
- 4. Golaknath v. State of Punjab (1967):**

The Court ruled that fundamental rights could not be amended by Parliament, affirming their inviolability. This decision led to significant political and legal debates.

- 5. Kesavananda Bharati v. State of Kerala (1973):**
 - The most significant case in the history of Indian constitutional law. The Supreme Court upheld Parliament's power to amend the Constitution but introduced the **Basic Structure Doctrine**, ensuring that amendments could not alter the fundamental framework of the Constitution.

Current Status of Fundamental Rights in India

Over the years, India's fundamental rights have evolved to reflect the changing needs of society. The judiciary has played a crucial role in expanding the scope of these rights while ensuring they remain consistent with the Constitution's spirit.

- 1. Expanded Interpretation of Rights:**
 - Rights such as privacy (Puttaswamy v. Union of India, 2017) and equality have been interpreted broadly to include digital privacy, gender equality, and more.
- 2. Judicial Safeguards Against Overreach:**
 - Courts have frequently struck down laws and actions that infringe on fundamental rights, such as internet shutdowns in Kashmir (Anuradha Bhasin v. Union of India, 2020).
- 3. Balancing Rights and National Security:**
 - The judiciary continues to balance individual freedoms with the state's need to maintain law and order, often treading a fine line in cases involving sedition or restrictions on speech.
- 4. Challenges in Modern Times:**



- Despite judicial vigilance, concerns remain about increasing restrictions on dissent, freedom of the press, and surveillance, prompting calls for stronger safeguards.

Conclusion

The **Romesh Thapar case** stands as a beacon in India's journey to secure fundamental rights, particularly the right to free speech and expression. It not only established the judiciary as a protector of these rights but also set the tone for subsequent legal and constitutional developments.

However, the case also underscores the ongoing struggle to balance individual freedoms with state power. While amendments like the First Amendment have placed "reasonable restrictions" on rights, the courts have continued to play a pivotal role in guarding against arbitrary curbs.

From the early days of Romesh Thapar's fight against censorship to landmark cases like Kesavananda Bharati, India's judiciary has shown remarkable resilience in protecting the core values of the Constitution. As challenges to fundamental rights evolve in the digital age, the lessons from these cases remain as relevant as ever in ensuring that democracy thrives in its true spirit.

MAIN PRACTICE QUESTION:

Discuss the significance of the Romesh Thapar v. State of Madras case in shaping India's constitutional framework, particularly in the context of freedom of speech and subsequent amendments. (250 words)

Answer Guidelines:

1. Introduction (30-40 words):

- Briefly introduce the case as the first major constitutional judgment safeguarding freedom of speech in independent India. Highlight its context: the ban on *CrossRoads* magazine under the Madras Maintenance of Public Order Act.

2. Significance of the Judgment (100-120 words):

Explain how the Supreme Court's decision clarified the scope of restrictions on free speech under Article 19(1)(a) and differentiated between "security of the state" and "public order."

- Mention the judgment's role in establishing the judiciary as a guardian of fundamental rights and setting a precedent for future cases on free speech.

3. Impact on Constitutional Amendments (70-80 words):

- Discuss how the judgment led to the **First Amendment (1951)**, which introduced "reasonable restrictions" on free speech, including grounds like



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public order, incitement to offense, and friendly relations with foreign states.

- Emphasize the balance it sought to strike between individual freedoms and state authority.

4. Conclusion (30-40 words):

- Summarize the case's enduring legacy as a foundational moment for press freedom and its influence on subsequent landmark judgments, including **Kesavananda Bharati**, which reinforced the basic structure doctrine.

This approach ensures clarity, coherence, and adherence to word limits while addressing the question comprehensively.

