

Romesh Thapar Case - Important SC Judgements for UPSC

Many Supreme Court judgements have changed the face of Indian polity and law. These landmark SC judgements are very important segments of the [UPSC syllabus](#). In this series, we bring to you important SC judgments explained and dissected, for the benefit of IAS aspirants. In this article, you can read all about the Romesh Thapar case. Get a list of [landmark SC judgements for the UPSC exam](#) in the linked article.

Romesh Thapar Case UPSC Notes:- [Download PDF Here](#)

Romesh Thapar Case

Case Summary - Romesh Thapar v State of Madras (1950)

Freedom of the press is an essential component of a thriving democracy and this right is not limited to newspapers but to other vehicles of information flow also. In this day and age, it can be argued that such a right extends to expressing opinions on various digital platforms without fear of repercussions. In the case of Indian Express newspapers v. Union of India, the apex court has made the following observations:

The expression "freedom of press" has not been used in Article 19 but it is comprehended within Article 19(1)(a). The expression means freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers.....Freedom of press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.

The press is often described as the fourth estate and rightly so, thus the freedom of the press is one of the most cherished rights in a truly democratic setup. It is this freedom that allows the press to bring to the common citizen the failings that are committed by people who serve in the echelons of governance. The freedom of press extends not only to the content that is published and propagated but also to the volume of information that is to be circulated.

In the course of several decades since the Constitution was adopted, the Supreme Court has always acted in a manner that errs on the side of safeguarding the rights of the press and several landmark judgements in this respect are a testimony to the earnest effort of the Court. The earliest case which dealt directly with the rights of a free press was the case of Romesh Thapar v. State of Madras.

Background of the case

The petitioner Mr. Thapar was a well-known communist of his time and was very sceptical of the policies of the then Prime Minister Pt. Jawaharlal Nehru, especially his foreign policy.

- He published a few articles in his weekly English magazine called *Crossroads* that expressed his scepticism in this regard.
- As he was writing these articles, a communist movement was gathering steam in parts of Madras and the authorities felt that the petitioner's articles will not be helpful with regard to stopping the enthusiasm among the members of the said communist movement.
- In the month of March 1950, the Government of Madras by virtue of an order imposed a ban on the entry and circulation of the magazine in these areas.
- The order was issued pursuant to Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 which empowered the government to prohibit the circulation, sale or distribution of the journal

in certain parts of the province of Madras for the purpose of ensuring 'public safety' or preserving 'public order.'

- Aggrieved by this government order Mr. Thapar approached the Supreme Court with the contention that the impugned order infringed upon his [fundamental right to free speech and expression](#).

Issues before the Court

- The issue that the Court was to adjudicate upon was whether the order under Section 9(1-A) of the Madras Maintenance of Public Order Act was in violation of Article 19(1) (a) of the Constitution or did it fall within the restrictions provided in Article 19(2).
- The Court also had to determine whether the impugned provision was void under Article 13(1) of the Constitution by virtue of it being in violation of the fundamental right of free speech and expression.
- The Advocate General who appeared on behalf of the State of Madras also raised an additional issue whereby he argued that the petitioner has to first approach the High Court under Article 226 and only when he had exhausted that remedy, he could bring his grievances to the [Supreme Court](#).

The Court's Ruling

- With reference to the issue of approaching the High Court first, the Court held that the two remedies i.e., to approach the High Court and to approach the Supreme court were analogous in nature and that the petitioner was free to approach the Supreme Court for the enforcement of his fundamental rights without approaching the High Court first.
- The Court, while ruling on the validity of the impugned order that banned the entry and circulation of the weekly magazine into certain parts of Madras, held that the freedom of speech and expression includes freedom of propagation of ideas that can only be ensured by circulation.
- The Court ruled that it was clear that the impugned order passed was in violation of Article 19(1) (a) unless Section 9(1-A) of the impugned Act is saved by the reservation provided for in Article 19(2).
- The Court in order to ascertain the validity of Section 9(1-A) delved deep into the origins of the impugned Act, which lay in the [Government of India Act of 1935](#) and the Constituent Assembly debates.
- The Court finally invoked the Doctrine of Severability whereby it is seen whether severing or removing a provision from legislation changes the legislative intent behind the enactment and if not, the impugned provision may be declared invalid.
- After applying the rule of severability to Section 9(1-A) of the impugned Act, the majority held it to be void under Article 13(1) of the Constitution and thus ultra vires as it was inconsistent with the provisions of Part III of the Constitution.
- Justice Fazal Ali however in his dissenting opinion held that maintenance of peace and tranquillity was an integral part of maintaining state security, thus contending that the impugned Act imposed reasonable restriction on the freedom of Speech and Expression.

Conclusion

It has to be noted that this judgement came during the phase while post-constitutional India was still in its nascent stage. But the rationale behind this judgement set a healthy precedent both in terms of protecting press freedom and defining the scope of reasonable restrictions on the fundamental rights as provided in Part III of the Constitution. The Court by putting restrictions on the powers of the State to interfere with individual rights paved the way for other judgements that championed the cause of the individual against the might of the State which further led to immense confidence among the masses in the high levels of integrity among the judicial branch of the government.

Reacting to this judgment, the Parliament amended the Constitution in 1951. 1st Constitutional Amendment Act, 1951 added 'Public Order' as a reasonable restriction under 19(2) on the Freedom of Speech & Expression - 19(1)(a).

