Message from the Executive Board

I warmly welcome all the representatives to the first edition of Cambridge Court MUN. AIPPM is the most disruptive and fun committee to be in. You will get a chance to experience the nuances of Indian Politics in the purest form. Being the youth of this magnanimous nation, it is our moral imperative to take part in the policy making that impacts the entire nation. Not only are we supposed to select the best people to govern us, but also to think upon solutions to existing conflicts in our country, so that every day our country becomes a better place to live in. We request all the representatives to have a practical view while analysing the sedition laws in our country and to keep in mind the actual political constrains that exist in the current scenario. Research and do formulate your opinions and try to align them with the portfolio you have got. We request all the first-timers not to be afraid at any point of time. Just do your research work well, we will be there to guide you through the procedure and to help you with the most diplomatic way to put your stance. Let us make our experience of AIPPM a memorable one. You have the power to influence the way politics is in this country right now. Please consider that the following guide, as the name suggests, is merely to provide you with the background of the agenda and cannot serve as the credible source of information. Your real research lies beyond this guide and we hope to see some strong content and debate come our way.

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All India Political Parties Meet (AIPPM)

The All Indian Political Parties Meet is a powerful committee introduced in order to emulate political realities by bringing to light various layers of polity and governance in India. It is quintessential that members be thoroughly researched about all the current political happenings around the country and the members are also required to be aware of their character's political affiliations, interests, ideology etc.

Generally, AIPPM is called by Prime Minister or Speaker of the house, so that all parties come to a single alignment regarding the circumstances and problems which needs our special attention.

Agenda – Revisiting the concept of Sedition and Nationalism

MEANING-

Section 124-A in the Indian Penal Code, named 'Sedition', explains sedition in wide and magnanimous terms.

It says "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with life imprisonment".

The explanations which the Indian Penal Code gives are that 'the expression 'disaffection' includes disloyalty and all feelings of hate

It also says that comments that express strong disapproval of 'the measures of the Government, with a view to obtain their desired modifications by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offense under this section.'

According to the section 124-A, comments expressing strong disapproval of the 'administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offense under this section.'

The law was originally drafted by Thomas Macaulay. It was not a part of IPC in the 1860s and was even dropped from the law. It was introduced in the IPC in the year 1870

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When the first amendment was introduced, which also included detailed limitations on free speech, the then Prime Minister Jawaharlal Nehru was categorical in his belief that the offence of sedition was fundamentally unconstitutional. He had said 'now so far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons. The sooner we get rid of it the better.'

Public order and sedition:

The question of how much criticism a government can tolerate is indicative of the self-confidence of a democracy. On that count, India presents a mixed picture where, on the one hand, we regularly see the use of sedition laws to curtail political criticism even as we find legal precedents that provide a wide ambit to political expression.

At the heart of the debate on subversive speech is the question of how the law imagines the relationship between speech and action. In thinking of the scope of free speech in relation to public order in Art. 19(2) and sedition in Sec. 124A of the IPC, a key question has been how courts conceptualize the relation between speech and effect. Is someone who advocates the use of violence to overthrow the government entitled to protection under Art.19(1) (a)? Does a harsh criticism of the government amount to an act that undermines the security of the state or a disruption of public order? It will be useful to maintain a comparative frame to examine the evolution of different standards in two constitutional traditions, the US and India.

In the United States, the initial test applied to speech that criticized the government (especially during war) was the “bad tendency” test which did not protect any speech that had a tendency to cause any illegal action. In Schenk, Justice Holmes added a new dimension even as they accepted the bad tendency test. Holmes asked “whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent”. A doctrinal shift begins with the Abrams case where the majority reiterated the bad tendency test, but Holmes dissented, relying on his own formulation of ‘clear and present danger’ in Schenk, and clarified its scope to create a rupture between speech and consequence arguing that it was only the present danger of immediate evil or an intent to bring it about that justified limitations on speech.

The ‘clear and present’ danger test remained the prevailing standard till the 1960’s when the Ku Klux Klan case (i.e. Brandenburg v Ohio) held that while the test may even have some value in times of emergency in ordinary times it had no place in assisting the interpretation of the first amendment. According to the court, “The constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or law violation [i.e. subversive advocacy] except where [1] such advocacy is directed to inciting or producing imminent lawless action and [2] is likely to incite or produce such action.” The two step Brandenburg test currently stands as the prevailing standard to determine protectable speech.

Let us turn now to the Indian position on the relationship between free speech and subversive speech. Indian courts explicitly rejected the ‘clear and present danger’ test arguing that the doctrine cannot be imported into the Indian constitution because fundamental rights guaranteed under Art. 19 (1) of the Constitution are not absolute rights and subject to the restrictions placed in the subsequent clauses of Art. 19.The rejection of American standards by itself does not solve the problem of where the line between speech and action while interpreting Art. 19(2) is drawn.

Unlike the relatively straight line that can be drawn to trace the doctrinal development of

subversive speech and action in the US, in India it emerges more as a criss-crossing set of lines that move between different standards and across different forms of speech.

If the ‘bad tendency’ test established a loose nexus between speech and effect, and the ‘clear and present danger’ test demanded a closer proximity between speech and consequence, in India we find a slightly different spectrum which runs between ‘bad feelings’, ‘bad tendency’ and the standards of ‘clear and present danger’. The interpretations of sedition during the colonial period tended towards a narrower space for any subversive speech and in that sense the *Romesh Thapar* and *Brij Bhushan* decisions of 1950 were rather remarkable for their ability to distinguish between different levels of threat and impact in assessing speech in a postcolonial context.

Wrestling with the problem

The first major case after the first amendment to the Indian constitution in 1951 is *Ramji Lal Modi vs The State of U.P.* This was not a sedition case but it was the first one to examine the scope of the words ‘in the interest of’ and ‘public disorder’ in Art. 19(2). The question in this case was whether Sec. 295A of the IPC was protected by Art. 19(2). The petitioners argued that 295A sought to punish any speech which insulted a religion or the religious beliefs of a community but not all insults necessarily lead to public disorder and since the provision covers speech that does not create public disorder, it should be held to be unconstitutional. The Supreme Court disagreed with this interpretation and held that the phrase “in the interests of” has a much wider connotation than “for maintenance of” public order. Thus if certain activities have a tendency to cause public disorder, then a law penalizing such activities as an offence cannot but be held to be a law imposing reasonable restriction “in the interests of public order” even if those activities may not actually lead to a breach of public order. The court also held that 295A does not penalize every act of insult; it penalizes only those acts of insults which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of a class. The court introduced two tests – “aggravated form”, which

defines the criteria for what counts as an insult, and the "calculated tendency" of the insult to disrupt the public order. This is a confusing standard for while interpreting the words "in the interest of", the court comes close to the bad tendency test with no requirement of any actual proximity between speech and consequence, at the same time it qualifies the bad tendency test with "calculated tendency".

The next major case to deal with these issues was S upper intending, Central Prison vs Ram Manohar Lohia in 1960. The court discussed the idea of public order and observed that under Art. 19(2), the wide concept of "public order" is split up under different heads (security of the state, friendly relations with foreign states, public order, decency or morality etc) and they argued that while all the grounds mentioned can be brought under the general head "public order" in its most comprehensive sense, it was important that "public order" be demarcated from the others. In their understanding, "public order" was synonymous with public peace, safety and tranquility. In their discussion of Ramji Lal Modi, the court says the distinction between 'in the interest of' and 'for the maintenance of' does not ignore the necessity for an intimate connection between the law and the public order sought to be maintained by the law. They added that after the word reasonable had been added to 19(2) it was imperative that restrictions have a reasonable relation to the object which the legislation seeks to achieve and must not go in excess of that object. The restriction made "in the interests of public order" must have a reasonable relation to the object to be achieved, i.e., the public order. If the restriction has no proximate relationship to the achievement of public order, it fails the reasonableness test.

They approvingly cited the Federal Court in Rex v. Basudeva, which established the proximity test where a restriction has to have a proximate connection or nexus with public order, but not one far- fetched, hypothetical or problematical or too remote in the chain of its relation with public order. *Lohia* therefore introduces a double test – 'proximity and proportionality', which Gautam Bhatia argues is the introduction of an additional moral dimension to the public order exception. Bhatia describes the consequences of this as "introducing an 'inbuilt autonomy respecting limitation' by which the chain of causation (and, by extension, responsibility) between speech and public order disruption is broken when the actions of autonomous, rational individuals intervene".

The Supreme Court had an opportunity to clarify the scope of public order in *Kedar Nath Singh v. State of Bihar*, a 1961 case which challenged the constitutional validity of Sec. 124A (i.e. sedition). The court in *Kedar Nath*, after examining the conflict in standards in the colonial decisions (between "bad feelings" and 'bad tendency") observed that since sedition was not included in Art. 19(2) it implied that a more liberal understanding was needed in the context of a democracy. They made a distinction between a strong criticism of the government from those words which excite with the inclination to cause public disorder and

violence. They also distinguished between “the government established by law” and “persons for the time being engaged in carrying on the administration”. The court then held that “strong words used to express disapprobation of the measures of government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the government, without exciting those feelings, which generate the inclination to cause public disorder by acts of violence, would not be penal”.

They argued that what is forbidden are “words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order”. So if Ramji Lal Modi introduced the idea of “calculated tendency”, in Kedarnath we have the phrase “pernicious tendency”. Does this effectively bring us back to the bad tendency test? It appears that part of the confusion in Kedarnath emerges from the eagerness of the court to save Sec. 124A from being invalidated and towards such end acknowledge that if sedition were interpreted to mean disaffection in the sense of creating bad feelings alone, it would be invalid on the basis of exceeding Art. 19(2). It is only by drawing a nexus between speech and consequence in a manner consistent with Art. 19(2) that the provision is saved. While Kedar Nath cites Ramji Lal Modi, it completely ignored Ram Manohar Lohia which had reinterpreted Ramji Lal Modi to develop a strict test of proximity.

Squaring the circle:

One of the most significant tests that have emerged after *Lohia* and *Kedarnath* is the analogy of ‘spark in a powder keg’ in the *Rangarajan* case. In a crucial paragraph in Rangarajan, the court explicitly hold that while there has to be a balance between free speech and restrictions for special interest, the two cannot be balanced as though they were of equal weight. One can infer that the courts are making it clear that exceptions have to be construed precisely as deviations from the norm that free speech should prevail except in exceptional circumstances. And what is it that the court considers an exceptional circumstance?

Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a “spark in a powder keg”.

The court in this paragraph lays down in no uncertain terms the standard that has to be met in alleging a relation between speech and effect. The analogy of a spark in a powder keg brings in a temporal dimension of immediacy where the speech should be immediately dangerous to public interest. In other words, it must have the force of a perlocutionary speech act in which there is no temporal disjuncture between word and effect. A cumulative reading of the cases on public order and sedition suggest that as far as subversive speech targeted at the state is concerned, one can infer that even if there is no absolute consistency on the doctrinal tests, there is a consistency in the outer frame, namely that democracy demands the satisfaction of high standards of speech and effect if speech is to be curtailed.

Therefore, advocating revolution, or advocating even violent overthrow of the state, does not amount to sedition, unless there is incitement to violence, and more importantly, the incitement is to 'imminent' violence. Thus, in Balwant Singh v. State of Punjab, the Supreme Court overturned the convictions for 'sedition', (124A, IPC) and 'promoting enmity between different groups on grounds of religion, race etc.', (153A, IPC), and acquitted persons who had shouted – "*Khalistan zindabaad, Raj Karega Khalsa,"* and, *"Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da*", late evening on October 31, 1984, i.e. a few hours after Indira Gandhi's assassination – outside a cinema in a market frequented by Hindus and Sikhs in Chandigarh.

And finally the Supreme Court in *Arup Bhuyan vs State Of Assam* has incorporated the Brandenburg standards into Indian law. After citing the Brandenburg test, they explicitly state the following: "We respectfully agree with the above decisions, and are of the opinion that they apply to India too, as our fundamental rights are similar to the Bill of Rights in the U.S. Constitution".

It is abundantly clear that freedom of speech and expression within the Indian legal tradition includes within its ambit any form of criticism, dissent and protest. It cannot be held hostage to narrow ideas of what constitutes "anti national" speech and we hope that the courts will step in not merely to defend free speech but also pass strictures on those who abuse the legal process to create a chilling effect on constitutional rights. This is particularly important in the context of the ongoing case against the students of Jawaharlal Nehru University because if free speech and thought is curtailed within universities, we run the risk of endangering one of the most crucial spaces of political freedom in the country.

Can we in India imagine an event similar to that staged in Berlin on May 10, 1933, when student groups affiliated with the ruling Nazi Party collected tens of thousands of books and then, with the active encouragement of Nazi police, burned them in a massive pyre? Why did they do that, you might ask?

Questions to take into consideration:

- Is sedition law necessary in India?
- How sedition laws assume importance even in a democracy?
- Should the sedition law be repealed from India?
- Does sedition law exists in countries other than India?
- Use of Sedition law in recent times (during Punjab University student protest, JNU incident, Hardik Patel, Harayana Protestor Sombir Case etc.)
- Future Road-map and current road-blocks for sedition law?