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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 RESPONDENTS]

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STATEMENT OF FACTS

BACKDROP

Camelot is a multi-ethnic, culturally rich country situated in the Asian sub-continent. It has been following a democratic and federal structure since 1947, with a Parliamentary system of governance comprising of a single House of Citizens. Camelot has the Republic of Tallisker, Genghiztan and India as its neighbors. 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. Bennet, the leader of the Hogwarts Party, is a newly elected Member of the Parliament. Her party organizes campaigns with the objective of betterment of Camelot. Some of the campaigns involved praising Genghiztan and its achievements, *inter alia*, with the object of imbibing good qualities of various countries. The Chief Minister of Erehwon, Mr. Panda opposed Ms. Bennet's acts publicly. Subsequently, in May 2015, Ms. Bennet and her party launched another campaign "*Mock and Shame the Psuedo-Nationalist Government*". A public rally was called, during which Ms. Bennet emphasized the need for a fundamental overhaul. She iterated she was ready to sacrifice herself for Camelot to have a fresh start.

Thereafter, the people attacked public property. Some people, comprising members of the party, gave toys to Government officials for their naïve political stance.

THE PROCEEDINGS

Ms. Bennet and some other persons were charged under Sec. 421-A, 351-A and 210-B of the Camelot Penal Code in a complaint, along with an FIR. The approval of the Lieutenant Governor of Erehwon was granted to proceed with the prosecution. Accordingly, a final report was filed against Ms. Bennet, Mr. Fun Toosh, and Mr. Rebello Gonsalves, consequent to which the Magistrate took cognizance and issued a summons.

A trial was conducted that resulted in Ms. Bennet's conviction. The ultimate penalty of death was awarded. On appeal before the High Court, the decision was rightfully 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 THE TRIAL COURT HAD JURISDICTION TO PROSECUTE THE RESPONDENTS?

II.

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

III.

WHETHER DEATH IS THE APPROPRIATE PUNISHMENT FOR SEDITION IN THE PRESENT CASE?

IV.

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

V.

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

SUMMARY OF ARGUMENTS

[1]. THE TRIAL COURT HAD NO JURISDICTION TO TRY THE RESPONDENTS IN THE FIRST PLACE

It is submitted that the issue of objection as to sanction can be raised at any stage of the proceedings. The same is being challenged before the Hon'ble Court. The case requires a valid sanction because of the rational nexus of the impugned acts with the scope of official duty. The law requires the acts to include 'purported acts done in color of official duty'. The phrase entails acts committed while the public servant was in office and cannot be said to be exclusive of offences since that will render the provision useless. Since valid sanction was a necessity, the same required the proper sanctioning authority, which is lacking in the present case. Accordingly, the proceedings are vitiated and are liable to be quashed.

[2]. SEC. 421-A IS NOT APPLICABLE IN THE PRESENT CASE

Sec. 421-A of the Penal Code of Camelot should be struck down as being over-broad and vague because the restrictions that it lays down on the freedom of speech is unreasonable and thus is against the spirit of democracy. Further, clause 2 of the section being overbroad and vague suffer from the vice of excessive delegation of power to the governement which should merit its being struck applying the doctrine of severability. To do away with the vagueness, over-breadth and excessive delegation, violence should be held as standard threshold for conviction under Sec. 421-A. Ms. Bennet's speech was not seditious as it did not have the

tendency to incite violence. There was no link between her speech and the violence that occurred. Even if the blame for the violence is imputed on the party members, Ms. Bennet cannot be held liable for the acts of her party members.

[3]. DEATH PENALTY IS NOT THE APPROPRIATE PUNISHMENT FOR SEDITION.

The death penalty is not an appropriate punishment for sedition for two reasons. *First*, the tests for awarding the death penalty have not 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 not been fulfilled because no common law jurisdiction has ever imposed the death penalty for sedition. Hence, sedition is far removed from the pool of grave offences which deserve the death penalty. *Furthermore*, the criminal test has not been fulfilled because of the presence of mitigating circumstances. The facts of the case point to the young age of Ms. Bennet. She also has no prior convictions. Finally, the rarest of the rare test has not been followed as the objective of punishing sedition can be satisfied by awarding life imprisonment. The possibility of reformation is high.

Secondly, the principles of sentencing have been violated as capital punishment is grossly disproportionate to the alleged seditious act committed by Ms. Bennet.

[4]. THE IMPUGNED ACTS DO NOT CONSTITUTE AN OFFENCE UNDER SEC. 351-A.

The offence under the said provision can be established only when there is an intention to do so. The interpretation of the impugned form of expression should satisfy a *clapham omnibus* standard. Further, the intention has to be gathered by taking the piece of expression in totality along with the circumstances surrounding it. In the present case, the intention was the betterment of the citizens of Camelot and ultimately upholding the principles envisaged by the Constitution. The provision further requires espousing feelings of hatred and ill-will among different groups, classes, or communities, which are clearly lacking in this case.

[5]. CHARGE OF CRIMINAL CONSPIRACY IS NOT MADE OUT AGAINST MS. BENNET

The elements of criminal conspiracy have not been made out against Ms. Bennet as there is nothing to suggest any intention or establish *mens rea*, leave alone agreement on her part to commit any of the crimes under Sec. 421-A or 351-A of the Penal Code of Camelot.

WRITTEN PLEADINGS

[1]. THE TRIAL COURT HAD NO JURISDICTION OWING TO LACK OF VALID SANCTION

1. Ms. Bennet is a Member of Parliament of Camelot.[1] It is submitted that the respondent being a public servant,[2] there was a requirement of a valid sanction for her prosecution under Sec. 196[3] of the Camelot Criminal Procedure Statute. The objection as to the validity of sanctions can be raised at any stage of the proceedings **[1.1]**. Further, it is submitted that, the impugned acts had reasonable nexus with the respondent's discharge of official duties **[1.2]**. Hence, the sanction was invalid on grounds of improper sanctioning authority **[1.3]**. Further, an invalid sanction vitiates proceedings **[1.4]**. Hence, the trial court lacked jurisdiction to prosecute the respondent in the first place.

[1.1] THE ISSUE OF SANCTION CAN BE RAISED AT ANY STAGE OF THE PROCEEDINGS

2. The question relating to the need of sanction is to be decided from stage to stage.[4] It doesn't have to be considered as soon as the complaint is lodged and on the allegations contained therein.[5] Such a question can be raised and considered at any stage of the proceedings.[6] This is because the necessity for a sanction may reveal itself during the progress of the case.[7] In the present case, the importance of a valid sanction cannot be neglected. Further, since the respondent was acquitted by the High Court,[8] and the said decision has been challenged in this court, it is crucial for the defense to point out this procedural flaw.

3. Hence, the issue can be raised at any time after the cognizance or framing of charges, or in certain eventualities, should be left open to be decided in the main judgment.[9] It is submitted that the respondent is well within her right to raise this issue at this stage of the proceedings.

[1] ¶ 4, Page 1, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[2] P.V. Narsimha Rao v. State, 1997 SCC OnLine Del 751; State Of Orissa v. Habibullah Khan, (2003) 12 SCC 129; R v. Boston, (1923) 33 CLR 386; A.R Antulay v. R.S. Nayak, (1988) 2 SCC 602; L.K. Advani v. C.B.I., 1997 CriLJ 2559.
[3] Sec. 196, Camelot Criminal Procedure Statute.
[4] D.T. Virupakshappa v. C. Subash, (2015) 12 SCC 231.
[5] Parkash Singh Badal and Anr. v. State of Punjab and Ors., AIR 2007 SC 1274.
[6] Parkash Singh Badal and Anr. v. State of Punjab and Ors., AIR 2007 SC 1274.
[7] Matajog Dobey v. H.C. Bhari, 1956 AIR 44.
[8] ¶ 15, Page 5, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[9] P.K. Pradhan v. The State of Sikkim, (2001) 6 SCC 704.

[1.2] THE IMPUGNED ACTS COME UNDER THE SCOPE OF ACTS RELATED TO DISCHARGE OF OFFICIAL DUTIES

4. The Supreme Court of India has, for an analogous provision, held that if such a provision is construed very narrowly, it can never be applied, since it is never a part of a public servant's duty to commit an alleged offence.[10] An official act can be performed both in discharge as well as in dereliction of it.[11] From the current factual matrix, it is clear that the respondent was a Member of the Parliament of Camelot and that her party was in the opposition. It is obviously a part of her duties to keep a check on the government by exercising her right to criticize its functioning. The essential requirement for granting sanction is that the alleged offence must have been done while acting or purporting to act in the discharge of his duties.[12] The respondent was in office when the said speech was delivered criticizing the government, as a newly elected member.[13]

[1.3] THE SANCTIONING AUTHORITY WAS NOT PROPER

5. In order to ensure that Members of Parliament are not subjected to frivolous or malicious allegations at the hands of the interested persons, the prosecuting agency needs the permission from the Speaker/Chairman of the concerned House.[14] In the present case, the sanction was granted by the Lieutenant Governor of Erehwon.[15] This proposition has been endorsed in other cases as well.[16] Hence, it is submitted that the Lieutenant Governor of Erehwon was not the proper sanctioning authority as far as prosecution of the respondent is concerned.

[1.4] AN INVALID SANCTION VITIATES PROCEEDINGS

6. Any case instituted without proper sanction must fail because of it being a manifest defect in the prosecution.[17] The language of the provision is mandatory in nature and cannot be left to the discretion of the Court. The use of the words "no" and "shall" in the provision make it abundantly clear that the bar on the exercise of the power of the Court to take cognizance is

[10] Shreekantiah Ramayya Munipalli v. The State Of Bombay, AIR 1955 SC 287.
[11] State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40.
[12] Sambhoo Nath Misra v. State of U.P., (1997) 5 SCC 326; Inspector of Police v. Battenapatla Venkata Ratnam, 2015 SCC OnLine SC 339.
[13] ¶ 4, Page 1, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[14] P.V. Narsimha Rao v. State, 1997 SCC OnLine Del 751.
[15] ¶ 11, Page 5, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[16] Lalu Prasad Yadav and Rabri Devi v. State of Bihar, (2007) 1 SCC 49; State of Kerala v. K. Karunakaran, 2003 CriLJ 2225.
[17] Mohd. Iqbal, Ahmad v. State Of Andhra Pradesh, 1979 AIR 677.

absolute and complete.[18] Without proper sanction, the trial court could not have taken cognizance of the case in the first place. In this case, the facts suggest the validity of sanction was never questioned at the trial stage, due to which its invalidity went unnoticed. The trial court's judgment went on to appeal to the High Court, the verdict of which is now being challenged before this Court.[19] The entire proceedings are rendered *void ab initio*.[20] It has been held that if it is established that want of sanction was necessary, the prosecution has to be quashed at such stage.[21]

[2]. SEC. 421-A IS NOT APPLICABLE IN THE PRESENT CASE.

7. Freedom of speech is a fundamental common law right.[22] The right to protest through civil disobedience has come to be recognized as a right of the citizen in a democratic polity.[23] Admittedly at the same time, the right to speech is not unfettered in most common law jurisdictions. For instance, content which is defamatory or against public order or morality may be prohibited.[24]

8. The validity of a statute can be challenged on grounds of contravention of fundamental rights,[25] absence of legislative competence or unreasonableness of the law.[26] In the instant case, it is submitted that Sec. 421-A[27] should be struck down as being against the spirit of democracy **[2.1]**. *In any case*, Sec. 421-A Clause (2) of The Penal Code of Camelot should be struck down **[2.2]**. Furthermore, violence should be held as the standard for the application of Sec. 421-A **[2.3]**.

[2.1] SEC. 421-A IS AGAINST THE SPIRIT OF DEMOCRACY

9. The phrase '*restrictions*' imposed on a person in the enjoyment of a right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public.[28] In this context, Sec. 421-A is against the letter and spirit of democracy because the section is vague in its construction **[2.1.1]** and the provisions of the section are overbroad **[2.1.2]**.

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[18] State Of Maharashtra v. Dr. Budhikota Subharao, 1993 SCC (2) 567; Rakesh Kumar Mishra v. State Of Bihar, (2006) 1 SCC 557.
[19] ¶ 16, Page 6, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[20] Mohd. Iqbal Ahmad v. State Of Andhra Pradesh, 1979 AIR 677.
[21] Sankaran Moitra v. Sadhna Das, (2006) 4 SCC 584.
[22] Nationwide News v. Wills, (1992) 177 CLR 1; Attorney-General (South Australia) v. Corporation of the City of Adelaide, (2013) 249 CLR 1.
[23] Maneka Gandhi v. Union of India, 1978 AIR 597.
[24] Romesh Thapar v. State of Madras AIR 1950 SC 124.
[25] Kheybari Tea Co. Ltd. v. State of Assam, AIR 1964 SC 925.
[26] Namit Sharma v. Union of India, (2013) 1 SCC 745.
[27] Sec. 421-A, The Penal Code of Camelot.
[28] ChintamanRao v. State of Madhya Pradesh, AIR 1951 SC 118.

[2.1.1] Sec. 421-A is Vague in its Construction

10. In *Musser* v. *Utah*,[29] it was held that where no reasonable standards are laid down to define guilt in a section and where no guidance is given to either law abiding citizen or to authorities and courts, such a section should be struck down as being arbitrary. Just like the word 'sacrilegious' was said to be subjective as its standards varied among the 300 sects of New York,[30] similarly the term '*incitement to hatred and disaffection*' is subjective too. The standard for incitement differs from person to person and no objective standard has been laid down by the Penal Code of Camelot for the same. "*In such cases, we not only do not know but cannot know what is condemnable. And if we cannot tell, how are those to be governed by the statute to tell*."[31] Hence, Sec. 421-A is void for vagueness.

[2.1.2] The provisions of Sec. 421-A are Overbroad

11. Overbreadth is a recognized ground to test the *vires* of legislation on the touchstone of the Constitution.[32] Provisions of a legislation are likely to be abused because of the overbreadth of the provision and should thus be struck down.[33] The Constitution does not permit the legislature to set a net large enough to catch all possible offenders and leave it to the Court to decide who could be rightfully detained and who should be set at liberty.[34]

The language of Clause 2 of Sec. 421-A of the Penal Code of Camelot is obscure, which makes it a catch-all provision covering all kinds of criticisms of the government. The section gives *carte blanche* to the government to prosecute anyone who holds an opinion against it. Sec. 421-A has a *chilling effect* on free speech and should, therefore, be struck down on the grounds of overbreadth.

[2.2] *IN ANY CASE*, SEC. 421-A CLAUSE (2) OF THE PENAL CODE OF CAMELOT SHOULD BE STRUCK DOWN

12. Sec. 421-A Clause (2) delegates unrestricted power to the government and thus frustrates the very crux of a democracy. It suffers from an excessive delegation of power **[2.2.1].** Hence, applying the doctrine of severability, the impugned clause should be struck down. **[2.2.2]**

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[29] Musser v. Utah, 92 L. Ed. 562 (1948).
[30] Burstyn v. Wilson, 343 U.S. 495 (1952).
[31] Burstyn v. Wilson, 343 U.S. 495 (1952).
[32] Shreya Singhal v. Union of India, AIR 2015 SC 1523.
[33] Leonard Hector v. Attorney General of Antiqua and Barbuda, (1990) 2 A.C. 312.
[34] United States v. Reese, 92 U.S. 214 (1875).

[2.2.1] <u>Sec. 421-A Clause (2) of The Penal Code of Camelot suffers from Excessive Delegation of Power</u>

13. Admittedly, a discretionary power may not necessarily be a discriminatory power. However, where a statute confers a power on an authority to decide matters without laying down any guidelines, the power has to be struck down as being arbitrary[35] The fact that the government cannot be criticized in any of its measures,[36] arms the Government of Camelot with uncanalized and unguided discretion. The cumulative effect of vagueness and overbreadth gives excessive powers to the government to infringe upon the right to free speech with no checks whatsoever. Since excessive delegation of power is unreasonable, Sec. 421-A Clause (2) is against the spirit of democracy.

[2.2.2] <u>Applying The Doctrine of Severability, Sec. 421-A Clause (2) should be struck down</u>

14. It is well settled that provisions which are invalid need not affect the validity of the legislation as a whole.[37] In the instant case, if not the whole section, then applying the doctrine of severability, at least clause 2 of the Sec. 421-A should be severed and struck down as it prohibits any form of criticism of the government.

15. The impugned clause is not integral to the enactment of the remaining provisions, and the other provisions can be enforced without making alterations and modifications therein. In such circumstances, the doctrine of severability is applicable.[38]

[2.3] <u>VIOLENCE IS THE STANDARD FOR THE APPLICATION OF SEC. 421-A</u>

16. In order to do away with vagueness, overbreadth and excessive delegation of power, a threshold for calling upon Sec. 421-A is imperative. The standard in common law jurisdictions involves an element of violence or public disorder. The Indian Supreme Court, for an analogous provision, has held violence to be the standard for conviction under the charge of sedition.[39] It drew a clear distinction between "advocacy" and "incitement", and only the latter could be punished. [40] The U.S. Supreme Court too lays down 'imminent lawlessness' as the threshold for sedition.[41]

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[35]AIR India v. NergeshMeerza, AIR 1981 SC 1829.
[36] Sec. 421-A (b), Penal Code of Camelot.
[37] Attorney General for Alberta v. Attorney General for Canada, 1947 AC 503.
[38] R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628.
[39] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.
[40] Shreya Singhal v. Union of India, AIR 2015 SC 1523.
[41] Brandenburg v. Ohio, 395 U.S. 444 (1969).

17. Generally, a prosecution for seditious libel must be founded upon an intention to incite violence against government institutions.[42] Thus, we see that the 'mischief' that was sought to be cured was to prevent violence. Moreover, a statute must be constructed narrowly if such an interpretation renders it valid.[43] In the present case, it is submitted that Ms. Bennet's speech did not have a tendency to incite violence **[2.3.1]**, and the violence caused cannot be linked to her speech **[2.3.2]**.

*[2.3.1] **Ms. Bennet's speech did not have a tendency to incite violence***

18. Ms. Bennet being a Member of the Parliament of Camelot[44] is a public servant[45] and it is her duty to keep the government in check, being in opposition. Her speech contained figurative terms which were used to express peaceful disapprobation. At no point of time did she call upon people to resort to any unconstitutional means, on the contrary, she talked about upholding the ideals laid down in our constitution.[46]

19. *Kedar Nath*[47] stipulates that only words that imply subversion of the Government by violent means are punishable. The terms '*overthrow the government*' and '*break the government to pieces*' basically meant that people should remove the present government from office. They did not suggest unconstitutional or violent means for the same.[48] The protests near the parliament of Camelot had no element of violence. It was a peaceful protest in which there was no disturbance to law and order.[49]

20. Also, the standard for speeches with 'seditious tendency' is rather high.[50] For instance, shouting slogans demanding a separate country right after the assassination of the Prime Minister of India was held to be not seditious.[51]

*[2.3.2] **The violence caused cannot be linked to the speech***

21. The action of the crowds cannot be imputed to Ms. Bennet. The concept of vicarious liability cannot be called upon in criminal cases,[52] and therefore the charge under Sec. 421-A

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[42] Boucher v. The King, [1951] S.C.R. 265.
[43] State of Maharashtra v. Indian Hotel and Restaurants Association, (2013) 8 SCC 519; Pravasi Bhalai Sangathan v. Union of India, AIR 2014 SC 1591.
[44] ¶ 4, Page 1, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[45] P.V. Narsimha Rao v. State, 1997 SCC OnLine Del 751; State Of Orissa v. Habibullah Khan, (2003) 12 SCC 129; R v. Boston (1923) 33 CLR 386, A.R Antulay v. R.S. Nayak, (1988) 2 SCC 602; L.K. Advani v. C.B.I., 1997 CriLJ 2559.
[46] ¶ 8.3, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[47] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.
[48] ¶ 8, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[49] ¶ 8, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[50] Boucher v. The King, [1951] S.C.R. 265.
[51] Balwant Singh and Anr. v. State of Punjab, AIR 1991 SC 2301.

cannot be imputed upon Ms. Bennet, since there was no proximate relationship between the speech and the subsequent violence. In the light of above facts and precedents, Ms. Bennet cannot be held liable under Sec. 421-A of the Penal Code of Camelot.

[3]. DEATH PENALTY IS NOT THE APPROPRIATE PUNISHMENT FOR SEDITION.

22. It is well-settled that in cases pertaining to death penalty, three tests need to be satisfied prior to the sentencing stage.[53] It is submitted that the conditions for awarding the death penalty have not been fulfilled in the present case [**3.1**]. Furthermore, the principles of sentencing have been violated in the present case as the punishment is disproportional to the mischief it seeks to cure [**3.2**].

[3.1] THE THREE TESTS FOR AWARDING THE DEATH PENALTY HAVE NOT BEEN SATISFIED IN THE PRESENT CASE.

23. 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 order to impose the death penalty. These are: the crime test, which deals with aggravating circumstances; the criminal test, which pertains to mitigating circumstances; and the rarest of rare test.[54] 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 [**3.1.1**]. *Additionally*, the criminal test has not been satisfied [**3.1.2**] and; *finally*, the present case does not fall into the category of rarest of rare cases, where the death penalty can be awarded [**3.1.3**].

*[3.1.1] **The crime test has not been satisfied in the present case.***

24. The Supreme Courts in various jurisdictions have placed a high premium on aggravating circumstances.[55] The aggravating circumstances are aptly named as the 'crime test' since the focus is on facts and elements of the crime committed.[56] Aggravating circumstance refers to

[52] N.J. Lawankar v. Anil Devidas Garad, (2007) 115 FLR 25; Surinder Singh v. State of Punjab, (2003) 10 SCC 66.
[53] 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).
[54] 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.
[55] Zant v. Stephens, 462 U.S. 862 (1983); Gregg v. Georgia, 428 U.S. 153 (1976); Cunningham v. California, 549 U.S. 270 (2007).
[56] Gurvail Singh alias Gala v. State of Punjab, (2013) 2 SCC 713; Shankar Kisanrao Khade v. State Of Maharashtra, (2013) 5 SCC 546; Birju v. State of M.P., (2014) 3 SCC 421; Santosh Kumar Singh v. State of M.P., (2014) 12 SCC 650; 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).

"*A fact or situation that increases the degree of liability or culpability for a tortuous/criminal act.*"[57] There is no exhaustive list of aggravating circumstances,[58] and judges have the discretion to identify aggravating facts which would warrant a higher sentence,[59] in addition to statutory aggravating circumstances.[60] Generally, the nature of offence is considered as an aggravating factor.[61] Judges are required to survey offences in preceding cases to determine whether a case deserves the death penalty.[62] *Additionally*, most cases which employ the crime test authorize the death penalty if the crime is '*especially heinous, atrocious or cruel*' and by its very nature brutal, gruesome and depraved.[63]

25. In the present case, Ms. Bennet is being tried for sedition. As mentioned above, judges should examine a pool of similar cases to determine if an offence deserves the ultimate penalty. However, in no common law jurisdiction has death penalty ever been imposed for sedition. In India, for instance, the highest punishment is life imprisonment.[64] In fact, the crime of sedition, which originated in the United Kingdom, was *abolished* in 2009 by the Coroners and Justice Act, 2009.[65] The United States too abolished its Sedition Act shortly after it was introduced.[66] Hence, it can be logically inferred that sedition is far removed from the pool of grave offences which deserve the death penalty. Furthermore, examining the facts of the case, Ms. Bennet merely sought to exercise her fundamental right to free speech by critiquing the government. Although this led to a public protest which included attacking of property,[67] the nature of this alleged offence is not especially heinous, atrocious or cruel. Hence, we submit that the crime test has not been satisfied, as no aggravating circumstances are prevalent in the present case.

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[57] Henry Campbell Black, BLACK'S LAW DICTIONARY, 236 (Bryan A. Garner ed., 7th edn., 1999).
[58] Jagmohan Singh v. State of Uttar Pradesh, 1973 SCR (2) 541.
[59] People v. Black, (2005) 35 Cal 4th 1238.
[60] Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think*, 98(6), COLUMBIA LAW REVIEW, 1538, 1547 (1998).
[61] 262nd Report of the Law Commission of India, THE DEATH PENALTY, ¶5.2.36 (2015).
[62] Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 SCC 498.
[63] Walton v. Arizona, 497 U.S. 639 (1990); Gregg v. Georgia, 428 U.S. 153 (1976); Proffitt v. Florida, 428 U.S. 242 (1976); Bantu v. State of Uttar Pradesh, (2008) 11 SCC 113; Jumman Khan v. State of Uttar Pradesh, (1991) 1 SCC 752; Kamta Tiwari v. State of Madhya Pradesh, (1996) 6 SCC 250; Shivaji alias Dadya Shankar Alhat v. State of Maharashtra, (2008) 15 SCC 269.
[64] Sec. 124-A, The Indian Penal Code, 1860.
[65] Sec. 73, Coroners and Justice Act, 2009.
[66] The United States introduced the Sedition Act of 1918 as a supplementary to the Espionage Act of 1917. However, the Sedition Act was repealed in 1920; Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).
[67] ¶ 9, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.

*[3.1.2] **The criminal test has not been satisfied in the present case.***

26. Mitigating circumstances are those elements of a defendant's character, background, or any other factor that might form the basis of reducing a defendant's sentence.[68] According to the landmark case of *Lockett* v. *Ohio*,[69] the court should be allowed to consider "*any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.*"[70] This reasoning shall hold even when there is *no direct nexus* between the mitigating factors and the culpability of the accused for the crime he/she committed.[71] Such a judicial approach enables a reasoned moral response to the crime, the background and the character of the accused.[72] While the burden is on the prosecution to prove aggravating circumstances beyond any reasonable doubt, mitigating circumstances have to be proved by a preponderance of the evidence.[73]

27. It is well established that factors considered as mitigating are: young age, prior criminal record, character, lack of intent, etc.[74] The young age of the offender is a pertinent mitigating factor.[75] The underlying rationale is that a young person is most susceptible to influence and damage.[76] The possibility of reform is higher.[77] In S*urendra Mahto* v. *State of Bihar*,[78] the court did away with the death penalty as the offender was aged only thirty years. Apart from age, the prior record of the accused is another mitigating factor.[79] The antecedents of an accused and his/her subsequent conduct provide an indication as to whether the person is a menace to society and whether the possibility of rehabilitation exists.[80]

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[68] Sec. 13-703(G), The Arizona Criminal Code, 1989.
[69] Lockett v. Ohio, 438 U.S. 586 (1978).
[70] Lockett v. Ohio, 438 U.S. 586 (1978).
[71] Bigby v. Dretke, 402 F.3d 551 (2005); Skipper v. South Carolina, 476 U.S. 1 (1986); Tennard v. Dretke, 542 U.S. 274 (2004); Ayers v. Belmontes, 549 U.S. 7, 26 (2006).
[72]Penry v. Lynaugh, 492 U.S. 302 (1989); Williams v. Taylor, 529 U.S. 362 (2000); Abdul Kabir v. Quarterman, 127 S. Ct. 1654 (2007); Michigan State University College of Law, *Deciding to Kill: Revealing the Gender in the Task Handed lo Capital Juries*, (1994), *available at* http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1218&context=facpubs (Last visited on November 24, 2016).
[73] Sec. 13-703(C), 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).
[74] Lockett v. Ohio, 438 U.S. 586 (1978).
[75] Bachan Singh v. State of Punjab, (1980) 2 SCC 684; Walton v. Arizona, 497 U.S. 639 (1990).
[76] Eddings v. Oklahoma, 455 U.S. 104 (1982).
[77] Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257; Ramesh v. State of Rajasthan, (2011) 3 SCC 685; Rameshbhai Chandubhai Rathod v. State of Gujarat, (2011) 2 SCC 764; Amit v. State of Maharashtra, (2003) 8 SCC 93; Rahul v. State of Maharashtra, (2005) 10 SCC 322; Santosh Kumar Singh v. State, (2010) 9 SCC 747; Amit v. State of Uttar Pradesh, (2012) 4 SCC 107.
[78] Surendra Mahto v. State of Bihar, 2008 CriLJ 1680.
[79] State v. Graham, 135 Ariz. 209, 660 P.2d 460 (1983); State v. Brewer, 170 Ariz. 486, 498, 826 P.2d 783, 795 (1992); State v. Styers, 177 Ariz. 104, 108, 865 P.2d 765, 769 (1993); State v. Aryon Williams, 183 Ariz. 368, 904 P.2d 437 (1995); State v. Milke, 177 Ariz. 118, 865 P.2d 779 (1993); State v. Spears, 184 Ariz. 277, 908 P.2d 1062 (1996).
[80]B.A. Umesh v. Registrar General, High Court of Karnataka, (2011) 3 SCC 85.

28. Courts have also defined mitigation as the "*diverse frailties of humankind*". The Eighth Amendment in the United States provides for the decision makers to extend mercy on a case by case basis.[81] In other words, in cases where the punishment is death, individualized sentencing is a constitutional requirement.[82]

29. In the present case, the facts clearly make a reference to the young age of Mrs. Bennet. For instance, *first*, she started her new campaign: *Dawn of Justice*,[83] to strike a chord with the young citizens of Camelot. *Secondly*, in May of 2015, Mr. K.F. Panda, the Chief Minister of Erehwon, tweeted, "The enervated, neoliberal *youth* like Ms. Bennet and her ilk from the Hogwarts Party, of our country have gone off on an academic tangent!"[84] *Thirdly*, the Hogwarts Party was largely a student-dominated party.[85] It is a logical inference that a political party of such nature would have a young leader at its helm. All these facts clearly indicate that Ms. Bennet was a politician of young age. Hence, it is submitted that her age should be considered as a mitigating factor.

30. *Additionally*, Ms. Bennet has had no prior convictions. Furthermore, the only motive behind her actions was the betterment of citizens' lives in Camelot, by adopting a process which upheld the ideals contained in the Constitution of Camelot. She was a devout patriot as in one of her speeches; Ms. Bennet stated that she was ready to sacrifice her own life for the betterment of Camelot. It is submitted that a law abiding citizen of such high integrity and character, with no intention to threaten Camelot's integrity, should not be sentenced to death. Hence, the criminal test is not satisfied.

*[3.1.3] **The present case does not fall into the narrow category of rarest of rare cases.***

31. It is well settled that an unqualified right to life guides sentencing in death penalty cases. This right can be taken away only in the most exceptional cases.[86] The legal basis for judicial executions is found in the ICCPR, which states that the death penalty may be imposed only for the most serious crimes.[87]

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[81] Woodson v. North Carolina, 428 U.S. 280 (1976); Jose B. Ashford, DEATH PENALTY MITIGATION: A HANDBOOK FOR MITIGATION SPECIALISTS, INVESTIGATORS, SOCIAL SCIENTISTS, AND LAWYERS, 25 (2013).
[82] Roberts v. Louisiana, 428 U.S. 325 (1976); Woodson v. North Carolina, 428 U.S. 280 (1976).
[83] ¶ 5, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[84] ¶ 6, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[85] ¶ 4, Page 1, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[86] Pipersburgh v. The Queen [2008] UKPC 11; Maxo Tido v. The Queen [2011] UKPC 16; Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 SCC 498; Bachan Singh v. State of Punjab, (1980) 2 SCC 684; Jagmohan Singh v. State of Uttar Pradesh, 1973 SCR (2) 541.
[87] Art. 6, International Covenant on Civil and Political Rights, 999 UNTS 171 (Adopted on December 16, 1966).

32. According to the United Nations, vaguely defined acts called '*crimes against the state*' should not be punished by the death penalty.[88] The death penalty should be imposed only in the 'rarest of the rare' or 'worst of the worst' cases. There must be no reasonable prospect of reform; and the object of punishment should not be achieved by any other punishment.[89] The burden is on the State to prove that the accused cannot be reformed, and constitutes a threat to society.[90] The Supreme Court of India in *Jagdish* v. *State of M.P.*,[91] emphasized that human beings are not chattels and should not be used as pawns in furthering some larger political or government policy.[92] Various courts have described the rarest of rare cases as those constituting uncommon crimes of extraordinary brutality.[93]

33. In light of the above, if Ms. Bennet were to be punished for sedition with the death penalty, it would be in clear violation of jurisprudence developed around the death penalty, since the United Nations has categorized 'offences against the state' as offences for which the death penalty cannot be awarded. There is no evidence to suggest that Ms. Bennet cannot be reformed or rehabilitated into society. As stated before, the possibility of reform is high, owing to her young age. The objective of punishment for sedition can very well be satisfied by awarding life imprisonment, which is the lesser sentence stipulated under Sec. 421-A. In Ms. Bennet's speeches, and the events that transpired later, no uncommon crime or extraordinary brutality exists; which would objectively warrant capital punishment. Hence, it is submitted that the given case does not satisfy the rarest of the rare test for awarding death penalty.

[3.2] THE PRINCIPLES OF SENTENCING HAVE BEEN VIOLATED AS THE PUNISHMENT IS DISPROPORTIONAL.

34. A fundamental principle of criminal jurisprudence is that the punishment must be proportionate to the offence it seeks to curb.[94] A savage sentence is anathema to the right to

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[88] United Nations Human Rights Commission, *Extrajudicial, Summary on Arbitrary Executions*, (2014), *available at* http://www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx (Last visited on November 24, 2016).
[89] Trimmingham v. The Queen [2009] UKPC 25; Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 SCC 498.
[90] Mohd. Mannan v. State of Bihar, (2011) 8 SCC 65; Sangeet v. State of Haryana, (2013) 2 SCC 452; Nirmal Singh v. State of Haryana, (1999) 3 SCC 670; Mohd. Chaman v. State (NCT of Delhi), (2001) 2 SCC 28; Raju v. State of Haryana, (2001) 9 SCC 50; Bantu v. State of M.P., (2001) 9 SCC 615; Surendra Pal Shivbalakpal v. State of Gujarat, (2005) 3 SCC 127; Rahul v. State of Maharashtra, (2005) 10 SCC 322.
[91] Jagdish v. State of M.P., 2010 (1) ALD (Cri) 277.
[92] Rajendra Prasad v. State of Uttar Pradesh, AIR 1979 SC 916.
[93] Bachan Singh v. State of Punjab, (1980) 2 SCC 684; Machhi Singh v. State of Punjab, (1983) 3 SCC 470.
[94] 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,

life.[95] The concept of '*desert*' prescribes that a wrong action should be met by a sanction appropriate to the action.[96] The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment.[97] The principle of proportionality is categorically stated in the Charter of Fundamental Rights of the European Union as, "*The severity of penalties must not be disproportionate to the criminal offence*."[98]

35. A court's proportionality analysis should be guided by objective criteria. This includes, *first*, the gravity of the offense and harshness of the penalty; *secondly*, the sentences imposed in the same jurisdiction; and *thirdly*, the sentences imposed in other jurisdictions.[99] It might be argued that the wisdom of the legislature ought to be respected and since Sec. 421-A awards either death or life imprisonment for sedition, this punishment is proportional. However, all criminal sentences must be proportional to the gravity of the crime in question. No penalty is *per se* constitutional.[100] *Additionally*, according to Andrew von Hirsch, gradation of penalties is necessary. There should be a difference between a given penalty and the one immediately more/less serious.[101]

36. In the case at hand, employing the above objective criteria, death is not proportional to the seditious act committed by Ms. Bennet. *Additionally*, Sec. 421-A does not provide a detailed gradation of penalties in consonance with the severity of sedition committed. Practically, this is a grave injustice since Ms. Bennet who intended only the betterment of Camelot, would face the same punishment as an offender who maliciously sought to threaten the unity and integrity of the nation by inciting violence, leading to killing of citizens. Life imprisonment as the only alternative does not suffice. Sec. 421-A does nothing to cater to myriad circumstances. Furthermore, no jurisdiction in the world has imposed the death penalty for sedition. In recent times, even the nation with one of the most stringent sedition laws: Malaysia punishes aggravated sedition with a term ranging from 3 to 20 years.[102]

(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).

[95] Vikram Singh v. Union of India, (2015) 9 SCC 502.

[96] 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).

[97] The Constitution of the United States of America, 1787.

[98] Art. 49, Charter of Fundamental Rights of the European Union, 2000/C 364/01 (Adopted on October 2, 2000).

[99] Herman Solem v. Jerry Buckley Helm, 463 U.S. 277 (1983); Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 SCC 498.

[100] Herman Solem v. Jerry Buckley Helm, 463 U.S. 277 (1983).

[101] Silvia D'Ascoli, SENTENCING IN INTERNATIONAL CRIMINAL LAW: THE UN AD HOC TRIBUNALS AND FUTURE PERSPECTIVES FOR THE ICC, 2038 (2011); Confederation Of Indian Alcoholic Beverage Companies v. State of Bihar, 2016 SCC OnLine Pat 4806.

[102] Sec. 4(1A), The Sedition (Amendment) Bill, 2015.

Hence, it is submitted that the death penalty is a disproportionate punishment for sedition, violating principles of criminal sentencing.

[4]. THE IMPUGNED ACTS DO NOT INVITE THE APPLICATION OF SEC. 351-A

37. The charge under Sec. 351-A[103] of the Penal Code of Camelot against the respondents cannot be sustained. It is submitted that both the required elements to constitute an offence under the said provision are absent, them being *mens rea* **[4.1]** and promoting hatred between *two or more* groups **[4.2]**.

[4.1] *MENS REA* TO INCITE HATRED IS ABSENT IN THE PRESENT CASE

38. It has been held by the Supreme Court of India that for an offence to be made out under Sec. 153-A of the Indian Penal Code, which is similarly worded, the intention is an essential requirement.[104] There must an intention to incite people to create disorder and the prosecution has the burden of proving the same.[105]

39. The standard for inferring the effect of words spoken allegedly to incite disorder has to be fairly high and cannot be a *prima facie* standard. That is, in such cases, the said words should be construed from a reasonable standard.[106] They cannot be judged by the standards of the weaker sections of the society that infer danger from every hostile point of view.[107] Hence the prosecution has to prove *mens rea* and not merely limit itself to proving it on a *prima facie* standard. Further, in order to ascertain the intention of the accused, the entire alleged piece of expression has to be taken into account, inclusive of the circumstances surrounding it.[108]

40. The speech delivered by Ms. Bennet, therefore, might have suggested the overthrow of the government, but the intention was to convey the need of an overhaul that arose due to the maladministration of the government in power. In order to intensify the movement started by the appellant for the betterment of the citizens, this speech was directed towards the government to accept criticism for its inept governance. Even if the speech is about criticism of the government and implies the unity of all classes of the society towards a certain movement, it doesn't necessarily have to imply class hatred.[109] In democratic countries, criticism of governments can be exaggerated to enlist popular support and the same cannot be

[103] Sec. 351-A, The Penal Code of Camelot.
[104] 42nd Report of the Law Commission of India, THE INDIAN PENAL CODE, ¶8.24 (1971); Balwant Singh v. State of Punjab, AIR 1991 SC 2301.
[105] Balwant Singh v. State of Punjab, AIR 1991 SC 2301.
[106] State of Maharashtra v. Sangharaj Damodar Rupawate, 2010 (6) SCALE 667.
[107] State of Maharashtra v. Sangharaj Damodar Rupawate, 2010 (6) SCALE 667.
[108] Ghulam Sarwar v. State of Bihar, AIR 1966 Pat 82.
[109] Debi Soren v. The State, AIR 1954 Pat 254.

said to promote class hatred.[110] The United States Supreme Court, while striking down an analogous provision, has held that libel critical of government doesn't suffice to be an offence.[111]

41. Even if some nuances of expression have the tendency to stir up feelings among the listener, it is not sufficient to establish an offence[112] if a strong and beneficial impression is conveyed by the same message.[113] The fact that the ultimate objective was, as mentioned in the speech, '*to uphold the ideals of the Constitution*'[114] clearly indicates bona fide intentions on part of the respondents.

[4.2] THE SPEECH BY THE ACCUSED DOES NOT REFER TO SPECIFIC GROUPS

42. In common law that there should be the promotion of hatred, ill-will or enmity between 'two different groups' on grounds of religion, race, caste or communities.[115] It is required by law that at least two such groups should be affected by the alleged act.[116] This requirement is clearly lacking in the present case. A mere gathering of public and party workers[117] cannot be said to constitute a group. The plain reading of the language in such a provision reveals that there has to be the promotion of ill-will or disharmony between different groups and not mere incitement on grounds of hatred.[118] In this case, there was a public rally and it is not clear as to who was incited, as a group. The damage to public property[119] cannot be said to be a subsequent result of a group being incited[120] or targeted in a speech.

43. It has to be noted that the provision doesn't talk about *any* group, but that there has to exist some sort of specificity, for instance, the common racial origin, ethnicity, etc. Merely inciting the feelings one community or a group, which is not readily identifiable in the present case, cannot be sufficient to establish an offence under such a provision.[121] In this case, it could be argued that there was indeed a clash between some people who attended the rally and the government, since it was public property that was damaged. But it is difficult to ascertain whether the clash was between the supporters of the government on one hand and party workers on the other. Also, given the fact that teddy bears were offered to officials so as

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[110] Debi Soren. v. The State, AIR 1954 Pat 254.
[111] R.A.V. v. City of St. Paul, 505 US 377 (1992); New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
[112] Street v. New York, 394 U.S. 576 (1969).
[113] Ramesh S/O Chotalal Dalal v. Union Of India, 1988 AIR 775.
[114] ¶ 8, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[115] Bilal Ahmed Kaloo v. State of Andhra Pradesh, AIR 1997 SC 3483.
[116] Bilal Ahmed Kaloo v. State of Andhra Pradesh, AIR 1997 SC 3483.
[117] ¶ 9, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[118] Dr. Ramesh Yeshwant Prabhoo v. Shri Prabhakar Kashinath Kunte, 1996 AIR 1113.
[119] ¶ 9, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[120] Brandenburg v. Ohio, 395 U.S. 444 (1969); Cohen v. California, 403 U.S. 15 (1971).
[121] Bilal Ahmed Kaloo v. State of Andhra Pradesh, AIR 1997 SC 3483.

to target the government of Erehwon[122], it is also subject to speculation as to which government was the target of the alleged hate speech. The public mobilized could include common citizens without any party affiliations, and their ethnicity, race, caste cannot necessarily be similar.[123]

[5]. SEC. 210-B IS NOT APPLICABLE IN THE PRESENT CASE.

44. Generally, courts have laid down three elements necessary 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.[124]

45. It is a well-settled principle in common law that an offence is constituted by the presence of *actus reus* as well as *mens rea*.[125] The crime of criminal conspiracy explicitly requires *mens rea* through the use of the word 'agreement'. There is nothing in the facts to suggest that either Ms. Bennet or Mr. Fun Toosh or Mr. Gonsalves intended to incite 'violence' or 'lawlessness'. Since there was no agreement to do so, they could not have conspired to commit offences under Sec. 421-A and 351-A, since violence is an essential of criminal conspiracy. Hence, a *prima facie* case cannot be made out in the absence of the requisite *mens rea*. It is submitted that the offence of conspiracy cannot be made out because one person cannot conspire with himself to commit a crime **[5.1]**. *Additionally*, there was no illegal act that was meant to be performed **[5.2]**.

[5.1] ONE PERSON CANNOT CONSPIRE WITH HIMSELF TO COMMIT A CRIME

46. The government in their allegations have named Mr. Fun Toosh and Mr. Gonsalves as co-conspirators. Even though they are members of Hogwarts Party, there is no evidence to suggest that either of them intended to commit the crime under either Sec. 421-A or 351-A. It has been held that a single person cannot be held liable for criminal conspiracy.[126] The party members responsible for the riots have not been identified and even if they were, as already established, Ms. Bennet cannot be held liable for the acts of her party members.[127]

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[122] ¶ 9, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[123] ¶ 9, Page 3, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.
[124] Ajay Aggarwal v. Union Of India, (1993) 3 SCC 609.
[125] R v.Tolson, (1889) 23 QBD 168.
[126] Topandas v. State of Bombay, 1956 Cri LJ 138.
[127] N.J. Lawankar v. Anil Devidas Garad, (2007) 115 FLR 25; Surinder Singh v. State of Punjab, (2003) 10 SCC 66.

47. Since there is no mention of Mr. Fun Toosh and Mr. Gonsalves conspiring with Ms. Bennet to cause sedition, Ms. Bennet alone cannot be held liable for the crime of criminal conspiracy.

[5.2] THERE WAS NO ILLEGAL ACT THAT WAS MEANT TO BE PERFORMED

48. The third element requires that the ultimate objective should be illegal or there should be the use of illegal means to achieve a legal objective. Criticism of the government and betterment of citizens cannot be said to be an illegal objective. The standard to be charged under Sec. 421-A should be violence.[128] In the instant case, violence did not flow from Ms. Bennet's speech since there was no incitement to violence.[129] Neither was the ultimate objective illegal nor any illegal means were employed to achieve that objective.

49. Therefore the crime of criminal conspiracy cannot be established against Ms.Bennet. Neither can be an offence under Sec. 351-A, as concluded previously, since it requires intention as well as the incitement of two distinct groups, which are lacking in the present case.

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

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 Respondents.

[128] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.
[129] ¶ 8, Page 2, STATEMENT OF FACTS, The K.K. Luthra Memorial Moot Court, 2017.