**URN: 1358**

# XIII K.K. LUTHRA MEMORIAL MOOT COURT, 2017

*Before*

THE SUPREME COURT OF CAMELOT

GOVERNMENT OF EREHWON ……..……..APPELLANT

*v.*

MS. ELIZABETH BENNET……..…….... RESPONDENT

**[MEMORIAL ON BEHALF OF THE APPELLANTS]**

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# STATEMENT OF FACTS

## BACKDROP

Camelot is a culturally and ethnically rich democratic country situated in the Asian sub-continent. It has adopted a federal structure since 1947, with a Parliamentary system of governance comprising of a single House of Citizens. Its neighbours are the Republic of Tallisker, Genghiztan and India. Despite having strong historical ties with them, it has had a tumultuous relationship with Genghiztan, having engaged in war with it twice.

Erehwon, the capital of Camelot, is a federal territory that enjoys a special status under the Constitution, and the distribution of power with the Government of Camelot is determined by the same, read with a Statute of the Government of Erehwon.

## EVENTS LEADING UP TO AND FOLLOWING THE RALLY

Ms. Elizabeth Bennet, the leader of the Hogwarts Party, is a newly elected Member of the Parliament. Since April 2015, she has been organizing movements aimed at revolutionary overhauling of Camelot. Her campaigns involved praising Camelot's rival, Genghiztan. The concerned Chief Minister of Erehwon, Mr. Panda publicly opposed Ms. Bennet's acts. Subsequently, in May, 2015, Ms. Bennet launched another campaign "*Mock and Shame the Psuedo-Nationalist Government*". As a part of the campaign, a public rally was called by Ms. Bennet. She envisioned a fresh start for Camelot by overthrowing the current government.

Thereafter, the public and some members of her party, inspired by the speech, committed arson and burned public property. Thousands of people gathered near important landmarks of Erehwon. Some people, comprising members of the party, mocked Government officials by gifting them toys for their naïve and childish political stance.

## THE PROCEEDINGS

Ms. Bennet and some other persons were charged under Sec. 421-A, 351-A and 210-B of the Penal Code of Camelot in a complaint, along with a FIR. Mr. Panda obtained sanctions from the Lieutenant Governor of Erehwon as per Sec. 196 of the Camelot Criminal Procedure Statute. Accordingly, a final report was filed against Ms. Bennet, Mr. Fun Toosh, and Mr. Gonsalves, consequent to which the Magistrate took cognizance and issued a summons.

A trial was conducted that resulted in Ms. Bennet's rightful conviction. She was awarded the death penalty. On appeal, the decision was overturned. The Sate of Erehwon has preferred an appeal by way of a Special Leave Petition. *Resultantly*, the present case is listed for final hearing before the Supreme Court of Camelot.

## ISSUES RAISED

**I.**

WHETHER AN OFFENCE UNDER SEC. 421-A HAS BEEN ESTABLISHED?

**II.**

WHETHER DEATH PENALTY IS PROPORTIONATE TO THE OFFENCE OF SEDITION IN THE PRESENT CASE?

**III.**

WHETHER AN OFFENCE UNDER SEC. 351-A HAS BEEN ESTABLISHED?

**IV.**

WHETHER AN OFFENCE UNDER SEC. 210-B HAS BEEN ESTABLISHED?

**V.**

WAS A VALID SANCTION NEEDED IN THE PRESENT CASE?

## SUMMARY OF ARGUMENTS

### [1]. THE RESPONDENTS SHOULD BE CONVICTED UNDER SEC. 421-A

Sec. 421-A of the Penal Code of Camelot cannot be struck down because the restrictions imposed under Sec. 421-A are reasonable. They are in the interest of public order and they are not vague, since violence has been held to be the threshold for conviction. Furthermore, the restrictions under 421-A are essential as they account for future eventualities. Ms. Bennet is liable under Sec. 421-A as there is a *direct nexus* between her speech and the ensuing violence. The threshold of violence has been met in the present case. Her speech has the intent as well as the tendency to incite violence.

### [2]. DEATH PENALTY IS AN APPROPRIATE PUNISHMENT FOR SEDITION.

The death penalty is an appropriate punishment for sedition for two reasons. *First*, the tests for awarding the death penalty have been fulfilled. These are: the crime test, which deals with aggravating circumstances; the criminal test, which pertains to mitigating circumstances; and the rarest of the rare test. The crime test has been fulfilled since Ms. Bennet's actions led to the attacking and burning of property. This aggravates the sedition. Additionally, the decision making authority vested with Ms. Bennet and she was at the forefront of planning/organizing the offense. This increases her culpability. *Furthermore*, the criminal test has been fulfilled. Due to the gravity of offence committed by Ms. Bennet, courts should exercise their discretion and not grant leniency in sentencing. The facts of the case also do not shed light on any mitigating circumstances. *Finally*, the rarest of the rare test has been satisfied as sedition is nearly allied to treason. Judges are required to survey a comparative pool of cases to determine whether a case deserves the death penalty. Keeping in mind the deterrent effect on society, the death penalty should be imposed for sedition.

*Secondly*, the principles of sentencing have not been violated. It is necessary for the courts to respect legislative wisdom. Punishing sedition with death is not grossly disproportionate, in light of how similar offences are dealt with in common law.

### [3]. AN OFFENCE UNDER SEC. 351-A IS ESTABLISHED IN THE PRESENT CASE.

The impugned speech was not only intrinsically inflammatory, but was also delivered with the requisite *mens rea*. The same was directed at the appellants. The words used had a tendency to incite violence and were potentially subversive to the established governments. The consequences of the act will be presumed to be intended by the respondent. There is no such requirement of distinct groups to be referred to under the provision since its object is maintaining

public harmony. Even assuming such a requirement, it is submitted that there was mention of the group to be targeted, as evident from the facts.

**[4]. CHARGE OF CRIMINAL CONSPIRACY HAS BEEN MADE OUT AGAINST MS.BENNET**

Ms. Bennet is liable under Sec. 210-B of the Penal Code of Camelot because she conspired with Mr. Gonsalves and Mr. Fun Toosh to commit the offences under Sec. 421-A and 351-A. Even if the co-conspirators are not conclusively identified, Ms. Bennet is still liable for the abovementioned offences as it is certain that she was one of the conspirators. It is not necessary for the other conspirators to have been prosecuted before prosecuting her.

**[5]. VALID SANCTION IS NOT NEEDED IN THE PRESENT CASE**

The requirement of sanction for prosecuting a public servant doesn't arise in each and every case. It has to be considered whether the impugned acts come under the ambit of official duties. The same has to have a rational nexus with the discharge of official duties and should not be pretentious in nature. Further, the objection as to the issue of sanction should be raised at the earliest stage. This is to protect the legislative purpose of the provision so that if there is a possibility of the public servant escaping vexatious/ malicious prosecution, it is tested before the commencement of the trial itself.

## WRITTEN PLEADINGS

### [1]. OFFENCE UNDER SEC. 421-A HAS BEEN ESTABLISHED

[1.1] SEC. 421-A IS A REASONABLE RESTRICTION ON THE FREEDOM OF SPEECH

**1.** There is generally a presumption in favour of constitutionality of a statute.[1] Admittedly, freedom of speech is a fundamental right,[2] but this right is not unfettered in most common law jurisdictions and reasonable restrictions may be placed on it. For instance, content which undermines the security of a state or is against public order can be restricted.[3] The crime of sedition is to incite people to insurrection and rebellion. It basically includes all endeavours to promote public disorder.[4]

**2.** In the instant case, it is submitted that the restrictions under Sec. 421-A are imposed in the interest of public order **[1.1.1]**; the threshold for its applicability has been established to be violence **[1.1.2]** and restrictions under Sec. 421-A are essential **[1.1.3]**.

#### *[1.1.1] Restrictions under Sec. 421-A are in the interest of public order*

**3.** Sedition is made an offence to tackle the anti-national elements who intend to disrupt public harmony and incite violence.[5] This offence is called upon when the accused incites disaffection towards the government established by law.[6] The restriction under Sec. 421-A serves the purpose of protecting public order. The restriction has a *direct and proximate nexus* with the same as it punishes those actions which have a tendency to disrupt public peace and tranquility.[7] Thus, Sec. 421-A clearly falls within the ambit of preventing public disorder and hence is a reasonable restriction to free speech.

#### *[1.1.2] The threshold for conviction under sedition is violence*

**4.** The legal maxim *ut res magis valeat quam periat*[8] implies that courts should strongly lean against any construction which renders a statute futile. The construction given by courts should

[1] R.M.D.Chamarbaugwal v. Union of India, AIR 1957 SC 628.
[2] Nationwide News v Wills, (1992) 177 CLR 1; Attorney-General v. Corporation of the City of Adelaide, (2013) 249 CLR 1.
[3] Romesh Thapar v. State of Madras, AIR 1950 SC 124; Chintaman Rao v. State of Madhya Pradesh, AIR 1951 SC 118.
[4] Nazir Khan v. State of Delhi, (2003) 8 SCC 461.
[5] Niharendu Majumdar v. K.E. 1942 F.C.R. 38.
[6] Balwant Singh v. State of Punjab, AIR 1991 SC 2301.
[7] Kedar Nath Singh v State of Bihar, AIR 1962 SC 955; Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia, AIR 1960 SC 633.
[8] Tinsukhia Electricity Supply Co. Ltd. v. State of Assam, (1989) 3 SCC 709.

further the object of incorporation of that provision.[9] Courts in common law jurisdictions have employed the standard of violence or public disorder, in dealing with sedition.[10]

**5.** Sec. 421-A Clause (1) of the Penal Code of Camelot is analogous to that of Sec. 124-A of the Indian Penal Code. The Indian Supreme Court drew a clear distinction between "advocacy" and "incitement", stating that only the latter could be punished. The U.S. Supreme Court also laid down 'imminent lawlessness' as the threshold for sedition.[11] Hence, violence is the standard for conviction under Sec. 421-A, and the said section is neither vague nor overbroad.

### *[1.1.3] Restrictions under Sec. 421-A takes into account future eventualities*

**6.** Sec. 421-A was enacted to curb public disorder and violence. Hence, the policy underlying the said provision demands it to contemplate several eventualities that might occur. This is the rationale behind the employment of overarching language which is nevertheless *comprehensive*[12] in nature. Mere overbreadth of the provision does not merit striking down the same when the enactment was directed to contemplate several eventualities to safeguard national interest.[13]

## [1.2.] THERE IS A DIRECT NEXUS BETWEEN MS. BENNET'S SPEECH AND THE ENSUING VIOLENCE

**7.** Rebellion refers to deliberate organized resistance by force and arms, to the laws or operations of the government.[14] Sedition embraces all those practices which disturb public tranquility of the state, and lead ignorant persons to subvert the government and the laws of the country.[15] Admittedly, casual raising of slogans is not sedition where it *does not* lead to violence.[16] However, in the present case, Ms. Bennet's speech did not just culminate in chanting of slogans. It was seditious as it had a tendency to incite violence **[1.2.1]** and was intended to incite violence **[1.2.2]**.

### *[1.2.1] Ms. Bennet's speech had the tendency to incite violence*

**8.** In *Kedar Nath Singh* v. *State of Bihar*,[17] the Supreme Court of India held that referring to the Criminal Investigation Department as dogs and saying that the '*congress goondas*' will be liquidated, which led to violence, was held to be sedition.

[9] T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481; Indian Medical Association v. Union of India, (2011) 7 SCC 179.
[10] Shreya Singhal v. Union of India, AIR 2015 SC 1523.
[11] Brandenburg v. Ohio, 395 U.S. 444 (1969).
[12] R.K Karanjia v. Emperor, AIR 1946 Bom 322.
[13] The Sunday Times v. United Kingdom, (1979) 2 EHRR 245.
[14] Henry Campbell Black, BLACK'S LAW DICTIONARY, 1139 (Bryan A. Garner ed., 7th edn., 1999).
[15] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.
[16] Balwant Singh v. State of Punjab, AIR 1991 SC 2301.
[17] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

**9.** In the instant case, Ms. Bennet's speech called for people to rebel against the government, who she referred to as "*dirty leeches on our minds*".[18] As stated previously in Sec. [1.2] under ¶ 7, 'rebel' by definition is seditious. Ms. Bennet accused the government of being 'corrupt' and 'useless war mongers'.[19] She intended 'striking at the very root of the evil government'.[20] She asked the people to overthrow and break the government into pieces to effectuate a fundamental overhaul.[21] Her huge popularity[22] among the youth also played a part in creating tremendous fervour. The tendency of her speech to incite violence is clear from her words and their repercussions. It is violative of Sec. 421-A(c) and hence Ms. Bennet can be charged for sedition.

### *[1.2.2] Ms. Bennet's speech was intended to cause violence*

**10.** According to the Supreme Court of India, an expression must be intrinsically dangerous to public interest and of the nature of a '*spark in a powder keg'* to be called seditious.[23] In the present case, the party members mobilized the public to protest against the government. This came right after Ms. Bennet's speech which had already incited the masses.[24] It was a calculated move on the part of Ms. Bennet and her party members to get back at the present government. Her appeal to the masses to '*vaporize the government*' indicates that she was inciting them to use unlawful means. Furthermore, she was prepared to sacrifice her own life if need be, and asked the attendees to do the same.[25] This is clearly suggestive of her intentions to cause violence. It is submitted that all the restrictions mentioned in Sec. 421-A have been violated and thus Ms. Bennet should be convicted under the same.

## [2]. THE DEATH PENALTY IS THE APPROPRIATE PUNISHMENT FOR SEDITION IN THE PRESENT CASE.

**11.** It is well-settled that in cases pertaining to death penalty, three tests need to be satisfied prior to the sentencing stage.[26] It is submitted that the conditions for awarding the death penalty have been fulfilled in the present case [**2.1**]. Furthermore, the principles of sentencing have not been violated in the present case as the punishment is proportional to the mischief it seeks to cure [**2.2**].

[18] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[19] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[20] ¶ 8.1, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[21] ¶ 8.1, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[22] ¶ 4, Page 1, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[23] S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574.
[24] ¶ 8, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[25] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[26] Bachan Singh v. State of Punjab, (1980) 2 SCC 684; Shankar Kisanrao Khade v. State Of Maharashtra, (2013) 5 SCC 546; Kansas v. Marsh, 548 U.S. 163 (2006).

[2.1] THE THREE TESTS FOR AWARDING THE DEATH PENALTY HAVE BEEN SATISFIED IN THE PRESENT CASE.

**12.** It is well-settled that the death penalty is imposed only in the most exceptional of circumstances. Generally, courts have laid down three tests that have to be satisfied in any given case in order to impose the death penalty. These tests are: the crime test, which deals with aggravating circumstances; the criminal test, which pertains to mitigating circumstances; and the rarest of the rare test.[27] Such a judicial approach endorses the twin elements of individualized yet principled sentencing. It is submitted that the crime test has not been satisfied in the present case [**2.1.1**]. *Additionally*, the criminal test has not been satisfied [**2.1.2**] and; *finally*, the present case falls into the category of rarest of the rare cases, where the death penalty can be awarded [**2.1.3**].

### *[2.1.1] The crime test has been satisfied in the present case.*

**13.** Courts in various jurisdictions have placed a high premium on aggravating circumstances.[28] The aggravating circumstances are aptly named as the 'crime test' since the focus is on facts and elements of the crime committed.[29] Aggravating circumstance refers to "*A fact or situation that increases the degree of liability or culpability for a tortuous/criminal act.*"[30] There is no exhaustive list of aggravating circumstances,[31] and judges have the discretion to identify aggravating facts which would warrant a higher sentence,[32] in addition to statutory aggravating circumstances.[33] Generally, the nature of the offence is considered as an aggravating factor.[34] Focusing on the nature of the offence, i.e. sedition, the recent Sedition (Amendment) Bill, 2015 of Malaysia defines aggravated sedition as a seditious act *causing* bodily injury or damage to property.[35] The underlying rationale is that violence caused by any seditious act would aggravate the offence. In the present case, in light of the above common law proposition, the nature of the offence is aggravated sedition, since Ms.

[27] Bachan Singh v. State of Punjab, (1980) 2 SCC 684; Shankar Kisanrao Khade v. State Of Maharashtra, (2013) 5 SCC 546; Gurvail Singh alias Gala v. State of Punjab, (2013) 2 SCC 713; Santosh Kumar Singh v. State of M.P., (2014) 12 SCC 650.
[28] Zant v. Stephens, 462 U.S. 862 (1983); Gregg v. Georgia, 428 U.S. 153 (1976); Cunningham v. California, 549 U.S. 270 (2007).
[29] Gurvail Singh alias Gala v. State of Punjab, (2013) 2 SCC 713; Birju v. State of M.P., (2014) 3 SCC 421; Mahesh Dhanaji Shinde v. State of Maharashtra, (2014) 4 SCC 292; Dharam Deo Yadav v. State Of Uttar Pradesh, (2014) 5 SCC 509; Cunningham v. California, 549 U.S. 270 (2007).
[30] Henry Campbell Black, BLACK'S LAW DICTIONARY, 236 (Bryan A. Garner ed., 7th edn., 1999).
[31] Jagmohan Singh v. State of Uttar Pradesh, 1973 SCR (2) 541.
[32] People v. Black, (2005) 35 Cal 4th 1238.
[33] Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think*, 98(6), COLUMBIA LAW REVIEW, 1538, 1547 (1998).
[34] 262nd Report of the Law Commission of India, The Death Penalty, ¶5.2.36 (2015).
[35] Sec. 4(1A), The Sedition (Amendment) Bill, 2015.

Bennet's speech on June 1, 2015, led to the mobilization of 30,000 people, which culminated in the attacking and burning of public property.[36]

**14.** Courts have also considered *leadership role* as a serious aggravating circumstance.[37] The underlying rationale is that leaders play an important role in the planning, directing, and success of the criminal activity. Thus, leaders have higher culpability.[38] In the present case, Ms. Bennet is the leader of the student-dominated Hogwarts Party.[39] Since most of the members of this party are young students, who have susceptible minds, it is logical to infer that Ms. Bennet would exercise significant control over these members. Furthermore, Ms. Bennet started a campaign called *Dawn of Justice*.[40] This was followed by Ms. Bennet starting a new and far more aggressive campaign, *Mock and Shame the Pseudo-Nationalist Government*,[41] under whose banner she committed sedition. She stated, "*Together, we will overthrow the government! Break the government to pieces* […]"[42] Hence, the decision-making authority vested with Ms. Bennet and she was at the forefront of planning/organizing the offense. We, therefore, submit that the crime test has been satisfied by the presence of aggravating factors in the present case.

### *[2.1.2] <u>The criminal test has been satisfied in the present case.</u>*

**15.** Mitigating circumstances are those elements of a defendant's character, offence, background, or any other factor that might form the basis of reducing a defendant's sentence.[43] Mitigating factors will be deemed sufficient to grant leniency only when they can balance the aggravating factors.[44] *Additionally*, depending on the gravity of the crimes committed, courts may find that the weight of mitigating factors is limited/non-existent at the sentencing stage.[45] The principle behind prior convictions and age being employed as mitigating factors is tolerance for human frailty. However, whether these factors are capable

[36] ¶ 9, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[37] People v. Reyes, 255 A.D.2d (1998); People v. Cardenas, 31 Cal. 3d 897 (1982); Prosecutor v. Dusko Sikirica, IT-95-14 (2001); United States v. Cruz Camacho, 137 F.3d 1220 (1998); United States v. Ross, 210 F.3d 916 (2000); R. Mulgrew, RESEARCH HANDBOOK ON THE INTERNATIONAL PENAL SYSTEM, 152 (2016).
[38] United States v. Herrera, 878 F.2d 997 (1989); United States v. Bolden, 596 F.3d 976 (2010); United States v. Torres, 53 F.3d 1129 (1995); United States v. Cruz Camacho, 137 F.3d 1220 (1998); United States of America v. Jose Guadalupe Altamirano, 166 F.3d 348 (1998).
[39] ¶ 4, Page 1, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[40] ¶ 5, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[41] ¶ 7, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[42] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[43] Sec. 13-703(G), The Arizona Criminal Code, 1989.
[44] Purushottam Dashrath Borate v. State of Maharashtra, AIR 2015 SC 2170; Sushil Murmu v. State of Jharkhand, (2004) 2 SCC 338; Sangeet v. State of Haryana, (2013) 2 SCC 452; Harvey Berger, SEVENTH ANNUAL REPORT AND DIRECTORY OF ACCREDITED LABORATORIES, 687 (1984).
[45] Prosecutor v. Tihomir Blaskic, IT-95-14-T (2000); Prosecutor v. Goran Jelisic, IT-95-10-T (1999); Notburga K. Calvo-Goller, THE TRIAL PROCEEDINGS OF THE INTERNATIONAL CRIMINAL COURT, 109 (2006).

of mitigating the prescribed sentence depends on the discretion of the courts; it is not a mandatory right.[46]

**16.** In the present case, it is submitted that due to the gravity of the offence committed by Ms. Bennet, courts should exercise their discretion and not grant leniency in sentencing. A person who threatens the unity and integrity of a nation and incites thousands of people to overthrow the government does not deserve mercy. The learned counsel for Ms. Bennet might argue that she has no prior convictions, and hence this should count as a mitigating circumstance. However, *first*, the facts of the case do not delve into Ms. Bennet's prior conviction record. It is faulty to assume this due to lack of evidence. Such a claim fails to meet the preponderance standard.[47] *Secondly*, courts in various cases have found that absence of prior conviction record is not sufficient to grant leniency.[48] The learned counsel also might present Ms. Bennet's age as a mitigating factor. As argued above, the facts of the case do not delve into Ms. Bennet's age. Furthermore, courts in various cases have found that young age is not sufficient to mitigate sentencing.[49] Hence, the criminal test has not been satisfied in the present case.

### *[2.1.3] <u>The present case falls into the category of rarest of the rare cases.</u>*

**17.** It is well settled that an unqualified right to life guides sentencing in death penalty cases.[50] The rarest of the rare doctrine is a pragmatic compromise between abolition and the haphazard application of death penalty.[51] Courts have used the effect on society as a touchstone to identify the rarest of the rare cases,[52] as imposing a sentence without considering its effect on the social order would be futile.[53] The rationale behind this touchstone is deterrence, which is the most important object of capital punishment.[54] The

[46]Mirko Bagaric, *Abolishing Prior Criminality as Aggravating Sentencing Factor*, 3(4), ORIGINAL LAW REVIEW, 111, 116 (2007).
[47] Sec. 13-703(C), The Arizona Criminal Code, 1989; State v. McMurtrey, 143 Ariz. 71, 691 P.2d 1099 (1984); State v. Walton, 159 Ariz. 571, 586, 769 P.2d 1017, 1032 (1989).
[48] State v. Clark, 126 Ariz. 428, 616 P.2d 888 (1980); State v. Ricky Tison, 129 Ariz. 526, 633 P.2d 335 (1981).
[49] Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 SCC 220; Jai Kumar v. State of Madhya Pradesh, (1999) 5 SCC 1; Shivu v. Registrar General, High Court of Karnataka, (2007) 4 SCC 713.
[50] Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
[51] David Johnson, THE NEXT FRONTIER: NATIONAL DEVELOPMENT, POLITICAL CHANGE, AND THE DEATH PENALTY IN ASIA, 438 (2009); N. Prabha Unnithan, CRIME AND JUSTICE IN INDIA, 378 (2013).
[52] Jameel v. State of U.P., (2010) 12 SCC 532; Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 SCC 220; State of M.P. v. Basodi, (2009) 12 SCC 318; Mohan Anna Chavan v. State of Maharashtra, (2008) 7 SCC 561; Bantu v. State of U.P., (2008) 11 SCC 113; State of Madhya Pradesh v. Saleem, (2005) 5 SCC 554; State of U.P. v. Sri Krishan, (2005) 10 SCC 420; State of Madhya Pradesh v. Sheikh Shahid, (2009) 12 SCC 715.
[53]Ankush Maruti Shinde v. State of Maharashtra, (2009) 6 SCC 667; Brajendrasingh v. State of Madhya Pradesh, (2012) 4 SCC 289.
[54] 35th Report of the Law Commission of India, CAPITAL PUNISHMENT, ¶4.3.1 (1967).

death penalty serves as a greater deterrent than life imprisonment.[55] This is because the common man understands deterrence more than the jargon of reformation.[56] Hence, keeping in mind the deterrent effect on the society of Camelot, sedition in the present case falls into the rarest of the rare category.

**18.** Furthermore, judges are required to survey precedent to determine whether a case falls into the rarest of the rare category.[57] The offence in the present case, sedition, is nearly allied to treason. Sedition is an umbrella term covering all those practices which disturb the tranquility of the State, inciting people to rebellion.[58] Hence, sedition and treason should be treated alike. When it comes to treason, many common law countries impose the death sentence; for instance: Kenya, Philippines, Israel, United States, and India.[59] The learned counsel for the respondent may contend that death penalty is not imposed for non-homicidal crimes. However, this reasoning is inapplicable to treason, which is an offence against the State.[60] Sedition, allied to treason, falls into the comparative pool of cases for which the death penalty is imposed. *Resultantly*, it belongs to the rarest of the rare category. Hence, the death penalty should be imposed.

### [2.2] PRINCIPLES OF SENTENCING HAVE NOT BEEN VIOLATED AS THE PUNISHMENT IS PROPORTIONAL TO THE OFFENCE.

**19.** A fundamental principle of criminal jurisprudence around the world is that the punishment must be proportionate to the offence it seeks to curb.[61] A savage sentence is an anathema to the right to life.[62] The concept of '*desert*' prescribes that a wrong action should be met by a sanction appropriate to the action.[63] The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment.[64] The principle of proportionality is also

[55] Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
[56] Mahesh v. State of Madhya Pradesh, (1987) 3 SCC 80.
[57] Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 SCC 498; Mofil Khan v. Jharkhand, (2015) 1 SCC 67; Gurvail Singh alias Gala v. State of Punjab, (2013) 2 SCC 713.
[58] Nazir Khan v. State Of Delhi, (2003)8 SCC 461; High Court of Karnataka v. Syed Mohammed Ibrahim, 2014 Indlaw KAR 2012; Reg. v. Alexander Martin Sullivan, (1868) 11 Cox CC 44; K.D. Gaur, TEXTBOOK ON THE INDIAN PENAL CODE, 227 (2009).
[59] 262nd Report of the Law Commission of India, THE DEATH PENALTY, ¶3.9.19 (2015).
[60] Kennedy v. Louisiana, 554 U.S. 407 (2008).
[61] Andrew Ashworth, SENTENCING AND CRIMINAL JUSTICE, 84 (2005); Vikram Singh v. Union of India, (2015) 9 SCC 502; Shivu v. Registrar General, High Court of Karnataka, (2007) 4 SCC 713; State of U.P. v. Satish, (2005) 3 SCC 114; Lehna v. State of Haryana, (2002) 3 SCC 76; Mohan Anna Chavan v. State of Maharashtra, (2008) 7 SCC 561; Weems v. United States, 30 S. Ct 544 (1910).
[62] Vikram Singh v. Union of India, (2015) 9 SCC 502.
[63] Mary Ellen Gale, *Retribution, Punishment, and Death*, 18 (4), UC DAVIS LAW REVIEW, 973, 1003 (1985); Susan Easton, SENTENCING AND PUNISHMENT: THE QUEST FOR JUSTICE, 57 (2012).
[64] The Constitution of the United States of America, 1787.

categorically stated in the Charter of Fundamental Rights as, "*The severity of penalties must not be disproportionate to the criminal offence*."[65]

**20.** It is well settled that the legislature understands the needs of its people because the Parliament consists of the elected representatives of the people.[66] Hence, the punishment prescribed by the legislature reflect the gravity of the offence concerned, what the legislature considers as a suitable punishment and its impact on the society. It is necessary for the courts to respect legislative wisdom.[67] When courts deviate from the written word of law, they might write their own personal predilection into the law.[68] A variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation may play a role in a State's sentencing scheme. This does not take away from judicial discretion if the legislature provides alternative punishments for an offence.[69] The principles of sentencing do not require strict proportionality between crime and sentencing. Rather, only extreme sentences that are '*grossly disproportionate*' are forbidden.[70]

**21.** In the given case at hand, the legislature of Camelot found it prudent to affix the punishment for sedition as death or life imprisonment while enacting Sec. 421-A. As stated previously in Sec. 2.1.3 under ¶ 18, sedition is allied to treason.[71] When it comes to treason, many common law countries impose the death sentence; for instance: Kenya, Philippines, Israel, United States, and India.[72] Hence, punishing sedition with death is not grossly disproportionate, nor is it so excessive as to outrage standards of decency. We submit that the court should not take it upon itself to read down Sec. 421-A as the wisdom of the legislature ought to be respected. This does not tie the hands of the judiciary since Sec. 421-A allows judges to choose between death and life imprisonment depending on the degree of severity of the offence. Hence, the principles of sentencing have not been violated and the punishment is proportional.

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[65] Art. 49, Charter of Fundamental Rights of the European Union, 2000/C 364/01 (Adopted on October 2, 2000).
[66] Maru Ram v. Union of India, (1981) 1 SCC 107.
[67] State of M.P. v. Bala alias Balaram, (2005) 8 SCC 1; Harmelin v. Michigan, 501 U.S. 957 (1991); Gore v. United States, 357 U.S. 386 (1958); Ewing v. California, 538 U.S. 11 (2003).
[68] Furman v. Georgia, 408 U.S. 238 (1972); Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
[69] Vikram Singh v. Union of India, (2015) 9 SCC 502.
[70] Harmelin v. Michigan, 501 U.S. 957 (1991); R. v. Fergusson, (2008) 1 SCR 96.
[71] Nazir Khan v. State Of Delhi, (2003)8 SCC 461; High Court of Karnataka v. Syed Mohammed Ibrahim, 2014 Indlaw KAR 2012; Reg. v. Alexander Martin Sullivan, (1868) 11 Cox CC 44; K.D. Gaur, TEXTBOOK ON THE INDIAN PENAL CODE, 227 (2009).
[72] 262nd Report of the Law Commission of India, THE DEATH PENALTY, ¶3.9.19 (2015).

## [3]. AN OFFENCE UNDER SEC. 351-A HAS BEEN COMMITTED

**22.** In the present case, the respondents have committed an offence under Sec. 351-A.[73] It is submitted that the speech given by Ms. Bennet was in itself prejudicial to the maintenance of harmony **[3.1]** and that the required *mens rea* existed at the time of the speech **[3.2]**. It is not necessary that for an offence to be committed under this provision, there be different groups to be incited. Assuming but not conceding that this is a necessary ingredient under the provision in issue, it is submitted that an offence has been committed by targeting only one such group, that is, the Government of Camelot **[3.3]**.

### [3.1] THE INTENDED SPEECH THREATENED PUBLIC TRANQUILITY

**23.** When the spoken words have the tendency or intention to create disorder or affect public tranquility, law has to step in.[74] The terms 'overthrow' and 'vaporizing the deep-seated rot'[75] and 'breaking the government to pieces' prima facie have a tendency and the *potential*[76] to incite violence.[77]

The facts and circumstances of the case must show disturbance or a semblance of disturbance in public tranquility on account of the activities of the accused.[78] The events immediately following the rally show that they were directly triggered by the speech and resulted in damage to public property.

**24.** If reference is made to any action which indicates overthrow of all the existing social and political order of things, and if it is stated that the said end can be attained only through the forcible overthrow of all existing social conditions, it will attract such a penal provision.[79] The fact that Ms. Bennet wanted a 'refreshing start'[80] and to achieve this she was willing to overthrow the government makes Sec. 351-A applicable in this instance.

### [3.2] THE REQUIRED *MENS REA* EXISTED AT TIME OF THE SPEECH

**25.** The intention to cause disorder or incite people to violence is the most essential ingredient of such a provision.[81] It has to be proved to a prima facie standard that such an intention existence on part of the accused.[82] In the present case, the intention was clearly to effectuate a

[73] Sec. 351-A, Penal Code of Camelot.
[74] Balwant Singh v. State of Punjab, AIR 1991 SC 2301.
[75] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[76] Southard v. DPP [2006] EWHC 3449; Harvey v. Director of Public Prosecutions, [2011] All ER (D) 143.
[77] Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).
[78] Balwant Singh v. State of Punjab, AIR 1991 SC 2301.
[79] M.L. Gautam v. Emperor, AIR 1936 All 561.
[80] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[81] Manzar Sayeed Khan v. State of Maharashtra, AIR 2007 SC 2074.
[82] Manzar Sayeed Khan v. State of Maharashtra, AIR 2007 SC 2074.

fundamental overhaul. The speech was directed at achieving the overthrowing of the current government in power.[83]

**26.** It has been held in law that if the language, by its nature, is such as to promote feelings of enmity, then it shall be presumed by law that the consequences of the impugned act were intended.[84] For the purposes of judging what the probable or natural consequences of the alleged words will be, it will be permissible by law to take into consideration the primary audience for which the impugned expression was meant.[85] Hence, calling a rally and conveying the message of replacing the government[86] was intended to have the said consequences of arson and other forms of damage to public property.[87] It is a reasonable assumption that 'overthrowing the government' and 'breaking it to pieces'[88] will have some semblance of violence in it. The same can be assumed to have an effect on the thousands of people attending the rally.

**27.** That the mode of expression in issue contained the truth is not a valid defence for the purposes of such a provision. Nor will be the fact that it is based on a good authority.[89] Even if it were to be assumed that the words spoken by the respondent directed against the government had an element of truth, they cannot negate the intention to prejudice public tranquility. The fact that the words would reasonably produce such an effect remains essential.

[3.3] AN OFFENCE HAS BEEN COMMITTED BY TARGETING ONLY ONE GROUP

**28.** It is not a pre-condition to prove that there has to be enmity between groups to threaten public tranquility. Even if the court were to hold that there have to be two or more distinct groups for an offence under the provision to take place, it is contended that there have been various cases where the court has invoked the provision when the act related to only one particular group. It has been held in common law that the provision will be attracted if a particular community has been targeted by such words.[90] It is not necessary to prove that there has to be some enmity or hatred caused between different classes as a consequence of the impugned expression.[91] Therefore, the mere attempt to create disaffection towards the

[83] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[84] Shib Sharma v. Emperor, AIR 1941 Oudh 310; Gopal Vinayak Godse v. Union of India, AIR 1971 Bom 56.
[85] Gopal Vinayak Godse v. Union of India, AIR 1971 Bom 56.
[86] ¶ 8, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[87] ¶ 9, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[88] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[89] State of Maharashtra v. Sangharaj Damodar Rupawate, 2010(6) SCALE 667.
[90] Jonathan Nitin Brady v. State of West Bengal, (2008)8 SCC 660.
[91] Gopal Vinayak Godse v. Union of India, AIR 1971 Bom 56.

government and inciting violence so as to disturb public tranquility in the process qualifies as an offence under the provision.

### [4]. OFFENCE UNDER SEC. 210-B IS ESTABLISHED IN THE PRESENT CASE

**29.** The prerequisites for the crime of conspiracy are not established in the Penal Code of Camelot. Generally, courts have laid down three necessary elements for criminal conspiracy to be established, namely: the presence of two or more people; who should have entered into an agreement; and such an agreement must be for doing of an illegal act or for doing a legal act by illegal means.[92]

**30.** Conspirators may be tried and punished for both the conspiracy and the complete crime.[93] Thus, apart from the offence under Sec. 421-A and 351-A, Ms. Bennet can also be held liable for criminal conspiracy laid down in Sec. 210-B of the Penal Code of Camelot.[94]

Ms. Bennet is liable under Sec. 210-B because, she conspired with Mr. Gonsalves and Mr. Fun Toosh to commit the offence under Sec. 421-A and 351-A **[4.1]** Even if the co-conspirators are not conclusively identified, Ms. Bennet is still liable for the abovementioned offences **[4.2]**.

#### [4.1] MEMBERS OF THE HOGWARTS PARTY CONSPIRED TO COMMIT THE CRIMES UNDER SEC. 421-A AND 351-A

**31.** For criminal conspiracy to be established, there needs to be a common intention or common design on part of all entering into the agreement. Such agreement can be expressed or implied. It might also be inferred by conduct of parties.[95] Members agreeing to a common design can safely be presumed to be a part of the criminal conspiracy. In our case, Mr. Fun Toosh, Mr. Gonsalves and Ms. Bennet, who were all members of Hogwarts Party,[96] had conspired and succeeded in their attempt to commit the offence defined under Sec. 421-A and 351-A of the Penal Code of Camelot.

**32.** Where the agreement is to commit an offence, the agreement itself becomes an offence and no overt act is required.[97] This basically means that since the agreement in question is for an illegal act, it is not necessary for the accused parties to perform any specific overt act and liability can be imposed upon them merely for entering into the agreement.

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[92] Ajay Aggarwal v. Union Of India, (1993) 3 SCC 609.
[93] Firozuddin Basheeruddin v. State of Kerala, (2001) 7 SCC 596.
[94] Sec. 210-B, Penal Code of Camelot.
[95] C.K.Takwani, INDIAN PENAL CODE, 137 (1st edn., 2014).
[96] Clarification No. 4, QUERIES AND CLARIFICATIONS, The K.K. Luthra Memorial Moot Court, 2017.
[97] State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600.

**33.** Admittedly, there is nothing to suggest that Ms. Bennet, Mr. Fun Toosh and Mr. Gonsalves entered into an express agreement to commit the crimes under Sec. 421-A and 351-A. However, Ms. Bennet called upon the people and the party members to rebel[98] against the government and break and overthrow the government.[99] The party members, including Mr. Fun Toosh and Mr. Gonsalves, acted accordingly. This suggests agreement by conduct. They mobilized the public to protest against the government and resorted to violent means.[100] Hence, members of the Hogwarts Party conspired to commit offences under Sec. 421-A and 351-A.

[4.3] IN ANY CASE MS.BENNET IS LIABLE FOR CRIMINAL CONSPIRACY.

**34.** Even if it cannot be ascertained conclusively that Mr. Gonsalves and Mr. Fun Toosh were part of the conspiracy, there were 3,000 other members of the Hogwarts Party who mobilized the public and consequently were responsible for the violence and public disorder that occurred[101].

**35.** If not Mr.Gonsalves and Mr.Fun Toosh, the party members who mobilized the public by conduct impliedly agreed to cause public disorder on Ms. Bennet's call and thus were co-conspirators in the commission of crimes under Sec. 421-A and 351-A.

**36.** The circumstances and the conduct following and preceding the occurrence are relevant factors in determining criminal conspiracy.[102] Ms. Bennet's disaffection towards the government was evident when she supported the anti-government statements of her supporters.[103] Her hatred and disapproval of the present government was also visible in her speeches.[104] Also, she iterated that Hogwarts Party would continue in this manner until Camelot woke up to a better dawn.[105] This means that she will continue to incite violence and disturb public order. Ms. Bennet, out of all people, intended to cause public disorder and disturb public tranquility.

**37.** Even if it cannot be ascertained conclusively as to who Ms. Bennet's co-conspirators were, Ms. Bennet alone can be convicted, for it is not necessary that others must have been convicted too.[106]

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[98] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[99] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[100] ¶ 9, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[101] ¶ 9, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[102] V.C.Shukla v State (Delhi Admn.), (1980) 2 SCC 665.
[103] ¶ 16, Page 6, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[104] ¶ 7, Page 1, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[105] ¶ 13, Page 5, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[106] Bimbadhar Pradhan v. State of Orissa, 1956 Cri LJ 138.

## [5]. VALID SANCTION IS NOT REQUIRED IN THE PRESENT CASE

**38.** In the present case, even assuming Ms. Bennet to be a public servant, sanction from the requisite authority is not a necessity for prosecuting the respondents as *first*, the issue of sanction should have been raised at an earlier stage **[5.1]** and *secondly*, the impugned acts were not related to the discharge of their official duties **[5.2]**.

### [5.1] OBJECTION TO SANCTION SHOULD HAVE BEEN RAISED AT AN EARLIER STAGE

**39.** The objection as to the issue of sanction should be raised at the earliest stage.[107] The inference as to a valid sanction at such a late stage of proceedings cannot be properly challenged.[108] It is submitted that any objection as to the sanction obtained by the appellant cannot be entertained by this court. The courts should consider the necessity and validity of the sanction at the earliest stage.[109] In the present case, the earliest opportunity was at the stage of the trial court, which was not availed of. The view of sanction should be considered at the stage of trial only.[110] The purpose of such a provision is to grant immunity to the public servant from vexatious and malicious prosecutions.[111] If the prosecution is initiated without considering the necessity of sanction in such cases, the purpose of immunity for public servants is defeated. It appears from the facts that the objection regarding sanction was raised after the respondent was acquitted by the High court[112] and when the same is being challenged before this court.

### [5.2] THE IMPUGNED ACTS DO NOT COME UNDER THE SCOPE OF *OFFICIAL DUTIES*

**40.** Whether an act requires sanction or not depends on the facts of each case.[113] For an analogous provision, the Supreme Court of India has held that the impugned act must have something to do with the discharge of official duty.[114] Delivering a speech outside the Parliament[115] cannot be a part of the set of duties of a Member of Parliament of Camelot. The act must bear a reasonable and not merely a fanciful or a pretended claim to official duties.[116]

[107] State v. Laldas, AIR 1953 Bom 1977.
[108] H.H.B. Gill v. The King, (1948) 50 BOMLR 487.
[109] Lumbhardar Zutshi v. The King, (1950) 52 BOMLR 480.
[110] Inspector of Police v. Battenapatla Venkata Ratnam, 2015 SCC OnLine SC 339.
[111] 41st Report of the Law Commission of India, THE CODE OF CRIMINAL PROCEDURE, 1898, ¶15.123 (1971).
[112] ¶ 15, Page 5, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[113] Amrik Singh v. The State of Pepsu, 1955 AIR 309.
[114] Matajog Dobey v. H. C. Bhari, 1956 AIR 44.
[115] ¶ 8, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[116] Abdul Wahab Ansari v. State of Bihar, AIR 2000 SC 3187.

Conducting a public rally[117] cannot be related to any of the activities of a member of the legislature of a government.

**41.** State immunity under the provision cannot be granted if the act alleged is a criminal act performed under color of authority and is hence an exception to the general rule.[118] The judiciary has generally excluded criminal misconduct from the ambit of the requirement of sanction for prosecution.[119] In the present case, the respondent faces charges under Sec. 421-A, 351-A and 210-B of the Code on the basis of the impugned speech.[120] The same being criminal in nature cannot be treated as a part of the duties of a public servant. The misdemeanour on the public servant's part cannot be treated as an act in the discharge of his official duties.[121]

**42.** If there was no necessary connection between the impugned acts and the official duties, merely official status furnishing an opportunity for those acts does not warrant a sanction.[122] Criticizing the government in public[123] in an inciting manner is not an official duty of such a public servant. It is submitted that in the present case, the privileges by virtue of being a Member of the Parliament of Camelot, if any, will be restricted to the proceedings of the House and cannot be extended to public rallies in general.

[117] ¶ 8, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[118] Parkash Singh Badal v. State of Punjab, AIR 2007 SC 1274.
[119] Raghunath Anant Govilkar v. State of Maharashtra, (2008) 11 SCC 289; Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287; Amrik Singh v. The State of Pepsu, 1955 AIR 309.
[120] ¶ 10, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[121] Rajib Ranjan v. R. Vijaykumar, (2015) 1 SCC 513.
[122] Amrik Singh v. The State of Pepsu, 1955 AIR 309.
[123] ¶ 8, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.

## PRAYER

Wherefore in the light of the issues raised, arguments advanced and authorities cited, it is humbly prayed that this Hon'ble Court may be pleased to adjudge and declare that:

1. Sec. 421-A should not be struck down.
2. The offences under Sec. 421-A, 351-A, and 210-B have been made out.
3. Death penalty is the appropriate punishment for the offence of sedition in the present case.
4. Proceedings should not be quashed on grounds of sanction.

And pass any other order, direction, or relief that this Hon'ble Court may deem fit in the interests of justice, equity and good conscience.

All of which is humbly prayed,
URN – 1358,
Counsels for the Appellants.