

(1950) 11 MAD CK 0011

In the Madras High Court

Case No : Civil Miscellaneous Petition No's. 5647 and 8581 of 1950

W.N. Srinivasa Bhat and Another

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 02-11-1950

Acts Referred:

Constitution of India, 1950 — Article 13, 19(1), 19(2), 226, 32
Press (Emergency Powers) Act, 1931 — Section 23, 24, 3(2), 4, 4(1)

Citation : AIR 1951 Mad 70 : (1951) 64 LW 82 : (1951) 1 MLJ 115

Hon'ble Judges : Panchapagesa Sastri, J; Govinda Menon, J; Basheer Ahmed Sayeed, J

Bench : Full Bench

Advocate : M.K. Nambiar and A. Ramachandran, for Row and Reddy, for the Appellant; Adv.-General and Public Prosecutor, for the Respondent

Judgement

Govinda Menon, J.—At the very outset of his arguments the learned Advocate-General raised the objection that this Court has no power to

issue a writ of certiorari claimed by the petitioners, and he rested his argument on an interpretation of Articles 225 and 226 of the Constitution of

India. The decision of their Lordships of the Judicial Committee in AIR 1943 164 (Privy Council) which lays down that the High Court at Madras

has no power to issue a writ of certiorari on an officer or official body beyond the limits of the Presidency town of Madras except in a limited

manner as regards British subjects and that the Madras Supreme Court Charter (1800), Clause 8 did not confer such a power has been relied

upon by the learned Advocate General. This decision must be deemed to have overruled the earlier decisions of this Court such as In re Nataraja

Iyer, 36 Mad. 72 : (16 I. O. 755) and the cases which followed the same, to the effect that the High Court has jurisdiction to issue a writ of

certiorari on an officer beyond the limits of its Ordinary Original Jurisdiction. It has been understood both by the Bench and the Bar in this Court

prior to the decision in AIR 1943 164 (Privy Council) that this Court has inherited all the powers of its predecessor, viz., the Supreme Court of

Madras, in the matter of issuing all the prerogative writs which the Court of King's Bench in England had and which were conferred upon the

Supreme Court by its Charter of 1800. There had been a number of instances where writs of certiorari had been issued to tribunals authorities and

officers functioning outside the City of Madras and even a writ of prohibition had been issued by this Court on a Deputy Registrar of Co-operative

Societies functioning outside the City as in Krishna Iyer v. The Secyt Urban Bank Ltd., Calicut, 65 M. L. J. 367 : (A. I. R. 1933 Mad. 6b2). But

the authoritative pronouncement of Viscount Simon in the case AIR 1943 164 (Privy Council) referred to above has reversed the current of

decisions, prior to it and if the Constitution of India did not confer a right on this Court to issue a writ within the limits of its appellate jurisdiction,

then we have to hold that our power is limited to issuing writs within the limits of the Presidency town of Madras.

2. The learned Advocate-General invited our attention to Article 32, Clauses (2) and (3), especially to Clause (3) which says that Parliament may

by law empower any Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under

Clause (2). Clause (2) empowered the Supreme Court to issue the prerogative writs such as habeas corpus, mandamus, prohibition, quo warranto

and certiorari and other directions or orders for the enforcement of any of the fundamental rights conferred by Part in on the citizen. Article 139

enacts that the Parliament may, by law, confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of

habeas corpus, mandamus, prohibition, quo warranto and certiorari, for purposes other than those mentioned in Clause (2) of Article 32. It is

therefore clear that the Supreme Court, as a Court of Original Jurisdiction, has not been empowered to issue writs in the first instance for any

purposes other than the enforcement of the fundamental rights conferred by Part III of the Constitution. In other words, it is not open to any party

to approach the Supreme Court, and pray for the issue of a writ or order on any tribunal, authority or officer, doing judicial or quasi judicial

functions, if such authority, tribunal, or officer was acting in excess of his jurisdiction or refusing to act in the proper exercise of his jurisdiction

except for the enforcement of fundamental rights. The question for consideration is whether Article 226 has conferred that power on the High

Court with regard to the enforcement of rights conferred by Part III. But the learned Advocate-General invites our attention to Article 225 of the

Constitution whereby the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in

relation to the administration of justice in the Court, are laid down as the same as immediately before the commencement of the Constitution. There

is a proviso added to it which has obliterated the invidious distinction that existed prior to the commencement of the Constitution whereby the High

Court was negated the jurisdiction in matters concerning revenue though the Subordinate Courts did have that power. Now, the learned

Advocate-General emphasises the fact that since Article 225 sustains and maintains the power and authority which this Court had on 25-1-1950,

and" since according to the decision of the Privy Council this Court had no power to issue a prerogative writ outside its Ordinary Original

Jurisdiction, unless by express conferment Article 226 gives the power to issue a writ outside the Ordinary Original Jurisdiction, this Court has no

authority to act in the manner prayed for by the petitioners. For this contention he places reliance on the decision of the majority of a Full Bench of

three Judges of the Madhya Bharat High Court reported in *Anant Bhaskar v. State* AIR (37) 1950 M. B. 60: (51 C. L. J. 1852 F.B.).

3. According to the learned Advocate-General the appropriate Legislature, by virtue of the powers conferred on it, has not invested this Court

with the power to issue writs outside its Ordinary Original Jurisdiction after the commencement of the Constitution and therefore we have no power

to entertain the present applications. The distinction between the words ""power"" and ""jurisdiction"" in Article 226 is practically the mainstay of the

contention on the side of the State. It is urged that Article 226 conferred upon the High Court certain powers which they may use for giving relief in

the exercise of their jurisdiction. The extent of the jurisdiction of the High Court and the cases in which it can be exercised and the procedure by

which it can be invoked are matters outside the purview of Article 226. Therefore what is urged is that unless this Court is specifically empowered

under Clause (3) of Article 32, we will not be justified in invoking Article 226 for the issuing of such writs in the exercise of our existing jurisdiction.

We prefer to follow the reasoning and the conclusions contained in the dissenting judgment of Mehta J. of the Madhya Bharat High Court as in our

opinion Mehta J.'s judgment appears to us to be the correct one. The learned Judge was of opinion that Article 32, Clause (3) does not refer to

existing High Courts constituted in the State because notwithstanding anything contained in Article 32, every High Court shall have power,

throughout the territories in relation to which it exercises its jurisdiction to issue directions, orders or writs as mentioned in Article 226 for the

enforcement of the fundamental rights and for any other purpose. What cl, (3) contemplates is that the Parliament may, by law, provide for

conferring jurisdiction on other Courts than the High Courts. In the judgment of the majority of the Full Bench in the aforesaid case, a distinction is

sought to be made between the two alleged concepts of "power" and "jurisdiction." The learned Chief Justice says that "jurisdiction" is an authority

conferred upon a tribunal to determine a matter. "Powers" are the means by which effect is given by Courts to their determination. The question as

regards the meaning of the phrase "for any other purpose" does not arise in this case for what the petitioners contend is that their fundamental rights

are infringed by the demand of security. We do not think it necessary to embark upon discussion about the meaning of term "for any other

purpose" and as to whether it is ejusdem generis with the previous expressions. In substance, the learned Advocate-General contends that though

under Article 226 this Court may have power to issue the various writs, the exercise of such powers can arise only when the Parliament confers

jurisdiction. We do not think that any such interpretation can be put upon the plain meaning of the statute. In our opinion the strained meaning that

is sought to be inferred from the plain words of Article 226 cannot be justified. It seems to us, therefore, that this Court has both the power and

jurisdiction to issue the writs specified in Article 226.

4. Both my learned brethren, Panchapagesa Sastry and Basheer Ahmed Sayeed JJ. have discussed the merits of the applications in great detail and

I do not wish to say anything more except a few words of my own. Ever since the days of Charles I's reign in England when John Milton wrote his

well known treatise "'Areopagetica'", where he pleaded for the freedom of the press and for the abolition of pre-censorship, the question regarding

the liberty of the press has been considered to be a foremost right in all freedom loving countries and I agree with my learned brother

Panchapageaa Sastri J. that the term "'freedom of speech and expression'" would include the liberty to propagate not only one's own views but also

the right to print matters which are not one's own but have either been borrowed from someone else or are printed under the direction of that

person.

5. I also agree with my learned brethren that in view of the decision of the Supreme Court in Romesh Thappar Vs. The State of Madras, and Brij

Bhushan and Another Vs. The State of Delhi, , Section 4(1)(d), Press (Emergency Powers) Act has to be held ultra vires the fundamental rights

conferred under Article 19(1) of the Constitution. I need not recapitulate the reasons given by my learned brethren on that point as I agree in the

main with reasoning on which the conclusion is arrived at by both of them.

6. With regard to the application to quash the orders of security demanded from the Avanti Press, the question as to how far the impugned

passages come within the exception provided in Clause (2) of Article 19 has to be considered. We have already held that the offending articles

contravene the provisions of Section 4 (1) (a) and, therefore, the only question that remains is whether that section is ultra vires. My learned

brother Panchapagesa Sastri J, seems to think that even if the"" newspaper, book, or document, contains words which incite, or encourage, or tend

to incite or encourage the commission of an offence of murder, or of any cognizable offence involving violence, and even if such incitement and

encouragement might undermine the security of the State or tend to overthrow the same, still Section 4 (1) (a) would be ultra vires because as the

section now stands incitements which do not undermine the security of the State or tend to overthrow the same, come within its ambit and since it

is impossible to separate the two different categories of the incitements the entire section should be held to be invalid and ultra vires. On the merits

I have come to the conclusion" that the incitements referred to in the offending; articles have a tendency to undermine the security of the State or to

overthrow it because what is asked of the Andhras is to fight tills every man

sheds his blood and there can therefore be no doubt that the incitement in question is intended to overthrow by force the State and undermine its security. I do not think that in such a case Section 4 (1) (a) can be held to be ultra vires. Even the incitement or encouragement to a single case of murder, or a single cognizable offence involving violence, might have a tendency to overthrow the State; as for example, if the incitement or encouragement is to commit a cognizable offence or to murder a very high functionary of the State whose disappearance itself might tend to or undermine the security of the State, it cannot be held that such an incitement cannot come within Clause (2) of Art, 19. It is very difficult to postulate with any definiteness that the classes of offences mentioned in Section 4 (1) (a) will not undermine the security of the State or may not tend to overthrow it. I, therefore, agree with my learned brother Basheer Ahmed Sayeed J. that the application by the Avanti Press has to be dismissed.

Panchapageaa Sastri, J.

7. These two petitions are filed under Article 226 of the Constitution and pray that appropriate writs may be issued for quashing the orders of the State Government passed under the Indian Press (Emergency Powers) Act, xxix [23] of 1931, (hereinafter called the Press Act or the Act).. The first of these is by the keeper of a printing press known as Avanti Press at Bajamahendrawaram in East Godavari district. On 1-3-1950 he was served with an order u/s 3 (3) of the Act dated 24-2-1950 calling upon him to deposit Rs. 2000 with the District Magistrate of East Godavari on or before 10-4-1950. A Telugu Book called ""Vajrayutham"" was printed in the Avanti Press aforesaid. It is a book of poems. When it was published, the State Government found that it contained passages which, in its opinion, came u/s 4(1)(a) of the Act. The demand for security was made because of this. The second petition is by the publisher of a newspaper entitled ""Aruna"" a Kannada Weekly of Mangalore, published at Mangalore. In the opinion of the State Government the paper contained in its issue of 26-2-1950 matter which came u/s 4 (1) (d) of the Press Act, In exercise of the powers conferred by Section 7 (3) of the Act, the publisher was called upon to deposit with the District Magistrate of South Kanara, security to the extent of Es. 1000. These petitioners had also filed O. P. Nos. 194 and 214 of 1950, u/s 23, Press Act, praying that the

orders demanding security might be set aside. The present Bench was constituted as a special Bench under s. 24 of the Act, to dispose of those

petitions. By judgments delivered by us today those petitions were dismissed, as we were clearly of opinion that the matter complained of did fall

within the scope of Sections 4 (1) (a) and 4 (1) (d) of the Act. In the first petition we found that some poems ""incited commission of offence of

murder and encouraged commission of cognizable offences involving violence.""

In the second petition we found that the articles brought into hatred

and contempt the Government established by law and excited disaffection towards the said Government. As our jurisdiction as a Special Bench is

limited to a consideration of that question only: see *Mrs. Annie Beasant v. Govt. of Madras*, 39 Mad. 1086: (A. I. R. 1918 Mad. 1210: 18 Cr. L.

J. 157 S.B.); *Mrs. Annie Beasant Y. Emperor*, 39 Mad. 1164: (A. I. R. 1918 Mad. 1266: 18 C. L. J. 239 .) and *Annie Beasant v Advocate-*

General, Madras, 43 Mad. 146 : (A. I. R. 1919 P. C. 31 : 20 C. L. J. 693) the present petitions have been filed to have the orders quashed on

the ground of the unconstitutionality of the relevant sections of the Press Act.

8. Mr. M. K. Nambiar appearing for the keeper of the printing press in the first petition, and Mr. Kamachandran appearing for the publisher of the

newspaper in the second, contended (i) that ""freedom of the press"" is included in the phrase ""freedom of speech and expression in Article 19

Clause (1) Sub-clause (a), and it is a right which is guaranteed to the petitioners: (ii) that the sections of the Press Act, Sections 4 (1) (a) and 4 (1)

(d), were an infringement of the citizen's right to freedom of expression and became void under Article 13(1) of the Constitution, and (iii) that the

demand for security under Sections 3 (3) and 7 (3) on the ground that the press was used for "printing objectionable matter coming under s. 4 (1)

(a) and that the newspaper published offending matter coming u/s 4 (1) (d) of the Act, operated by way of previous restraint upon the citizen's

freedom of publication and was analogous to precensorship and was void and unconstitutional. The Public Prosecutor, Mr, V. T. Eangaswami

Aiyangar, appearing for the State in the first of the petitions submitted that the liberty of the press was not expressly mentioned in Article 19(1) of

the Constitution and contended firstly that the impugned Section 4 (1) (a) did not infringe the freedom of expression of the keeper of the press but

was only a permissible restraint which the Constitution allowed under Article 19, Sub-clauses (s) and (6) in relation to the exercise of the fundamental rights under Article 19, Sub-clauses (f) and (g) of acquiring, holding and disposing of property and of practising any profession, or carrying on any occupation, trade or business, and secondly that, in any event, as the printing and publication were prior to 26-1-1950, the order of the Government was not invalid. The learned Advocate-General appearing for the State in the second of these petitions contended firstly that the impugned Section 4 (1) (d) did not offend against Article 19(1)(a) or Article 19(2) of the Constitution and secondly that this High Court had no jurisdiction under Article 226 of the Constitution to issue a writ beyond the limits of its original jurisdiction, and that Article 226 while conferring powers on the High Court did not extend its jurisdiction beyond what it had already under Article 225 of the Constitution. These broad contentions were developed during arguments in greater detail. It is desirable to deal with these topics separately.

9. Is "freedom of the press" a guaranteed right under Article 19(1) ? The State Prosecutor pointed out that the well known expression "freedom of the press" or "the liberty of the press" was not used in this Constitution. Constitutions of several countries make specific mention of the liberty of the press. The State Prosecutor recognised, however, that the decisions of the Supreme Court in what is known as the Crossroads case, *Romesh Thappar Vs. The State of Madras*, and in *Brij Bhushan and Another Vs. The State of Delhi*, are against this contention and are binding on this Court. In the latter case it is stated:

There can be little doubt that the imposition of precensorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Article 19(1)(a) of the Constitution of India.

Even apart from these decisions it is clear that the freedom of the press is a guaranteed right, under Article 19(1)(a), of a citizen who keeps a printing press, or is an editor, or a publisher. No right of a non-citizen such as a resident alien is involved in these petitions. The non-reference to the liberty of the press was merely because it was unnecessary.

10. The Public Prosecutor contended that the guaranteed right covered only

matter of which the citizen was the author and did not extend to matters of which others were authors. There is no justification, in my view, for this unwarranted limitation of the meaning of the phrase in Article 19(1)(a). What is guaranteed is much wider than that. There is no question of copyright involved with which we are now concerned. That is a different matter. The question at issue relates merely to the right of speech and expression. A limited construction would rule out the citizen's rights to recite the Vedas or the holy texts from the Quoran or to read out in public the sermon on the Mount. Coming to secular matters, a recital of the songs of Bharati or the poems of Sarojini Naidu or of Dr. Tagore could all be controlled. Coming even to consideration of political literature, a public reading of the Pledge of Independence (now happily not needed any longer) would be non-guaranteed. I see no justification for placing such a restriction on the wide meaning of the phrase as used in Article 19. Neither the context nor the subject-matter nor the language requires a limitation such as is suggested.

11 Does the word "expression" include mere printing without publication ? The State Prosecutor suggested that it did not. I do not agree. Freedom of expression is wider than freedom of communication. Publication is not a necessary ingredient of the concept. Many authors who have prepared their manuscripts have directed posthumous publication only. It cannot be said that they have not expressed themselves before publication. The language is wide. As it is a fundamental right which is being guaranteed, I see no reason to limit it in the way contended for. Freedom of thought cannot be controlled. Why should there be a restraint on the same, when it is printed though not published ? Indeed the very demand for security in these cases is not because of printing matter neither intended to be published nor never (ever) published but because objectionable matter printed had, in fact, been published. The phrases "freedom of speech and expression", "liberty of the press" are great historic phrases to secure which there had been great constitutional agitation and fight. The full meaning and content of these terms cannot and should not be controlled by a narrow interpretation. These are cherished freedoms now guaranteed as fundamental rights. The Dictionary method of approach for defining the scope of these terms would be unimaginative and somewhat fantastic.

12. The more important argument of the Public Prosecutor was that the impugned Section 4 (1) (a) was really a reasonable restriction in public interests by way of regulating a trade or profession and by way of a restriction on the use of property. This argument is of course confined to the keeper of the printing press and not to the publisher. The scope of the restriction on the keeper of the printing press is merely to control the use of the press and not to abridge his right of freedom of expression, as he is still left free to express himself by speech or otherwise or by printing or publishing in other presses. Such was the argument. Mr Nambiar contended that the Press Act legislation was not one in relation to control of a business or trade or use of articles of ownership. The question, therefore, to be decided is, what is the subject-matter of this legislation and its object ? I am of opinion that the Press Act in question is legislation directly dealing with printing presses and publication of matter. The history of the press laws in India is well known. It is unnecessary to go to earlier legislation; but it is sufficient to say that the Press Act of 1908 gave rise to an agitation in this country that the press laws were unduly oppressive and the same was ultimately repealed on the recommendation of a committee. Consequent on the starting of the Civil Disobedience Movement in 1931 as part of the struggle for the attainment of Swaraj, the Governor General passed an Ordinance in the first instance which was ultimately replaced by this Indian Press (Emergency Powers) Act, 1931. Its provisions were amplified by further legislation by the Criminal Law Amendment Act of 1932. What originally started as a temporary measure to meet an emergency, was in 1935 made permanent, and according to some, continued to disfigure the statute book of this country since then. When the Act was first promulgated in 1931 it was described as an Act to provide against publication of matter inciting to or encouraging murder or violence. The statement of objects and reasons indicated the same. It was stated therein :

Experience has shown that propaganda in furtherance of subversive movements and of crimes of violence is carried on by newspapers, leaflets, pamphlets, bulletins and the like.

In 1932 the heading was amended by the Criminal Law Amendment Act to read as follows: ""An act to provide for the better control of the press"".

The preamble was amended as follows : ""Whereas it is expedient to provide for the better control of the press"". Several new sub-clauses were

added in Section 4 (1) setting out what was considered to be objectionable matter and considerably enlarging the scope of the same. Section 3 (3)

provides for demand of security in certain cases where the press had been used for printing objectionable matter of the type mentioned in Section

4 (1); Section 4 provides for forfeiting the security where the press is used again for printing or publishing similar matter. Even the press can be

forfeited where security had not been deposited. The publication also may be forfeited. Section 5 provides for a deposit of further security where

there is a forfeiture of the deposit previously made. Section 6 provides for the forfeiture of the further security and other publications, if the press is

again used for printing and publishing objectionable matter. Section 7 provides for demand of security on a publisher of a newspaper where the

Provincial Government considers that the newspaper published objectionable matter as aforesaid. If later issues again"contained objectionable

matter, Section 8 provides for the forfeiture of the security deposited and for the annulment of the declaration made by the publisher u/s 5, Press

and Eegistration of Books Act, 1867, where security has not been deposited, and copies of the newspapers also may be forfeited. Section 9

provides for the demand of further security, while Section 10 provides for the forfeiture of the further security and the newspapers. Section 11

makes it an offence to keep a press without making the deposit demanded by the Government u/s 3 or Section 5. The keeper is on conviction

liable to a penalty of fane not exceeding Es. 2000 or simple imprisonment for a term not exceeding sis months or both. Section 12 precludes the

use of the press where a deposit has not been made for the printing and publishing of any newspaper, book or other document after the expiry of

the time allowed to make the deposit, until the deposit has been made. Where a printing press is used in contravention of Section I the Government

may declare the press itself to be forfeited. The Act also contains provisions for the issue of a search warrant.

13. It is fairly clear from the above summary of the main provisions that this Act must be taken to be legislation directly dealing with the control of

the press, i. e., printing and the publication of books, newspapers, leaflets, etc. It is impossible to regard this even in so far as the keeper of the

printing press. is concerned, as legislation having for its subject-matter the regulation of the printing press either as a trade or as a business, or for

the use of the press as an item of property by its owner. The object of the Act is to be gathered from its necessary effect and not from some

purpose or motive which the Legislature may be supposed to have had. The whole! scope and purpose of the Press Act is not to regulate the trade

or business of a printing press as such. It is, as it professes to be for the control of the press. I cannot agree with the contention of the Public

Prosecutor that Section 3 (3) read along with Section 4 (1) (a) merely operates to create a restraint on the use of the press as an article of

ownership, and that it is in no sense a restraint on freedom of expression. It is, in my opinion, no answer to say that it is still open to the keeper of

the press to express himself by printing and publishing anything which he wants in other presses either of his own or of strangers. He is, by the very

terms of Section 12 of the Act, precluded from making use of this press with respect to which a demand for security has been made, for printing or

publishing of any newspaper, book or other document until he makes the deposit and if he does so, without making the deposit, the press itself can

be forfeited. H.e is also liable to conviction u/s 11 which,, be it noted, may come into operation long before the validity of the demand is tested by

the filing of the petition in the High Court u/s 23 and its disposal. In a prosecution for an offence u/s 11, there seems to be no room for defence that

the demand for security was illegal on the ground that the offending article would not come under the relevant clauses of Section 4 (1) (a). The

American Courts have held that exclusion of matter from the main destroys circulation and makes free speech to that extent impossible, and it is no

answer to say that the telegraph can be used instead. I am clearly of opinion that even as regards the keeper of the press the combined operation

of Sections 3 (3) and 4 (1) (a) is to abridge; his freedom of speech and expression.

14. It is next argued that even if it is in one sense an abridgement of the right to freedom of expression, still it may be valid as a reasonable

restriction on the right to engage in business or commercial activity. It is true that normally the keeping of a printing press is a business and

produces an economic return to the owner. At the same time the press is the chief means of publication and the most popular and effective means.

The object of printing is generally publication. Printing press is used as the main instrument for the same. Printing gets over the difficulties" of time and space, which speech has to encounter. The spoken voice, apart from modern inventions of very recent times, does not extend far and vanishes after the speech is uttered, whereas printing perpetuates the expressions and printed matter can be sent to very distant places. It is obvious that the running of a printing press is a thing quite different and distinctive from other kinds of trade. It is really a part and parcel and indeed the primary part of publication machinery. A control over the printing press even as regards the owner thereof will, generally, operate to restrict or abridge his freedom of expression. At the same time the business aspect of the organisation cannot be totally ignored. The printing press is a business which cannot claim immunity from regulations affecting its business side such, for instance, the applicability of factory laws or the Shop Assistants Act with reference to its employees. Having regard to the dual aspect of the printing press being a business as well as its functioning as a means of propagating ideas and thoughts, restrictions may partake of the character of both, i.e., legislative regulations may from one aspect be regarded as restrictions on the use of the press, and from another aspect, as restrictions on its function. Restrictions of one kind may be justifiable under the Constitution, whereas the same restrictions viewed in the other aspect may be unjustifiable. In this very case, regarded as an infringement of the freedom of expression, Article 19(2) will apply. If the restriction is regarded as a restriction of fundamental rights under Article 19(1)(f) and (g), Clauses (5) and (6) will apply. The scope of the exceptions in each case is different. A conflict may well arise in such circumstances, where a particular restriction is constitutionally justified under Clauses (5) and (6) and is constitutionally bad as not coming under Sub-clause (b) of Article 19(1). The test to be applied in such cases cannot be formulated easily. I shall deal with it presently; but before I consider the matter I think it is better to clear up a subsidiary consideration.

15. Mr. Nambiar for the petitioner specifically admitted before the Court in answer to my question that he did not contend that the provisions of Sections 4 (1) (a) and 3 (3) of the Act would amount to an unreasonable restriction within the meaning of Clauses (5) and (6) of Article 19, if the

fundamental rights affected are those set out in Article 19(1), Sub-Clauses (f) and (g). The State prosecutor therefore did not argue this matter.

Nevertheless, I am not satisfied about this point. The demand for security if not complied with, makes the keeper of the press liable for a

prosecution and may subject him to imprisonment and fine. It precludes him before satisfying the demand from making use of the press for printing

and publishing even legitimate matter of an unobjectionable kind, as for instance, a wedding invitation. These disabilities are not imposed as

punishments for an offence proved in the ordinary way but are consequent upon a determination by the executive Government that the press has

been used for printing objectionable matter. The Act does not provide for notice beforehand to the keeper of the press to show cause why an

order should not be passed u/s 3 (3). It is true that the matter can be taken up by him to the High Court; but these disabilities come into existence

even before the determination by the High Court on the merits of the dispute. These are somewhat exceptional provisions of a drastic character

contrary to the well established procedure under the Criminal P. C. and other rules. I have, therefore, some doubts as regards the reasonableness

of the restrictions. I quite realise that the restriction must be shown to be unreasonable, i.e., no rational being can say that it is reasonable, and that

a Court is not to substitute its own judgment of reasonableness in place of the judgment of the Legislature. Very probably, these restrictions may in

the light of the decisions bearing on the point be constitutionally upheld, notwithstanding what is stated above. I mention this merely for the purpose

of reserving my opinion on this point when it is fairly and squarely raised. It is as well that I make it clear that I do not understand Mr. Nambiar's

concession to govern anything other than a demand for deposit u/s 3 (3). Possibly he made this concession, as in this case we are only at the stage

of the demand and the making of the deposit. No question of forfeiture has arisen in this case. The question may take a different complexion

altogether with relation to the sections which provide for forfeiture. I shall leave the matter there with these observations.

16. Turning to the question postulated earlier I may state that I do not regard the right to freedom of speech and expression as having any

preferred place in relation to the other kinds of freedom guaranteed under Article 19, except in so far as the Constitution itself provides differently

in relation to the scope of the exceptions permitted under Clause (2) on the one hand and the other clauses following, in relation to the other

matters. No doubt it is the first of the series in Article 19, even as it stands first in the first amendment of the U. S. A. Constitution. Some of the

American decisions have no doubt recognised it as having a preferred position. Even apart from its occupying the first place, it is fairly clear that

the sanctity of that particular fundamental right cannot be permitted to be taken away by dubious intrusions, and

it is the character of that right, not of the limitation, which determines what standard governs the choice between the individual's freedom and the

State's power of control.

The difference in the importance of these various fundamental rights is, however, expressed by the Constitution by the difference in the character of

the restrictions permitted by the subsequent clauses of Article 19. It will be noted that Clause (2) allows a narrower field for legislative interference

than what Clause (3) to (6) allow. It is unnecessary, therefore, to build any argument upon the superiority of the one kind of freedom over the rest,

except to the extent especially recognised and regulated by the Constitution itself. The rights of free speech and expression and a free press are not

of course confined to freedom of thought and conscience or to religious activity of persons or institutions. Nor are they confined to political matters

alone. All secular causes, great and small, come under its sway. The safeguards, therefore, are not inapplicable to business or to economic activity.

Even with reference to an organisation engaged in business activities and with reference to individuals who make a profit out of it, the safeguards of

freedom of thought and expression are available and are not to be taken away. In reconciling individual freedom with social control, the Court has

to perform a peculiarly delicate task. The Constitution lays down the guaranteed rights and the legislative encroachments which are permitted. Any

particular restriction which is impugned as unconstitutional will have to be judged by its effects on individual freedom and compared with the effect

which its absence will produce on social order and general welfare. Considered as a "business" a reasonable restriction may be necessary and is

permissible in public interests. In a pharmacy where poisonous drugs are sold, the owner may be compelled to separate the poisonous and the

non-poisonous drugs and to keep the former in a separate place under lock and key. Razors and other instruments kept for use in a hair cutting saloon may be subject to a regulation for keeping them antiseptic. In the Interests of hygiene and sanitation, regulations may be made in relation to edible things exposed for sale in restaurants and boarding houses. These may be justified as reasonable restrictions in public interests. Where, however a keeper of the printing press is called upon to make a deposit, because the press has been previously used for printing objectionable matter it is difficult to see how the deposit of security would merely regulate the carrying on of the business as such. The very object of the demand for security is to act as a deterrent from printing or publishing objectionable matter in future. The object is more to control future printing or publication. Its direct effect is to act by way of control over the press in the matter of its functioning. This is not analogous to a regulation which regulates the press in the matter of securing a minimum wage for its employees or of ensuring a maximum number of working hours. A deposit is not required in every case where a printing press is started. The demand for deposit in this case is not a demand in the nature of a licence fee applicable to all owners of printing presses as such. It is a previous restraint on freedom of expression in spite of the device of requiring the deposit as a condition for continuing the use of the press for printing or publication. I cannot agree that the true scope of Sections. 3 (3) and 4 1. of the Act is merely to provide a reasonable restraint in the exercise of a calling or vocation or business. I must hold that it operates to abridge the right of freedom of expression.

17. The question would still remain whether it is constitutional by virtue of the saving clause, Article 19(2), the relevant portion of which is as follows :

Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law in so far as it relates to libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.

I have already set out Section 4 (1) (a), the relevant words being ""inciting to or encouraging commission of an offence of murder or any cognizable offence involving violence."" It is argued that. Section 4 (1) (a) of the Act relates

to a matter which undermines the security of or tends to overthrow the State. The other matters mentioned in Article 19(2) do not apply. It is apparent that the language of Section 4 (1) (a) is much wider than what is described in Article 19(2) as "matter which undermines the security of or tends to overthrow the State." Publications which incite murder of some individuals or commission of cognisable offences involving violence are not always such as may be described to undermine the security of or tend to overthrow the State. The word "State" is no doubt defined in Article 12 as including "the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. But even with this expanded definition in view the scope of s. 4 (1) (a) is very much wider than the language used in Article 19, Clause (2). It may be that in some cases publication which falls u/s 4 (1) (a) may amount to publication of matter undermining the security of or tending to overthrow the State; but the two expressions are not, however, identical. As Section 4 (1) (a) stands at present, it cannot be regarded as constitutionally valid, as it conflicts with Article 19(1)(a). To the extent of such inconsistency it has become void under Article 13(1). The question whether it is possible to separate a part of it as still good even though the whole of it cannot be sustained is more difficult to answer. I shall deal with that matter separately in a later portion of this judgment.

18. The Public Prosecutor further contended that the printing and the publication of the book "Vajrayutham", portions of which contained the offending article, was long prior to 26-1-1950. According to him an offence had been committed earlier and notwithstanding the coming into existence of the Constitution, the Press Emergency Act section would justify the making of the order by the Government in respect of prior publication. This argument is, in my opinion, untenable. The Government order in question was made in February 1950 and was served on 1st March on the keeper of the press. This is after the coming into force of the Constitution. No proceedings have been initiated prior thereto. There is nothing to indicate that the Government applied its mind and decided upon passing an order calling for security prior to 26th January. There is nothing to show even that the publication had come to the notice of the

Government prior to that date. Even if they had applied their mind, the effective order in this case was passed at a time when the Constitution had come into force and if the State had no right then the fact that the offending article had been published earlier would not validate the order.

19. The learned Advocate-General while conceding that "liberty of the press" would come under Article 19(1)(a) of the Constitution contended

that Section 4 (1) (d), Press Act, was not inconsistent with that right. He presented a twofold argument. First he stated the American law on the

subject of freedom of the press as laid down by the decisions of the United States Supreme Court and contended that it was not absolute freedom

which was guaranteed but it was subject to well-defined exceptions, one of which was that it could not be exercised where "there was a clear and

present danger of the spoken or written word disturbing public tranquillity," In such cases where it has such effect the police power so far as State

legislation is concerned and the inherent limitations on the concept of freedom of speech as regards legislation by the Congress operated to justify

an abridgement of the freedom of speech and expression. He submitted that the Courts in this country should declare the law in similar terms. His

second argument was that even otherwise Article 19(2) which permitted legislation on defined matters set out therein would justify the continuing in

force of Section 4 (1) (d).

20. I shall deal with the second argument first. Section 4 (d) is as follows :

To bring into hatred or contempt the Government established by law in British India, or the administration of justice, or any class or section of the

citizens of India, or to excite disaffection towards the said Government,

He contended that this would be legislation with reference to libel, one of the matters coming under Article 19(2). Exciting hatred and contempt

against the Government established by law or exciting disaffection towards Government are parts of what is known as the offence of sedition in the

Penal Code. When the Constitution was being considered, the question of sedition came also for discussion. As pointed out in the judgment of the

Supreme Court in the Crossroads case, *Romesh Thappar Vs. The State of Madras*, aforesaid, the Constitution in its finally amended form

omitted the word "sedition" which was found in the draft. Now it merely contains the words "matter which undermines the security of or tends to

overthrow the State." The Supreme Court decided in the case aforesaid that legislation relating to maintenance of public order was different from legislation which undermined the security of or tended to overthrow the State. While recognising that the distinction was one of degree rather than of kind, their Lordships, though by a majority, held that the Constitution permitted a law restricting freedom of speech and expression only where it is directed solely against undermining the security of the State or the overthrow of it and that a law cannot otherwise fall within the reservation of Clause (2), although the restriction which it seeks to impose may have been conceived generally in the interests of public order. Their Lordships further observed that the imposition of restriction for the wider purpose of securing public safety or the maintenance of public order fell outside the scope of the authorised restrictions under Clause (2) and was void and unconstitutional. The learned Advocate-General recognised that this decision which has got to be followed by us and which is binding on us, as laid down in the Constitution itself, stands in his way. All that he could suggest, when pressed with this difficulty, was that their Lordships did not consider the scope of the term "libel" in Article 19(2). He took us elaborately into the history of what is known as "seditious libel" in English Criminal law and pointed out that exciting hatred and contempt against the Government established by law was, under English law, seditious libel. He suggested that it was open to us to consider the matter afresh and hold if we agree with him that Section 4 (1) (d) could well be recognised as valid and constitutional, if it could be treated as legislation in relation to libel or what he calls, seditious libel. It is not permissible for us in the first instance to try to get over a direct decision of the Supreme Court in this indirect manner. We cannot assume that their Lordships were unaware of the meaning of the term "libel" also in Article 19, Clause (2). Their Lordships make a specific point that the wide concept of the expression "sedition" as reiterated in the latest decision of the Judicial Committee, differing from the view of the Federal Court in India, was specifically under the consideration of the Constituent Assembly and that in its ultimate shape the Constitution used very much narrower words with the deliberate object, as their Lordships infer, of excluding incitements creating hatred and contempt and exciting disaffection against Government from the scope of sedition. Their Lordships say that freedom of speech and expression

cannot be curtailed except in the manner recognised under Article 19(2). The question is, therefore, not open to us in this Court. This is sufficient to

dispose of this contention. I have mentioned it in passing so that the State may have liberty to raise it, if so advised in the highest Court.

21. Turning to the first argument as to the effect of the American decisions and the suggestion that we should declare the law in the same terms, it is

not quite clear to me on what basis the learned Advocate-General wanted to rest his argument. If the right to freedom of expression guaranteed

under Article 19(1)(a) is capable of restriction only under the terms of Article 19(2) and not otherwise, it is difficult to see how in the face of the

judgments of the Supreme Court already referred to, we can add or invent other grounds of exemption. Apparently though he did not state it so

categorically the Advocate-General meant to say that on a true and proper interpretation of the phrase "freedom of expression" in Article 19(1)(a)

there are inherent limitations on the concept of the freedom so guaranteed. Freedom is of course different from license or anarchy. Freedom of one

individual citizen, has got necessarily to be circumscribed by the like freedom of other citizens in any organised society. To that extent, therefore, in

a society under an organised Government the preservation of order is an implied condition for the exercise of the fundamental rights guaranteed to

the citizens. At the same time, it is not open to us to read limitations other than what are exclusively mentioned in Article 19(2) itself. The American

Constitution on which reliance was placed and the American decisions interpreting it have not enumerated any exceptions in general terms. The

way in which the American law has been developed with regard to this question is noteworthy. The expression "abridging the freedom of speech

or "of the press" occurs in the first amendment. The American Courts proceeded on the basis that the Constitution used those words in the sense in

which it was accepted and used by the English Common law at that time and the freedom so recognised as not to be curtailed had its amplitude

subject to the exceptions recognised by the Common law itself. At the same time the Courts recognised that the Republican form of Government

necessarily carried with it a larger meaning of the term than what the English Common law would allow. Though the heads of exceptions to the

existing freedom of right were the same as in English Common law, the precise ambit of those exceptions was not the same in both the countries,

particularly with reference to the law of sedition and seditious libel and the law relating to contempt of Court. Moreover, the American decisions

gave full scope for the doctrine of "necessary and proper powers" recognised under Clause (18) of Article VIII of the U. S. A. Constitution. The

power to regulate foreign and inter-State Commerce and the power to establish post offices and post roads, also empowered the Congress to

curtail freedom of speech and of the press in the exercise of what may be regarded as a power analogous to the police power of the States.

Freedom of speech was not, therefore, an absolute freedom which stood unregulated. Even giving the largest scope for those terms the Courts had

recognised the right to curtail the freedom in certain cases and had laid down a test as follows :

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present

danger that they will bring about the substantive evils that the Congress has a right to prevent. It is a question of proximity and degree.

No doubt this test was not regarded as a formula but was only a "working principle. Nonetheless, the decisions of the Supreme Court reveal a

startling divergence of views, amongst eminent Judges of that Court, in applying the principle aforesaid to concrete cases. In many such cases the

Court was not unanimous but divided in its opinion, often times by a five to four majority. It is with this knowledge of the uncertain application of

the test in various circumstances that the Indian Constitution adopted a different method. Our Constitution is a detailed one and has been framed to

suit Indian conditions and the genius of the country and its requirements in the light of its past history and its future growth. The Constituent

Assembly had before it various Constitutions of different States and had carefully made detailed provisions with reference to these restrictions on

the exercise of fundamental rights. Such restrictions which public interests required in order to reconcile social interest with individual freedom for

which the American Courts had to indent on the police power and the inherent restrictions on the concept of freedom of speech and of the press

have here been tabulated, categorised and formulated in defined exceptions. It is not permissible therefore, in my opinion, for the Court here to

resort to an undefined police power or a power analogous to it so as to extend the scope of the permitted field of legislation. The guaranteed

freedoms can be regulated only by legislation to the extent permitted under Article 19, Clauses (2) to (6). The phrase "freedom of speech and expression" is not term of art. In the face of the decisions of the Supreme Court the contention of the Advocate-General that even apart from the reference to the law of libel under Article 19(1)(b) there can be a restriction on the guaranteed right to freedom of expression is not one which this Court can entertain.

22. Mr. Nambiar contended that the Press Act itself was wholly unconstitutional as it operated to create a previous restraint on publication and was, therefore, an abridgment of the freedom of the press. His main argument was that the demand for security was not an abridgment for a proved offence or crime but was merely as a preventive action to control the nature of the future publications. He submitted that in truth this was a previous restraint in the nature of a pre-censorship on publication. He relied on the well-known passage in Blackstone's Commentaries;

The liberty of the press consists in laying no previous restraint upon publication, and not in freedom from censure for criminal matter when published.

In this connection he referred to the history of the doctrine in chap. VI of Dicey's well known book on the Law of Constitution. It is true that 1951

Madras/11 the demand for security is really by way of previous restraint on future publications and the sole object of the same is to control future

publications. In this sense this is a restraint prior to publication which, like the requirement of a licence for printing or like pre-censorship, is one of

the fundamental obstacles standing in the way of the freedom of the press. I cannot, however, agree with the contention of Mr. Nambiar that the

citizen has got a right to absolute freedom prior to publication as contradistinguished with a regulated right with reference to publications already

made. The Constitution does not draw the line between pre-publication and post-publication as such. The exceptions provided for in Article 19(2)

relate to matters with reference to which the Legislature may enact laws applicable to the stage before publication as well as after publication. No

doubt any restraint by way of precensorship or similar restraint of a like character are not likely to be enacted by Legislatures of modern times in a

democratic State. War-time and emergency legislation stands, however, on a

different footing; but even in normal and peace time such legislation is not precluded by the Constitution as unconstitutional. The necessity for and the wisdom of the measure, if any, will be one for the concerned

Legislature. Such measures are not open to judicial review except in so far as the legislation whether it concerns pre-publication or post-publication

is outside the field of legislative activity permitted under Article 19(2). In *Brij Bhushan and Another Vs. The State of Delhi*, the Act which was

impugned permitted a pre-censorship order. An order of that kind was called in question. The Supreme Court held that the imposition of pre-

censorship on a journal was undoubtedly a restriction on the liberty of the press and then postulated the question as follows :

The only question, therefore, is whether Section 7 (1) (e) (of the East Punjab Public Safety Act V [5] of 1949) which authorises the imposition

of such a restriction falls within the reservation of Clause (2) of Article 19.

It is clear that the latter question would have been unnecessary if the fact of pre-censorship by itself was conclusive of the matter. In the face of this

decision it is not possible to accept Mr. Nambiar's contention that the Press Act either wholly or in part is unconstitutional on the mere ground that

it operates to create restraints previous to publication.

23. The result of the foregoing discussion would amount to this that as regards the first petition, unless Section 4 (1) (a) can be said to be

constitutionally valid and operative to a part at least, i.e., in so far as it takes in words which have a tendency to undermine the security of or tend

to overthrow the State, the petition will have to be allowed. The second petition also will have to be allowed provided we have jurisdiction under

Article 226 of the Constitution to act by way of issuing writ beyond the limits of the Original Jurisdiction of this Court. Those two important

questions, therefore, remain to be considered before we can finally dispose of the applications.

24. I have already held that the language of Section 4 (1) (a), Press Act, is very much wider than what is permitted under Article 19(2). It is

argued, however, that even so any existing law inconsistent with the fundamental right is void only to the extent of the inconsistency and no more

and that in so far as the language of 8. 4 (1) (a), Press Act, will take in cases where the offending matter undermines the security of the States or

tends to overthrow the same, the legislation is saved by Article 19(2). This aspect of the matter was not fully argued at the Bar, though no doubt a brief reference to it was made. "Where certain words are found in a legislative enactment which if interpreted in its literal sense, may fall outside the powers of the Legislature but if confined to a narrower meaning will fall within its powers, the Court as a rule of construction will hold the legislation valid by attributing the latter meaning to the words in question. For instance, the word "property" in the Hindu Women's Eight to Property Act, 1939, had been interpreted by the Federal Court as meaning only non-agricultural property in view of the fact that the Central Legislature which made the enactment had no power to legislate on the subject of agricultural land. The present case cannot fall under that principle. Here words are used which take in a wider class of acts and events than what is permitted to the Legislature. In effect, we have got to substitute for the words in Section 4 (1) (a) different words limiting the scope thereof to cases where the offending matter undermines the security of the State or tends to overthrow it. This is rewriting the section, although it is by way of not introducing a new and different subject-matter but by abridging in the full scope of the enacted words as they would stand and limiting their operation to a narrower field. If it is true that a legislative Act may be entirely valid as to some classes of cases and clearly void as to others. Also, a portion of it may be good and a portion bad. A law may be unconstitutional as regards citizens but not unconstitutional as regards aliens. It may be unconstitutional in so far as it has been given retroactive operation, though it may be valid as regards its future operation. The American Courts have held that a State enactment, invalid as regards inter-State commerce may be good as regards intra-State commerce. The question of the severability of the good and the bad portions may arise for decision in different ways. Indeed, in some cases an enactment as "interpreted and applied" to the particular individual has been declared to be unconstitutional with reference to the particular matter in controversy. Those different aspects of this question of severability have to be kept in view before we can come to a conclusion in the present instance.

25. The precise question that calls for decision now is whether it is open to this Court to hold that the application of Sections 4(1) (a) and 3 (3) of

the Act as a result of which the keeper of the printing press has been called upon to make a deposit consequent on the printing and publication of

the particular offending matter complained of can be sustained on the ground that the offending matter aforesaid is such as to undermine the

security of the State or tend to overthrow the State; in other words, whether the application of the sections in each particular case has got to be

scrutinised with a view to see that the offending article can be brought not within the wide language of Section 4 (1) (a) as such but within that part

of it which may satisfy Section 4 (1) (a), as it stands, and at the same time also amount to undermining the security of or tending to overthrow the State.

On this aspect of the matter the judgment of the Supreme Court in the Crossroads case *Romesh Thappar Vs. The State of Madras*, has to be

borne in mind. Their Lordships say :

Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within

and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be

applied within the constitutional limits as it is not severable. So long as the possibility of its being applied to purposes not sanctioned by the

Constitution cannot be ruled out it must be held to be wholly unconstitutional and void. In other words, Clause (2) of Article 19 having allowed the

imposition of restrictions on the freedom of speech and expression only in cases where danger to public security is involved an enactment which is

capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent.

This clear pronouncement of the highest Court is, in my opinion, decisive of the question. It is not open to us to uphold the constitutionality of

Section 4 (1) (a) even to a limited extent as contended for. If it is true that in the Crossroads case *Romesh Thappar Vs. The State of Madras*, the

matter in question was a ban on the circulation of the journal. In *Brij Bhushan and Another Vs. The State of Delhi*, it was a pre-censorship order

which was also quashed by the Supreme Court. The entire order was quashed, and their Lordships do not uphold it even to any limited extent. The

test, however, is the same. It follows, in my opinion, that both Sections 4 (1) (a) and 4 (1) (d) fall outside the scope of permitted legislation and

would be unconstitutional as operating to abridge the freedom of expression guaranteed by Article 19(1)(a). Moreover, there is nothing to show

that the State Government, before asking for deposit, had applied its mind to the question whether the offending matter was such as to undermine

the State or tend to its overthrow, and not merely whether the matter comes u/s 4 (1) (a) of the Press Act as it stands now.

26. The last question relates to the jurisdiction of this Court to issue the writs under Article 226 of the Constitution. I agree with the conclusion of

my learned brother, Govinda Menon J. that this Court has jurisdiction. The question is fully examined by him. I shall content myself with observing

that while it is true that there is a distinction between jurisdiction and power, jurisdiction may also be implied in certain cases from the conferring of

powers. Article 226 confers the power on the High Court throughout the territories in relation to which it exercises jurisdiction. In my judgment,

these words would imply that this High Court has power to issue writs not only within the limits of its original jurisdiction but "throughout the

territories of the Madras State. The scheme of the Constitution is to provide a remedy for the enforcement of the fundamental rights by enabling

the subject to move the Supreme Court under Article 32(2) and to move the High Court under Article 226(1). The Constitution contemplates the

extension of this remedy by parliamentary legislation empowering other courts also such as Subordinate Courts (see Clause (3) of Article 32). In

this sub-continent of great distances the necessity for speedy resort to a Court of justice easily accessible was visualised by the Constitution and

provided for by Article 226 by giving jurisdiction to the High Courts and leaving it to parliamentary legislation to confer this jurisdiction on

Subordinate Courts, when necessary.

27. In the result I would allow both the petitions and direct the issue of necessary writs to quash the orders of the Government demanding security

from the petitioners. Sections 4 (1) (a) and 4 (1) (d), Press (Emergency Powers) Act, 1931, are in conflict with Article 19(1)(a) of the

Constitution and are, therefore, void under Article 13.

Basheer Ahmed Sayeed, J.

28. These are two petitions filed under Article 226 of the Constitution of India praying this Court to quash the orders passed by the Government of

Madras under Press (Emergency Powers) Act XXIII [23] of 1931 (hereinafter called the Press Act) by issuing appropriate writs or orders, on the

ground that these orders of the State Government contravene Articles 19(1) and 19(2) of the Constitution. The first petition is by the keeper of the

Avanti" press at Rajahmendrawaram, Bast Godavari district, within the State of Madras. The petitioner was served with an order dated 24-2-

1950 under 3.3(3), Press Act, by which he was called upon to deposit a sum of Rs. 2000 with the District Magistrate of East Godavari on or

before 10-4-1950 for having printed a Telugu book called "Vajrayutham" in his press. The book "Vajrayutham" contains numerous poems under

different headings and when it was published by the publisher with whom we are not concerned in this petition, it was found by the State

Government that the book contained passages which offended against a provision of the Press Act, viz., Section 4 (1) (a). The offending passages

are found in Ex. B filed along with the original petition, O. P. No. 194 of 1950. It appears to be the view of the Government that the passages

extracted in the said Ex. B from out of the book printed by the keeper of the "Avanti" press come within Section 4(1) (a), Press Act, and

therefore they fall within the mischief of s. 3 (3) of the said Press Act entitling the Government to call upon the "keeper of the Press" to deposit

security with the Magistrate. So action was taken u/s 3 (3) of the Act.

29. The second petition is by the "publisher" of a newspaper called "Aruna" published in Mangalore, South Kanara.;, district, within the State of

Madras. It is a Kannada weekly of Mangalore and its issue dated 26-2-1950 is said to contain matter of the nature described in Section 4 (1) (d),

Press Act, justifying the Government to call upon the petitioner, who is the editor and publisher of the said newspaper to deposit with the District

Magistrate of South Kanara, a sum of Rs. 1000 by way of security. This order is dated 8-6-1950 and issued in exercise of the powers vested in

the State Government u/s 7 (3), Press Act. A translation of the offending article entitled "22 persons were inhumanly murdered in Salem jail etc.,

which appeared in the petitioner's newspaper "Aruna" dated 26-2-1950 has been filed along with the original petition (O. P. No. 214 of 1950).

30. These two petitioners had originally filed O. P. Nos. 194 of 1960 and 214 of 1950 respectively u/s 23, Press (Emergency Powers) Act,

praying that the orders of the State Government demanding security from the ""keeper"" of the Press and the editor and publisher, respectively of the ""Avanti"" press and the ""Aruna"" newspaper might be set aside on the grounds set out in their petitions. For the disposal of these two petitions, the present Bench was constituted as required under s. 24, Press Act. By two judgments delivered by this Bench today, both the petitions referred to above have been dismissed, as, in our opinion, the matter complained of by the State Government in each of the cases did fall within the scope of Sections 4 (1) (a) and 4 (1) (d), Press Act, respectively and the State Government was justified in calling upon both the petitioners in the said two petitions to deposit the securities required in the orders issued by the State Government. In the first of the petitions, this Bench was of the opinion that some of the poems-extracted in Ex. B contained words, which incited the commission of the offence of murder and other cognisable offences involving violence. The contention of the learned counsel for the petitioner that the matter complained of did not come within the mischief of Section 4 (1) (a), Press Act, was not tenable. Even so, in the second petition, namely, C. P. No. 214 of 1950, this Bench was of the opinion that the article complained of did come within the scope of Section 4 (1) (d), Press Act, in that the words used brought into hatred and contempt the Government established by law and excited disaffection towards the said Government and that the petition was devoid of merits. But, since it was realised by the learned counsel for the petitioners, during the course of the hearing of these two petitions, that the jurisdiction of this Bench constituted under s. 24, Press Act, was confined only to a determination as to whether the book, or the newspaper, in respect of which the order was made by the State Government, did or did not contain any words, signs or visible representations of the nature described in s. 4 (1) (a), Press Act, or Section 4 (1) (d) thereof, it was felt necessary by the learned counsel to file the present civil miscellaneous petitions under Article 226 of the Constitution praying for the issue of appropriate writs or orders to quash the orders of the Government on the ground of unconstitutionality of Sections 4 (1) (a) and 4 (1) (d) of the said Press Act. It is with these petitions that we are now concerned.

31. The points raised by Mr. M. K. Nambiar the learned counsel appearing for the ""keeper"" of the printing press in the first petition are: 1. that

Sections 3 (3) and 4 (1) (a), Press Act are ultra vires of the Constitution of India, in that they abridge the right of the petitioner to freedom of speech and expression, a fundamental right guaranteed by the Constitution under Art, 19(1)(a); (2) that the said sections of the Press Act are not saved by Article 19(2) of the Constitution, which permits legislation by the State affecting the fundamental right guaranteed under Article 19(1)(a) of the Constitution in certain- specified matters; (3) that the demand for security u/s 3 (s), Press Act, on the ground that the press was used for printing objectional matter coming u/s 4 (1) (a), Press Act, operated by way of previous restraint upon the petitioner's right to freedom of speech and expression and was in the nature of precensorship and, therefore, it was void and unconstitutional and (4) that Section Section (3), Press Act, enabling the Government to demand such security was inconsistent with the provisions of Part III of the Constitution as laid down by Article 13 of the Constitution. Mr. Eamachandran, the learned counsel appearing for the editor and publisher in the second petition, also contends on the same lines as Mr. Nambiar in respect of the order served on his client u/s 3 (3), Press Act, and urges that Sections 3 (3) and 4 (1) (d), Press Act, are inconsistent with the Constitution and offend against Articles 13 and 19(1)(a) thereof.

32. The Public Prosecutor, Mr. V. T. Eangaswami Aiyangar, who appears for the State in the first petition, submitted various points in support of his contention that the order issued against the "keeper of the printing press" was sustainable and that Sections 3 (3) and 4 (1) (a), Press Act, did not offend against Article 13 or 19(1)(a) or 19(2) of the Constitution. In the first place, he argues that "freedom of the press" has not been specifically mentioned in Article 19(1)(a) of the Constitution and what is mentioned there is only "freedom of speech and expression", while in the Constitutions of America and other countries having a written constitution "freedom of the press" or "liberty of the press" has been specifically mentioned among the guaranteed rights and that since Article 19(1)(a) of the Indian Constitution has omitted to include the "freedom of the press or "the liberty of the press" it would not be proper to give any wider meaning than what is warranted by the express language of Article 19(1)(a) of the Constitution. His point seems to be that what has been guaranteed by the Constitution is only "freedom of speech and expression" and though

the term "expression" may relate to utterances in writing or in print, or manifestation or representation of feelings, intentions or thoughts in writing

the word "expression" cannot be equated with the words "liberty of the press" in the sense in which the phrase is used in the other Constitutions.

33. As against this contention, Mr. Nambiar invited our attention to the proceedings of the Constituent Assembly, when the Constitution was on

the anvil and especially to the debates relating to the framing of Article 19 of the Constitution of India. A reference to the debates of the

Constituent Assembly as published in vol. 7, No. 17, pp. 712 to 716 and No. 18 of the same volume, p. 77 and following reveals that, when the

question was raised by some of the framers of the Constitution that the phrase "freedom of the press" should also be included in addition to the

words "freedom of speech and expression" in Article 19, it was made clear in reply by the members of the drafting committee that "freedom of

speech and expression" means "freedom of the press" as well, and that there was no specific necessity to include the words "freedom or liberty of

the press" as such. Dr. Ambedkar who piloted the draft in the Constituent Assembly is reported to have said that no special mention of the "liberty

of the press" was necessary in view of the fact that in so far as citizens were concerned, "freedom of speech and expression" meant and included

freedom of the press" as well. Though the manner in which the need for the addition of the words "freedom of the press" has been dealt with does

not seem to be quite satisfactory and while we feel that it would have been eminently desirable to have included in Article 19(1)(a) the phrase

freedom or liberty of the press" as well, still we feel it difficult to exclude the concept of the "liberty of the press" from the actual terminology used

in Article 19(1)(a) of the Constitution. The term "press" according to A. Y. Dicey, the author of the Law of the Constitution, means periodical

literature in general and particularly the newspapers, and "freedom of the press", according to him, is a person's right to make any statement he

likes in books or newspapers. Freedom of expression, as found in Article 19(1)(a) of our Constitution, cannot be said to exclude a person's right

to make any statement he likes in books or newspapers, and it will be no violence to the meaning of the word "expression" if we so include within

its connotation this right. Besides the debates of the Constituent Assembly at the time of the framing of the Constitution referred to above, the

learned counsel for the petitioner in the first petition has also invited our attention to two decisions of the Supreme Court, namely, *Romesh Thappar*

Vs. The State of Madras, and *Brij Bhushan and Another Vs. The State of Delhi*, where the learned Judges of the Supreme Court have taken it for

granted that the term "freedom of speech and expression" include "freedom of the press" as well. In the first of the two decisions referred to above,

Patanjali Sastri J. delivering the majority judgment in the Supreme Court has observed that,

There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation.

The learned Judge further quotes in the course of his judgment the following :

Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little

value"--ex parts *Jackson*, 96 U. S. 727."

In the second of the above decisions also, *Patanjali Sastri J.* again delivering the judgment of the Supreme Court for the majority has observed,

there can be little doubt that the imposition of precensorship on a journal is a restriction on the liberty of the press which is an essential part of the

right to freedom of speech and expression declared by Article 19(1)(a) of the Constitution of India.

He further quotes a passage from *Blackstone's Commentaries*, vol. IV pp. 151, 152 which runs as follows :

The liberty of the press consists in laying no previous restraint upon publications, and not in freedom from censure for criminal matter when

published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press.

34. These two decisions no doubt are concerned mainly with the right of "publication of matter in journals" which had been interdicted by the State

Governments under special legislation enacted by the States" Legislatures and the person concerned and affected in each of these cases was a

printer, publisher and the editor of the journals in English called "Cross roads" in the one case, and "Organiser" in the other case. It should also be

noted that in these two cases, the question whether the "keeping of a printing

press"" could be included within the scope of Article 19(1)(a) did not arise and was not the subject-matter of the decision. However, the fact remains that, in the light of the two decisions referred to above and the well-known rule of construction that the terms used in a statute should be given the meaning which they were intended to be given at the time of the adoption of the statute, it could not be inconsistent, nor could it amount to any violation of the true meaning and intent of the language, to hold that the phrase ""freedom of speech and expression"" occurring in Article 19(1)(a) does include the ""freedom or liberty of the press"" as well. In this view, the contention of the learned Public Prosecutor that Article 19(1)(a) does not include liberty of the press cannot be accepted.

35. The next point argued by the learned Public Prosecutor is that though the various sections of Press (Emergency Powers) Act deal not merely with the ""keeper of the printing press"" but also with the ""publisher and editor of any newspaper"" or journal or magazine, still in the present case, the person who is sought to be dealt with by Section 3 (3), Press Act, is only the keeper of the printing press and that Section 3(3) in BO far as it related to the keeper of the printing press seeks only to regulate the use of the printing press by its keeper and not to restrict the liberty of the individual to make any statement he likes in books, or newspapers, or magazines. Therefore, he contends that in so far as the ""use"" of the printing press by its keeper is concerned, there cannot be any violation of the right of freedom of speech and expression, if the ""use"" of such a printing press is controlled; and the proper article under which such control can be legitimately exercised by the State is not by virtue of the reservations contained in Article 19(2), but that the use of a printing press by its keeper is permitted to be regulated by any existing laws, or by such laws as may be enacted by the State under the reservations contained in Articles 19(5) and 19(6). In effect, his argument is that, while Article 19(1)(a) would not apply to the ""use of the printing press by its keeper,"" Articles 19(f) and 19(g) would apply, and according to Articles 19(5) and 19(6), any existing law or legislation is permissible, which may impose reasonable restrictions on the exercise of any of the rights in the interests of the general public. According to the learned Public Prosecutor, the petitioner in the first of the petitions before us cannot be said to be

exercising any right of "freedom of speech and expression" in having undertaken to merely print matter for another individual, either for remuneration or free of any remuneration. The "keeper of the printing press," by no means, can be said to be making any statement he likes in books or newspapers and thereby exercising his right to "freedom of speech and expression," when he prints matter for another individual who may either publish or not publish the same. The position would not be any different, if he prints well-known works either of a secular or religious nature. Of course, the question of his reading or reciting or circulating such matter by publication would be otherwise. In that case, he would certainly be exercising his right of freedom of speech and expression. On the other hand, by printing the book in question, "Yajrayutham," he has simply used his press in the exercise of his right to the property, namely, the printing press, which he owns for the purpose of practising a profession or occupation, or trade or business of printing and has not exercised any personal right of the liberty of the press or freedom of speech and expression. Therefore, when the keeper of the press, the petitioner before us, has actually used his press for printing matter for another person, which incites to or encourages, or tends to incite or to encourage, the commission of any offences of murder, or any cognizable offence involving violence, the State will be entitled to regulate the use of such a printing press by its keeper in the interests of the general public by imposing reasonable restrictions such as are found in Section 3 (3), Press Act.

36. We think there is considerable force in this contention of the learned Public Prosecutor. A reading of the Press Act and an analysis of the various sections thereof discloses that the Press Act is intended not merely to control "publication" of newspapers, journals, magazines etc., but also to control and regulate "the use of the press" as a profession or business. The preamble, no doubt, is in very general terms when it says that it is enacted to provide for the better control of the press, It must be remembered that the words "better control" are used in comparison with the provisions of the already existing law in what is known as the Press and Registration of Books Act (xxv 25. of 1867). That is why frequent references are also made in the Press Act to this earlier Act which, apparently, was found to be inadequate to meet the requirements of the

changed situation. But the scheme of the Press Act seems to be to control the press in both its aspects, namely, "publication" of periodical literature in general such as newspapers, news sheets and magazines, etc., and also the "use" of the press, or the press or the printing press, as both a property and as a profession, occupation, trade or business. A scrutiny of the various sections of the Press Act abundantly supports that the scheme of the said Press Act is twofold as set out above. Section 2, Press Act, and Sub-Clauses (1), (5), (6), (9) and (1) thereof define the various items which go to constitute periodical literature, newspapers, magazines, etc., whereas Sub-clauses (7) and (3) define what a press and a printing press is. That is to say, Sub-Clauses (7) and (3) deal with the press in its narrower aspect, namely, as a property used for the purpose of carrying on a trade or business, viz., printing, while the other sub-clauses referred to above deal with the press in the wider aspect in which it is understood, viz., as the exercise of a liberty to make any statement or utterances, or express any opinion in books, newspapers or magazines, etc.

Section 3, Press Act, refers to deposit of security by keepers of printing presses as the marginal note indicates. A close reading of the said section itself would show that whereas Sub-Clauses (1) and (2) deal only with the keeper of a printing press and the deposit of security by him, Sub-clause (3) deals with the security that may be required from a "keeper of a press" which has been used for the purpose of printing or publishing any newspaper, book, or other document containing any words, signs, or visible representations of the nature described in Section 4 (1) of the Act.

This sub-clause clearly envisages two aspects, namely, the business of printing and also the publication of the matter printed. No doubt, sometimes, one and the same person may be the printer as well as the publisher and editor, but in the present case, it must be remembered that it is only the printer, i.e., the keeper of the press who is dealt with for having used his printing press for printing objectionable matter. Section 4, Press Act, similarly deals with the power of the State Government to declare either security or press forfeited in cases where action has been taken u/s 3 (8), Press Act, and where either printing or publication has taken place in violation thereof. Section 5 deals only with the "keeper of the press" in so far as the deposit of further security is concerned, after action has been taken against the keeper of the press u/s 4 or s. 6. Section 6 similarly deals

with the power of the Government to declare further security made by the keeper of the printing press and the publications that were published forfeited to the Government.

37. But when we come to Section 7, Press Act, the person dealt with under that section is the "publisher" of the newspaper and not the "keeper

of the press. Under Sub-section (1) of this Section 7, the publisher of a newspaper may be required to deposit security for reasons to be recorded

in writing. Sub-section (2) says that, where security has been deposited and where no order is made by the State Government u/s 8 in respect of

such newspaper--i.e., where there is no order as to forfeiture of the security--the security shall, on application by the "publisher, be refunded. Sub-

sections (3) and (4) of the same section enable the State Government to take action against the publisher, if the publisher publishes any

objectionable matter that may come within the scope of Section 4 (1), Press Act. It is to be noted that no mention of the keeper of the press, is

made in this section. Section 8 again deals with the newspaper in respect of which a security has been ordered and it enables the State

Government to forfeit that security, if objectionable matter which might fall under s. 4 (1) of the said Press Act is published. Section 9 deals with

the deposit of further security by the publisher of a newspaper. Section 10 deals with the power of the State Government to declare further

security deposited by the publisher of the newspaper and the newspaper itself being forfeited, if matter of the nature described in s. 4 (1) is

published in the newspaper. These three sections also do not even as much as refer to the keeper of the printing press. Section 11 deals with

penalty for keeping a press or publishing any newspaper without making deposit. Here again, we see that the two distinct aspects of the press are

dealt with, namely, the keeping of a press and the publishing of a newspaper. Section 12 deals with the consequences of failure to deposit security

as required, by the keeper of the printing press as also failure on the part of a publisher of a newspaper when either or both of them have been

called upon to furnish security under the relevant sections referred to above. Section 13 again refers to the return of security deposited in certain

cases by the person who is the keeper of the press, or by the person who is the publisher of the newspaper. That is to say, when the keeper of the

press ceases to keep the press, or when the publisher ceases to publish the newspaper, he is given the right to apply to the Magistrate for return of the deposit. It is unnecessary for us to consider the further sections which follow Section 13, Press Act. However, when we come to Section 23, it relates to the application to the High Court to set aside orders of the State Government under Sections 3 (3) or 7 (3) in respect of the keeper of a printing press, or the publisher of a newspaper as the case may be. Here again, the keeper of the press is dealt with distinctly and separately from the publisher of the newspaper. Section 23 (2) refers specifically only to the keeper of the printing press in respect of which an order for forfeiture has been made under Sub-section (2) of s. 12. Section 25 again deals with both the keeper of the press and the publisher of a newspaper and what orders have to be passed in either case, when the High Court comes to a decision on the applications filed. It would be evident, therefore, from a perusal of the sections that the Press Act, as already stated, deals both with regulating the trade or profession of printing as such and also controls the publication or dissemination of facts and opinions by means of newspapers, news sheets, books or other documents etc. That seems to be the comprehensive scheme underlying the Press Act.

38. If such be the aim and object of the Press Act, the question then arises as to whether, if the keeper of a printing press in the exercise of his profession, occupation, trade or business of printing, uses his press which is his property, for the printing of matter which incites to or encourages or tends to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, as has been already found by us in the present case, such trade, occupation or business of printing could be regulated or not in the interests of the general public ; or whether the keeper of a printing press has absolute and unfettered rights to use his press in any manner he likes. Another question that arises is as to whether the provisions of the existing law, namely, Sections 3 (3) and 4 (1) (a), Press Act, which seek to regulate the profession of printing by a keeper of the press by preventing or restraining the printing of matter which incites to or encourages or tends to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, are conceived in the interests of the general public or not. The

further question which arises is as to whether the provisions of the existing law, namely, Sections 3 (3) and 4 (1) (a), Press Act, are saved by the reservations contained in Articles 19(5) and 19(6) of the Constitution. In our opinion, if the Press Act also aims at the regulation of the trade, or profession or occupation of printing in addition to the control of the publication of newspapers, news-sheets, magazines, etc., as we hold it does, any provision contained therein which imposes a reasonable restriction upon the exercise of such a profession with a view to prevent the printing of matter, which incites to or encourages, or tends to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, must be held to be a legitimate restraint, which is permissible in the interests of the general public, under Sub-clauses (5) and (6) of Article 19 of the Constitution. Nothing could be considered to be more necessary and legitimate in the interests of the general public and the well being of the society, than to see and provide that any citizen, in the exercise of his profession, or in the use of his property, does not use his property, or exercise his profession in a manner that may possibly create public disorder or disturbance to the peace, and thereby prove detrimental to the interests of the general public, or affect the personal liberty, rights and safety of the other members of the society in the State. Therefore, it follows that any provision of law to regulate or control any profession, or the use of any property by any citizen in a manner not to affect the interests and rights of the members of the general public in the State, cannot by any means, be said to be a violation of his right to exercise his profession or the trade and much less a violation of his right of "freedom of speech and expression". In this view, we have no hesitation in holding that Section 3 (3) and Section 4 (1) (a), Press Act, are not inconsistent with Art. 13 of the Constitution or Articles 19(f) and 19(g) of the Constitution, for we hold that the limitations and restrictions imposed by the said sections of the Press Act are in full accord with and are saved by the reservations contained in Articles 19(5) and 19(6) of the Constitution, which permit the existing law to operate or a fresh law being enacted to regulate any trade or profession or the use of property in the interests of the general public.

39. In fact, Mr. Nambiar appearing for the petitioner in the first of the petitions did not choose to argue contrary to the contention that Sections 3

(3) and 4 (1) (a), Press Act, may amount to an abridgment of the right of the petitioner guaranteed to him under Articles 19(f) and 19(g), and that

such abridgment is saved by Articles 19(5) and 19(6). In fact, he conceded the position that, if the right of the petitioner to carry on the profession

or trade or business of printing alone is considered to be affected by the Government order requiring the petitioner to deposit security, then

an abridgment of this right, under Sections 3 (3) and 4 (1) (a), Press Act, should be valid and protected by the reservations contained in Articles

19(5) and 19(6). But what he strenuously contended was that it was not mere use of the printing press that had been sought to be affected by

Sections 3 (3) and 4 (1) (a), Press Act, but the right of the petitioner to print any matter he likes in his press, and that a restriction imposed upon

his right to print any matter he likes would be an abridgment of his right to "freedom of speech and expression" including the "liberty of the press".

His point; is that the right to print matter in the printing press is itself a right that has been guaranteed by the Constitution to the petitioner,

irrespective of whether such matter is published or not, either by him or by somebody else, and irrespective also of the fact, whether the matter

thus printed is in his own, or of somebody else. That is to say, the petitioner, according to him, has an absolute right to print anything he likes, that

under Article 19(1)(a), such a right is guaranteed to him, and that it cannot be abridged except when the restrictions partake of the nature provided

for in Article 19(2). At the same time, Mr. Nambiar also emphasises that every matter that is printed is intended only for publication and there is no

purpose of printing any matter, if it is not intended for publication. Printing of matter is only for publication and the right of "freedom of speech"

comprehends, according to him, everything that is ancillary and subsidiary to such publication. Printing of any matter through a printing press is,

therefore, according to him, part of the exercise of the "freedom of speech and expression", that printing is an ancillary process of the means of

expression and that the dominant idea underlying the scheme of the Press (Emergency Powers) Act, according to him, is to regulate or control the

means of publication and thereby to control the "freedom of speech and expression". He urges that the Press (Emergency Powers) Act is a law

directly dealing with the right of "freedom of speech and expression" and that it is not a law directly dealing with the trade or profession of printing,

or the running of a printing press. It is the functioning of the press and not the property in the press that is aimed at by the Press (Emergency

Powers) Act. This is what Mr. Nambiar urges in his elaborate argument,

40. The further point stressed by Mr. Nambiar is that an enactment like the Press (Emergency Powers) Act and particularly Sections 8 (8) and 4

(1) (a) could be held to be valid only if they could be brought under the saving clause of Article 19, namely, Sub-clause (2) which lays down that

the operation of any existing law in so far as it relates to any matter which undermines the security of, or tends to overthrow, the State, shall not be

affected by anything stated in Sub-clause (a) of Article 19, Elaborating this point, it is the contention of Mr. Nambiar that Section 4 (1) (a), Press

Act, which lays down that the printing or publishing after printing in a press, any book, or document containing any words, signs, or visible

representations which incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognizable

offence involving violence, cannot be brought under the scope of the terms used in Sub-clause (2) of Article 19 and cannot be held to be a matter

which undermines the security of or tends to overthrow the State. That is to say, any matter that is printed and/or published, which is objectionable

and comes within the scope of s. 4 (1) (a), Press Act, cannot be construed to undermine the security of the State or to overthrow the State.

Consequently, unless and until the matter is such as to undermine the security of or tends to overthrow the State, the absolute "liberty of the Press

and the "freedom of speech and expression" guaranteed under Article 19(1) of the Constitution cannot be affected. In spite of the able argument of 1951

Madras/12 & 13 merits advanced by Mr. Nambiar, we must confess, we cannot agree with him on the several points raised by him.

41. In this connection, Mr. Nambiar invites our attention to the first, the fifth and the fourteenth amendments of the American Constitution in order

to reinforce his argument that, while the American Constitution does not confer any positive right, it only restricts the curtailment or abridgment of

the existing rights viz., "freedom of speech and of the press, life, liberty and property" and these rights cannot be affected or taken away except

under due process of law; that in our Constitution, the position is otherwise, namely, that Article 19(1) confers certain positive rights on the citizens.

It is true that the trend of the decisions of the Supreme Court in the United States of America and the various authorities on Constitutional Law have held that the first amendment of the American Constitution and the fourteenth amendment have the same scope, namely, that the Congress or the States shall make no law unreasonably of abridging the "freedom of speech and of the press." It is also laid down by those decisions, even as has been the case in the United Kingdom, that there shall be no legal censorship against the press viz., what is understood to be the expression of opinion in periodical literature or in the form of books or newspapers etc. But nowhere has any decision of the Supreme Court of the United States of America, or any author of books on Constitutional Law in the United States, ever laid down that the Federal or the State Government had no power at all to legislate upon the subject of "freedom of speech and of the press." On the other hand, it has been uniformly held that the rights of freedom of speech and of the press are not absolute rights, but that both the States and the Federal Government in the United States have the power to restrict the freedom of speech and of the press within the limits imposed by the Constitutional guarantee on Governmental power to enact legislation in that regard.

42. The question then arises as to what exactly is the scope of the Constitutional limitation against the control of personal liberty, such as the freedom of speech and of the press," by the Government of the State or of the Union. That the fundamental right of the "freedom of speech and expression" guaranteed by Article 19(1)(a) of our Constitution can also be legislated upon by the States or the Union Government, cannot be denied, for Article 19(2) itself specifically lays down the limits or reservations within which such legislation upon the said right guaranteed by Article 19(1)(a) of the Constitution can be enacted. The question then is what exactly is the interpretation that has to be put upon the scope and implications of the reservations contained in Article 19(2) of the Constitution so far as the fundamental right of "freedom of speech and expression is concerned. It is a well-known fact that, even in the United States of America, notwithstanding the passage of the first amendment to the Constitution, the Alien and Seditions Acts of 1798 and the Espionage Act of 1917 were enacted by the Congress and the decisions of the

Supreme Court of the United States held these Acts to be valid, though these were wartime legislations. In times of peace, however, the same Court has held that any legislation which controls the "freedom of speech and of the press" will amount to due process of law, when it was a proper exercise of the police power of the State; and the proper exercise of the police power it has been held, would be whenever the Supreme Court of the United States finds a paramount social interest involved. In the case of seditious libel, i.e., libel on Government as distinguished from libel on private individuals, in the early stages, the Supreme Court of the United States thought that, when words directly urge or cause unlawful acts, a paramount social interest was involved and any legislation by the State controlling the expression of such words would be legal. However, at a later stage, the same Court thought that when the words might have an indirect or remote tendency to cause unlawful acts, social control of freedom of speech and of the press would be in the proper exercise of the police power vested in the State, by reason of the due process of law clause in the fourteenth amendment. Still later, the same Supreme Court of the United States has held that, when there is a clear and present danger that words will cause unlawful acts, the exercise of police power under the due process of law clause is allowed and the control of freedom of speech and of the press is sustainable as legal and legitimate. Though this seems to be the latest position so far as the Supreme Court of the United States is concerned, still according to H.E. Willis, the well-known author of the Constitutional Law of the United States, the position of the law, so far as the "clear and present danger" test is concerned, has been left in some obscurity by some of the later decisions. But this much seems to be clear, so far as the American Constitution is concerned, that the test of the remote and indirect tendency to cause unlawful acts cannot be the test of the Constitutionality of the social control of the right of "freedom of speech and of the press". But in the ultimate analysis, the sum and substance of the series of decisions of the United States of America on the Constitution, the meaning of the guarantee of "freedom of speech and of the press" seems to be that personal liberty is protected against social control, either by previous restraint or by subsequent liability, unless the Supreme Court passing both the utterance and the statute thinks such social control reasonable (See "Willis on Constitutional Law, 1986 Edn.

page 499).

43. If such, in brief, be the state of law of the American Constitution, what we have to ascertain is what would exactly be the meaning of the

guarantee of "freedom of speech and expression" in our Constitution in relation to the impugned sections of the Press (Emergency Powers) Act. In

this connection, it must be remembered that the Constitutional guarantee of the "freedom of speech and expression" in our Constitution is intended

only to secure the unrestricted discussion of public affairs, especially by the minorities which require protection against the majorities, which may be

in power and in charge of the administration of the State. As already observed, this right is not absolute and cannot prevent laws which may forbid

the abuse of this guarantee by imposing previous restraint upon publication or subsequent punishment for such publication which may be deemed to

be contrary to the public welfare. If we examine in this light, the contents of Section 4 (1) (a), Press (Emergency Powers) Act, it will be found that,

what is sought to be prevented or restricted is the incitement or encouragement to commit the offence of murder, or the incitement and

encouragement to commit any cognizable offence involving violence, by the "keeper of a printing press". No reasonable person could hold that, to

make criminal the counselling of murder or the commission of offences involving violence would be an unconstitutional restriction of the right of

"freedom of speech and expression", nor could any one deny that the privilege of the liberty of the press and of speech, as a right to freely discuss

public affairs, can be exercised only as long as the privilege was not used for the purpose of stirring up violence or breach of the law, or so long as it

does not amount to a direct incitement to disorder and commission of offences involving violence. By no means could it be claimed that the

"freedom of speech and expression" guaranteed by Article 19(1) of our Constitution intends to give immunity for every possible use of the language

even to use language so as to incite or encourage murders, or any other offences involving violence. Section 4 (1) (a), Press Act, refers plainly to

incitement to illegal acts which may amount to breach of the law and also create disorder and disturbance of public tranquillity. The Press Act,

therefore, interdicts both the printing of such words as are calculated to cause breaches of the law, create public disorder and disturb public

tranquillity, as are found in the book ""Vajrayutham"" referred to earlier, by imposing a restraint by way of deposit of security and also by way of forfeiture of such a security when deposited, if the ""keeper of the press" still persists in the commission of such unlawful acts as are contemplated in Section 4 (1) (a), Press Act.

44. It is now for us to consider whether the unlawful acts which are sought to be prevented by exercise of the powers vested in the State

Government u/s 3 (3), Press Act, could be so prevented and whether it is a proper exercise of the police power that is vested in the State to do

so. The further question that arises is whether these sections, namely, 3 (3) and 4 (1) (a) do not relate to a matter which undermines the security of

the State, and whether these provisions are not saved by Article 19(2) of the Constitution. In our opinion, the incitement to or encouragement to

offences of murder and the incitement to and encouragement to the commission of cognizable offences involving violence is certainly of a serious

nature which will undermine the security of the State. The security of the State, in our opinion, constitutes public welfare, public peace and public

safety, and the unlawful acts sought to be prevented by the impugned sections of the Press Act would certainly endanger the security of the State,

if left unchecked. If the security of the State does not involve these items which are essential for an orderly government of the State, it is difficult to

conceive what else could be meant by the security of the State. It is true the term security of the State has not been defined in the Constitution but

in our view internal peace, internal safety and internal order to make up the security in times of peace as well as in times of war and any acts

calculated to upset these essential factors must be considered to undermine the security of the State. Therefore, even applying the clear and present

danger test, followed by the Supreme Court of the United States of America, we are inclined to hold that Sections 3 (3) and 4 (1) (a), Press Act

are fully saved by the reservations contained in Article 19(2) of the Constitution and they fall within the ambit of permissible legislation.

45. It is well known that in the American Constitution, the postal power for regulation of mails and the power to regulate inter-state commerce

have also been exercised by the Congress of the United States of America to exclude from the mails, among other things, writings calculated to

produce sedition or to incite murder or arson. Congress, it is stated, has also enacted a number of laws, the principal purpose of which is to

protect the public from fraud, immorality or something else deemed inimical to public welfare. The theory upon which such legislation is based

seems to be that the postal power may properly be used to remedy the evil spread or perpetuated by the use of the mails. It is, however, stated

that the Congress, in the exercise of its Federal power, namely, to maintain postal services, may determine what is to circulate in the mails and

eliminate whatever in its judgment is deceptive, fraudulent, or otherwise detrimental to the public welfare. That is to say, a law can be made by the

State which may prescribe what it deems injurious to the public peace and welfare, notwithstanding the fact that such law will infringe the right of

freedom of speech and of the press.

It is on this basis again that postal authorities have the delegated power from the Congress in the United States to exclude obscene literature,

objectionable advertisements, writings calculated to incite to crime and matters advocating or urging treason, insurrection, or forcible resistance to

any law of the United States of America.

If such be the case with regard to the exercise of postal power to regulate mails, there can be little doubt that the State can exercise similar power

to inhibit matter being printed, or published by the keeper of a printing press which incites to crime, such as murder or other cognizable offences

which amount to not merely a breach of the laws but also injurious to the public peace and welfare which in turn cannot but undermine the security

of the State. If incitement to crime such as the commission of murder and other offences involving violence will not undermine the security of the

State, it is not possible to say what else will be the effect of such incitements on the State. (One may usefully refer to the book entitled "the

American System of Government, Federal, State and Local" by Fergusson and Mr. Henry, pp. 394 ff, 1947, Edn. in this connection.)

46. Mr. Nambiar, no doubt, argues that, when such matter is printed or published, it can be made the subject of a prosecution and the offender

may be punished and that there can be no justification for imposing a restraint in the nature of a pre-censorship. It may, however, be noted that the

demand for security in the present case is made only after the objectionable

matter has been printed by the keeper of the press and published by some other person. But it is well known that in a majority of cases, criminal prosecution may not be the effective remedy. Instead of it, the more effective remedy usually adopted happens to be to impose a ban by an administrative order issued under the law, thereby preventing the keeper of the printing press or the publisher from indulging in such unlawful acts, which involve danger to the security of the State. Therefore, it is that censorship is resorted to in order to suppress facts or opinions that might undermine the existing order, or the authorities, or the State as such. It is unnecessary to recall to mind in this connection the very wide and comprehensive definition of the term "The State" contained in Article 12 of the Constitution. It may be that the unlawful acts envisaged by the impugned Section 4 (1) (a), Press Act, do not constitute an "overthrowing of the State," but certainly they do constitute an undermining of the security of the State. In this view it is not possible for us to accept the contention that the impugned sections are wider in scope than what is permitted under Article 19(2) of the Constitution. In our opinion, there is certainly an undermining of the security of the State by reason of a direct incitement to murders and other cognizable offences though not an overthrowing of the State, as we have already found in the printed matter in question. Consequently, it is unnecessary for us to consider in this connection, the question of separability or not of the impugned provisions of the Press Act as that question does not arise in the present context, and in the view we have taken of the matter. We are, therefore, of the opinion that Section 8 (3) and 4 (1) (a), Press (Emergency Powers) Act, are not repugnant or inconsistent with the Constitution, but are saved by the reservations contained in Article 19(2) of the Constitution, assuming at the same time that, by reason of the exercise of the powers vested in the State Government u/s 8 (3), the right of "freedom of speech and expression" guaranteed by Article 19(1)(a) is sought to be curtailed or abridged.

47. The learned Public Prosecutor contended that the notice demanding security in the first of the petitions could not be affected by the Constitution which came into operation after January 1950, especially in view of the fact that the publication had taken place prior to the Constitution itself coming into force. However the action taken is after January

1950, though the publication is long prior thereto. The fact remains that actually, the Government Order was passed in February 1960 and was served on the party early in the month of March 1950. This makes it clear that the order demanding security was issued after the Constitution came into effect. It would have made, in our opinion, a difference if proceedings had been initiated against the "keeper of the printing press" for the impugned matter prior to the coming into effect of the Constitution.

We agree with our learned brother, Panchapagesa Sastri J. that there is nothing in the Government Order to indicate that the Government applied its mind and decided upon passing an order calling for the security prior to 26-1-1950. In so far as the Order seems to have taken effect in this case after the Constitution came into effect and if the State Government had no right to pass such an order after the Constitution had come into effect, it will make no difference virtually as to whether the publication took place earlier or later. But in view of the fact that we have held that the State Government is justified in imposing the ban on "the keeper of the press" for the reason that the impugned sections of the Press Act are not inconsistent with or repugnant to the Constitution, this question does not seem to be of any material importance. We do not think, therefore, it is necessary for us to dilate further on this argument of the learned Public Prosecutor.

48. In regard to the second petition, the main point argued by Mr. Ramaehandran appearing for the petitioner is that the matter complained of does not come u/s 4 (1) (d), Press (Emergency Powers) Act. In this connection, he has invited our attention to the two decisions of the Supreme Court, namely, *Romesh Thappar Vs. The State of Madras*, and *Brij Bhushan and Another Vs. The State of Delhi*, where it has been held that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State, or the overthrow of it such law cannot fall within the reservations contained in Article 19(2) of the Constitution although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. His further point is that though Article 19(2) of the Constitution permits legislation on the subject of libel with a view to restrict the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution still the subject

of sedition is not one of the subjects on which legislation can be taken to have been permitted under the reservations contained in Article 19(2) of

the Constitution. The matter that is now the subject of the Government order against the publisher of the ""Aruna"" is essentially seditious and

sedition in so far as it has been excluded from the scope of Article 19(2), the Government order under s. 4 (1) (d) is an infringement of the right of

freedom of speech and expression, by reason of the fact that Section 4 (1) (d) is itself ultra vires of the Constitution and is repugnant to it.

Therefore, Article 18 of the Constitution makes it unconstitutional. The learned Advocate-General, however, raised two points against the

contentions of the learned counsel for the petitioner in the second petition. The first point that the learned Advocate-General raised was that the

petitioner had no right to come before this Court for the issue of a writ in a matter like the present one. The proper remedy open to the petitioner,

according to the learned Advocate General, is that he should have gone before the Supreme Court and applied to that Court under Article 82 of

the Constitution. According to him, Article 226 of the Constitution does not confer power on the High Court to issue writs as regards the rights

guaranteed under Part III of the Constitution. It can only issue writs in matters arising within its original jurisdiction. On this point, our learned

brother, Govinda Menon J. has delivered judgment and since we fully concur with him, there seems to be no need for us to further elaborate this

objection of the learned Advocate-General.

49. The second point raised by the learned Advocate-General for the petitioner in the second petition is that the order of the Government under

Sections 8 (3) and 4 (1) (d), Press Act does not offend Article 19(1)(a) of the Constitution and that the two sections are saved by the first part of

Article 19(2). He, therefore, contends that the impugned sections of the Press Act should not be considered to be void, because of the fact that

Article 19(2) of the Constitution gives ample scope to any State to legislate on libel and libel must be construed in a general and comprehensive

sense so as to include what is known as ""seditious libel"" or ""libel on Government."" He, of course, concedes that the term ""freedom of speech and

expression"" may include the ""liberty of the press"" as well. But a reference to the history of the Constitution so far as it related to the framing of

Article 19(2) would show that the makers of the Constitution deliberately omitted the word "sedition" from the scope of Article 19(2) of the

Constitution and the cases cited by the learned counsel for the petitioner namely Romesh Thappar Vs. The State of Madras, and Brij Bhushan and

Another Vs. The State of Delhi, seem to warrant the position taken up by the learned counsel for the petitioner to the effect that the matter

complained of against the petitioner in this petition does not fall within the scope of permissive legislation contemplated by Article 19(2) of the

Constitution. In view of what we have already stated in the foregoing parts of this judgment and also in view of what our learned brother,

Panchagesa Sastri J. has observed in his elaborate judgment on this point we do not think it is necessary for us to traverse the same ground.

Suffice it for us to say that an examination of the scope of s. 4 (1) (d) leaves us with no other impression than that it will be straining too much to

bring it within the scope of Article 19(2) of the Constitution. The omission to include "sedition" in Clause (2) of Article 19 may perhaps be due to

the fact that the Constitution has envisaged a republican form of Government and also has provided for an amendability of the Constitution itself.

Numerous cases of the Supreme Court of the United States of America have also been cited to us which have dealt with this point under the

American Constitution. We have already examined in general terms the trend of the decisions on seditious libel in so far as they related to the

American Constitution and it is not necessary for us to recapitulate the effect of those decisions over again. In our opinion, Section 4 (1) (d), Press

Act, cannot be claimed to be consistent with the Constitution, nor could we say that Section 4 (1) (d), Press Act, is saved by the reservations

relating to permissive legislation contained in Art 19(2) of the Constitution. In our view, even applying the clear and present danger test of the

Supreme Court of America, s. 4 (1) (d) as it stands amounts to a restriction on the "freedom of speech and expression" guaranteed to the citizen

under Article 19(1)(a) and must be held to be an unconstitutional limitation not warranted by Article 19(2) of the Constitution. Therefore, while we

have to dismiss the first petition for the reasons above stated, we think the second petition has to be allowed, and we do so accordingly.

50. By Consent--C. M. P. No. 8581 of 1950 is dismissed. Leave to appeal to the Supreme Court under Article 182 is granted. C. M. P. No.

5647 of 1950 is allowed and the Order of the State Government is quashed.
Leave to appeal under Article 132 is granted.