ALL INDIA POLITICAL PARTIES MEET

Chairperson
Naman Kapoor

Secretary General
Devraj Singhania

Director General
Chirag Bansal

Under-Secretary General
Aryan Garg

Welham Boys' School Model United Nations 2019

Email
chair.aippm@welhamboys.org

Website
www.welhammun.org

AGENDAS

Implementation of Article 44 of The Indian Constitution.

Reviewing The Sedition Laws of India.

Table Of Contents

1. Letter from the executive board.....01
2. Agenda 1- Implementation of Article 44 of the Indian Constitution.....02
3. Concept of A Uniform Civil Code.....02
4. The Directive Principles of State Policy.....02
5. Need For A Uniform Civil Code.....03
6. The Shah Bano Case.....03
7. The Triple Talaq Case.....04
8. Constitutionalists On The Uniform Civil Code.....05
9. Reducing Gender Inequalities Through A Uniform Civil Code.....06
10. Merits of A Uniform Civil Code.....07
11. Expectations From The Executive Board.....08
12. Links for further research.....09
13. Agenda 2- Reviewing The Sedition Laws of India.....09
14. The Concept of Sedition.....09
15. Historical Context.....10
16. Sedition In The Indian Constitution.....13
17. Recent Landmark Sedition Cases.....14
18. Sedition Laws Versus Freedom of Speech.....19
19. Merits Of The Sedition Laws 19
20. Demerits of Sedition Laws.....20
21. QARMA- Questions A Resolution Must Answer.....20
22. Links for further research.....21

Letter from the Executive Board

The Executive Board of All India Political Party Meet welcomes you all to the 5th simulation of AIPPM at WELMUN here at Welham Boys' School. This year has till now been a very politically charged year, with the General Elections just behind us. The Executive Board hopes that the committee will work towards achieving a progressive and inclusive agenda for development.

Your Director throughout the course of the committee will be Rajesh Mohan Bhandari, a class 12th student with a lot of interest in national politics. Your Joint Director will be Prakhar Dixit, an ardent Hindi speaker and debater. Last but not the least, your Rapporteur will be Samanyu Raj Malik, an avid debater and MUNer with a keen interest in national politics. The Executive Board will work to ensure that every delegate is treated fairly and impartially, and has a good experience.

Recent Indian politics has been plagued with a lot of religiously charged violence and rhetoric. As the political leaders of the country, it is your job to ensure that such incidents do not take place. Talking in the same context, it is also your job that all the religions are treated equally by the government and no religion has an upper hand. Thus, a Uniform Civil Code is the need of the hour and it is your job to find a way to implement it. The question is simple, will India be inclusive of all religions and take in what everyone has to say, or will it adopt more of an exclusive stance and streamline its legal processes? It is up to you to decide

Freedom of speech is one of the pillars of our republic. However, national unity, integrity and political instability are also things to be taken into account. That is where the sedition laws come in. They curb freedom of speech to an extent, but also provide political stability to the country. You as the leaders of our country have to make the call, whether to remove, reform or keep them the way they are.

Your role in the committee is thus clear, you will have to build consensus among your fellow leaders and try to achieve something which has never been done before.

Welcome to an MUN simulation which will shape a narrative that is inclusive and one that upholds progressive values.

When India speaks the World listens,

Sincerely,
The Executive Board

Agenda-1

'Implementation of Article 44 of the Indian Constitution.'

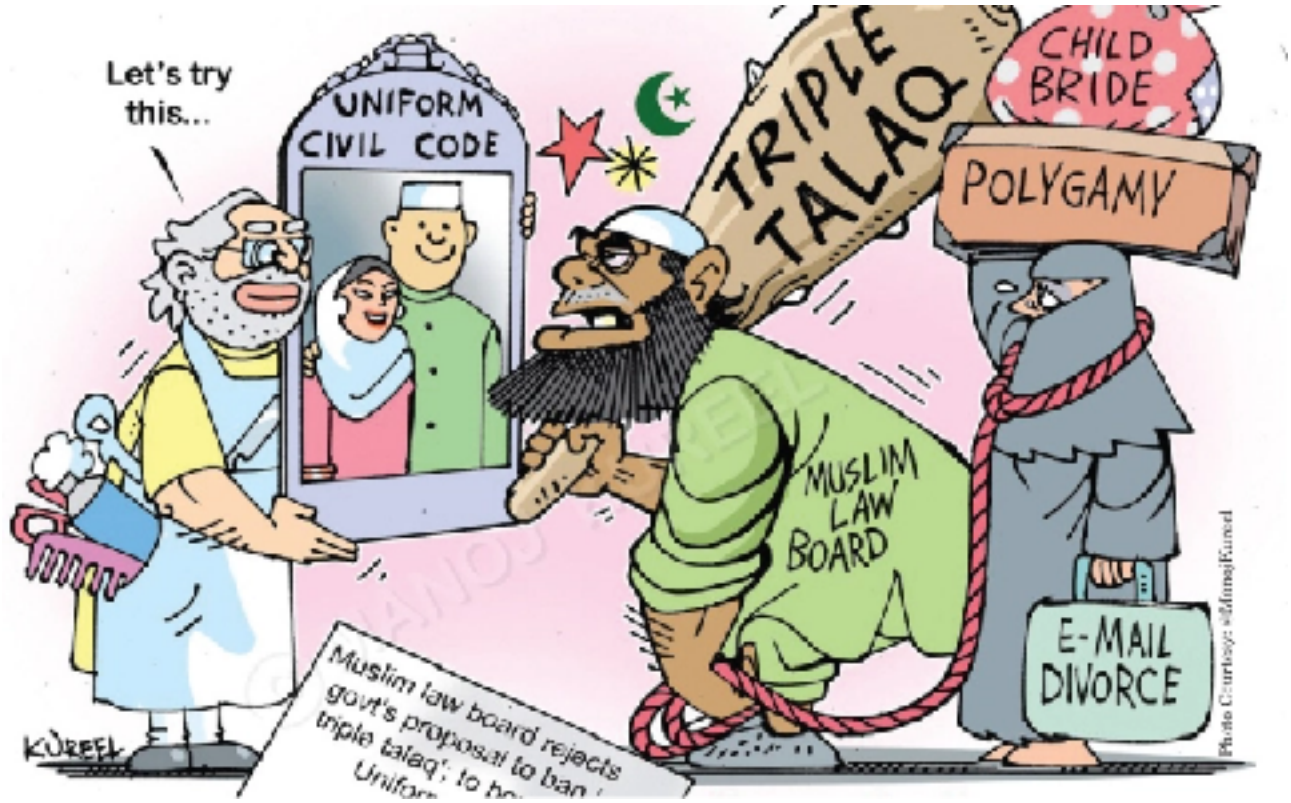
A uniform civil code (UCC) aims to set up a code of secular civil laws which are the same for all people irrespective of their caste, creed, religion or any other ethnic identity. The basic premise of a uniform civil code is to secure to all its citizens equality in all forms. The constitution also has a provision for Uniform Civil Code in Article 44 as a Directive Principle of State Policy which states that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."Currently, all religions have personal law boards which make laws for their respective religions. A lot of difficulties are faced by the government to unify the people and bring in a sense of equality, while at the same time having different laws for each religion. A uniform civil code aims to abolish this system.

The Directive Principles of State Policy

The Constitution lays down certain Directive Principles of State Policy, which even though are not justiciable, are 'fundamental in governance of the country', and it is the duty of the State to apply these principles in making laws. These lay down that the State shall work towards the welfare of people by securing and protecting as effectively as it may, a social order, in which justice-social, economic and political-shall form in all institutions of national life. The State shall direct its policy in such a direction, so as to secure the right of all men and women to an adequate means of livelihood, equal pay for equal work and within limits of its economic capacity and development, to make effective provision for securing the right to work, education and to public assistance in the event of unemployment, old age, sickness and disablement or other cases of undeserved want. The establishment of a Uniform Civil Code is one such DPSC.

The Need For A Uniform Civil Code

India, as we all know, is a secular country and follows a system of inclusive secularism. Our form of secularism is different from that of others; it does not prohibit interference in matters of religion, rather says that the state should indulge in all religions but equally. To secure equality for all, each ideology must compromise and adhere to a set of unified principles, objectives and laws. Considering the Triple Talaq judgement, which says that Muslim personal law is in direct contravention with the constitution, a UCC is the need of the hour. We will explore the need for a UCC through two case studies-



Should personal laws be replaced by a UCC?

The Shah Bano Case

The case of Mohd. Ahmad Khan vs. Shah Bano Begum & Ors is one of the legal milestones of the country's legal setup and the fight against the set Muslim personal law. It, very basically, laid the groundwork for all the women who were going to oppose patriarchy by approaching the apex court.

In April of 1978, a 62-year-old woman, Shah Bano Begum filed a petition in the court demanding maintenance from her husband Mohd. Ahmed Khan, a renowned lawyer in Indore, who had divorced her through irrevocable Triple

Talaq in November. Shah Bano went to court demanding maintenance for her and her five children under Section 123 of the Code of Criminal Procedure, 1973. The section puts a legal obligation on a man to provide for his wife during marriage and after divorce. Khan, however, contested his claim on Muslim Personal Law, which says that maintenance should be given only during the Iddat period after divorce.

After detailed arguments, the decision was passed by the Supreme Court of India in 1985. On the question of whether CrPC, 1973, which applies to all Indian citizens regardless of their religion, could apply in this case. Then Chief Justice of India Y.V. Chandrachud upheld the decision of the High Court that gave orders for maintenance to Shah Bano under CrPC. For its part, the apex court increased the maintenance sum.

The case echoes the need for a Uniform Civil Code because it basically puts forth the fact that some of the Personal Laws are in direct contradiction with the constitution and hence must be repealed. A Uniform Civil Code must be drafted and implemented.

The Triple Talaq Case

Shayara Bano was married to Rizwan Ahmed for a total of 15 years. In 2016, he gave her divorce through instantaneous triple talaq (talaq -e biddat). She filed a Writ Petition in the Supreme Court asking it to hold three practices – talaq-e-biddat, polygamy, nikah-halala – unconstitutional and invalid as they violate Articles 14, 15, 21, 25 of the Constitution.

Talaq-e- bidat is a practice which gives a man the right to divorce to his wife by uttering 'talaq' three times in one sitting with or without his wife's consent. Nikah Halala is another misogynistic practice where a divorced woman who wants to remarry her husband would have to marry, and obtain divorce, from a second husband before she can go back to her first husband. And polygamy is a practice which allows Muslim men to have more than one wife.

On the 16th of February 2017, the Court asked Shayara Bano, the Union of India, various women' rights bodies, and the All India Muslim Personal Law Board (AIMPLB) to give written submissions on the issue of talaq-e- bidat, nikah-halala and polygamy. The Union of India and the women rights organizations like Bebaak Collective and Bhartiya Muslim Mahila Andolan

(BMMA) supported Ms Bano's plea that these practices are unconstitutional. The AIMPLB has argued that uncodified Muslim personal law is not subject to constitutional judicial review and that these are essential practices of the Islamic religion and are protected under Article 25 of the Constitution.

After accepting Shayara Bano's petition, the Apex Court formed a 5 judge constitutional bench on 30th March 2017. The first hearing was held on 11th May 2017. On 22nd August 2017, the 5 Judge Bench pronounced its decision in the Triple Talaq Case, declaring that the practice is unconstitutional by a 3:2 majority.

Constitutionalists on the Uniform Civil Code

Constituent Assembly including prominent ones like Minoo Masani. Ambedkar said this on religion during one of his speeches- "I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, discriminations and other things, which conflict with our fundamental rights."

Reducing Gender Inequalities Through A Uniform Civil Code

A UCC has the potential to secure gender equality for all regardless of their religion. As it is evident in the Shah Bano Case, many of the Personal Laws are misogynistic and largely patriarchal. If a Uniform Civil Code is implemented, it will set a uniform code of laws which everyone will have to follow and thus the notion of patriarchy in laws will cease to exist. Examples of misogyny in Personal Laws-

Parsi personal law:

- If a Parsi woman marries someone who isn't a Parsi, their children are not accepted as part of the Parsi community. However, this does not apply to a Parsi man marrying outside the Parsi community.
- A non-Parsi woman who is married to or is the widow of a Parsi man cannot inherit on his death though their children can inherit.

Hindu personal law:

- If a married woman dies without having any children, the property is inherited by the children of her husband and not her own.

- Section 6(a) of the Hindu Minority and Guardianship Act gives the father the status of the natural guardian in the case of a legitimate child. The need for equality of rights of natural guardianship between both parents is ignored.
- Although Goa claims to be the only state with a UCC in place, in certain conditions, men can practice bigamy in Goa.

Muslim personal law:

- The practice of Talaq-e-biddat (triple talaq) allows for a Muslim man to divorce his wife instantaneously by uttering the word talaq three times in one sitting, a Muslim woman must follow a legal procedure after obtaining her husband's consent to be able to get a divorce. This law was recently repealed by the apex court.
- Allows for a Muslim man to have multiple wives.
- The practice of Nikah Halala determines that a Muslim woman is not allowed to remarry the husband who has divorced her unless she first marries another man and consummates that marriage.

Merits of A Uniform Civil Code

1. Will Promote Gender Equality

Having a UCC will promote gender equality and eliminate all gender disparities. This is because mostly all personal laws, especially Muslim personal laws have proven themselves to be misogynistic and patriarchal. A UCC will be a set of modern common laws which will go on to promote gender equality.

2. Will Enforce The Idea of Secularism

India is a secular country. The idea of personal laws goes against the idea of secularism at large because there is no one common law for all, rather different laws for all religions. If a UCC is implemented, it will enforce the idea of secularism in society.

3. Will Enforce The Concept of National Integrity And Unity

In a vastly diverse country like India, having different laws for each religion does not promote unity. Rather, it fragments society and strengthens the divides between different people. If a UCC is implemented and the concept of personal laws is abolished, then a boost to national integrity and unity will be given.

Demerits of A Uniform Civil Code

1. Aping The West Is Not A Solution

India is a society which is radically different from Western societies. Indian culture is an amalgamation of a lot of distinct cultures. The Western model of governance cannot be copied onto a society like India which is not homogenous in its composition and has loads of diversity.

2. Gradual Integration With Laws Can Be A Better Option

Personal laws can gradually integrate themselves with common laws which is a far better option than such a sudden change. If all personal law boards reach a consensus to harmonize themselves with the general laws, the situation will be far better.

3. Freedom of Religion At Risk

The Constitution of India provides everyone with the right to follow the religion of his or her own choice. If a Uniform Civil Code is implemented, it will ultimately reduce the scope of freedom of religion in the country.

4. The Time Is Not Suitable

Recent times have not been particularly rosy for the minorities in India, particularly the Muslims, considering the rising intolerance against them. The cases of mob lynching, the imposed beef ban and the overall saffronization of the country speak for itself. If a UCC is imposed, then it will corner the Muslim community and add fuel to the fire which will ultimately consume the unity of India.

Questions A Resolution Needs To Answer

1. Should a Uniform Civil Code be implemented
2. If it is implemented, What is going to be the nature of the implementation? (gradual or sudden)
3. If it is not implemented, is there going to be another alternative or are we going to continue with the current system?
4. How are the representatives of various religions be convinced of a UCC?
5. Is the UCC going to take the best from all religions or is it going to take another alternative?

Links For Further Research

https://www.thehindu.com/news/national/what-is-debate-on-uniform-civil-code-all-about/article24903560.ece
https://www.outlookindia.com/website/story/ambedkar-and-the-uniform-civil-code/221068
https://www.outlookindia.com/website/story/ambedkar-and-the-uniform-civil-code/221068
http://www.legalserviceindia.com/legal/article-226-should-uniform-civil-code-be-implemented-in-india.html
https://www.timesnownews.com/india/article/uniform-civil-code-where-political-parties-stand/50492

Agenda - 2

'Reviewing The Sedition Laws of India'

The Concept of Sedition

Legally speaking, the definition of sedition is- ''the criminal act of revolting against an established authority, usually in the form of treason or defamation of a government.'' In essence, if a person conspires against the state or tries to incite violence against it, he or she has committed the act of sedition

Sedition not only encompasses a person's actions, but any words, written or spoken that may have the potential to incite violence against the state. Sedition, therefore,is an umbrella term for all forms anti-state actions.

Historical Context

Macaulay to Strachey

Before 1832, the English law of "seditious libels" was actually quite broad. A person could be convicted for sedition for saying anything that brought the government into "hatred or contempt" or even for merely inciting "discontent or disaffection" against the government. In other words, it was not mandatory for a person to say something that was actually likely to make people take up arms against the government. However, this was not the same after 1832. In his 19th century treatise on the history of English criminal law, Sir James Fitzjames Stephen wrote that prosecutions for sedition in England since 1832 were "so rare that they may be said practically to have ceased". "In one word," he wrote, "nothing short of direct incitement to disorder and violence is a seditious libel." Ironically, Stephen was the Law Member of the Viceroy's Council who would introduce sedition into the IPC.

The original draft of the IPC was made in 1837 by the Indian Law Commission helmed by T.B. Macaulay. Section 113 of this draft made it a crime to "excite feelings of disaffection against the government". Macaulay's definition of sedition was broader than the pre-1832 English law of seditious libels. For instance, Macaulay did not make it an offence to incite

hatred, contempt or ill will against the government, choosing only the vague word "disaffection" to describe sedition. However, Macaulay's draft did not reflect upon the current state of the law in England either, according to which only direct incitements to violence against the state were deemed seditious.

For some reason, Section 113 of Macaulay's draft did not make it into the final version of the IPC in 1860. The official justification was that this was a clerical mistake. However, it is possible that Section 113 was omitted from the IPC in 1860 because it was incompatible with the contemporary law of sedition in England at the time. After all, the law codes of British India were made by the followers of Jeremy Bentham, who wished to enact similar codes back home in England. For them, the colony of British India was a place where they could test how a code would function and then implement it in England. They hoped that codes like the IPC would later serve as precedents for similar law codes to be drawn up in England itself. It is therefore possible that the framers of the original IPC of 1860 left out Section 113 of Macaulay's draft because it did not reflect the existing state of the law of sedition in England and because its introduction into the IPC might have come in the way of the code being used to draw up a similar statute in England.

An amendment was introduced to the IPC in 1870, and Section 113 of Macaulay's draft was put into the code as Section 124-A. There is some evidence to suggest that sedition was made an offence in British India because the colonial government feared a Wahabi uprising.

While introducing the amendment to the Viceroy's Council, Law Member Stephen made a reference to a man who had preached "jihad or holy war against Christians in India" and of how the man had been in the habit "for weeks and months and years, of going from village to village, and preaching in every place he came to that it was a sacred religious duty to make war against the Government of India". There were eight other men in Patna, said Stephen, who had been found to be indulging in similar activities. Later, in 1898, the Lieutenant Governor of Calcutta said that it was "the Wahabi conspiracy and the open preaching of jehad or religious war against the government" in 1870 that had prompted the introduction of sedition into the IPC.

Even though it was the fear of an Islamic religious uprising that gave rise to the offence of sedition in British India, the first person to be convicted under Section 124-A was not a Muslim but a prominent Hindu nationalist, Bal Gangadhar Tilak. His newspaper, Kesari, had carried an article in which the Hindu king Shivaji awoke in heaven and lamented the existing state of affairs in India. "Alack! What is this?" the fictitious Shivaji was reported as having said in Kesari, "I now see with (my own) eyes the ruin of (my) country…. Foreigners are dragging out Lakshmi violently by the hand."

Bal Gangadhar Tilak was charged with sedition before the Bombay High Court, in Queen Empress vs Bal Gangadhar Tilak (1897). Justice Arthur Strachey delivered the charge to the jury in very broad terms. He said that the meaning of sedition was "the absence of affection", that it meant "hatred, enmity, dislike, hostility, contempt, and every form of ill will to the government". For Strachey, sedition also meant "every possible form of bad feeling to the government", and the "amount or intensity of the disaffection" was "absolutely immaterial". It was not mandatory for the accused person to incite "mutiny or rebellion, or any sort of actual disturbance, great or small" in order to be convicted. In other words, the pre-1832 English law of seditious libels now became the law of sedition in India. The IPC was amended in 1898, and Strachey's definition of sedition replaced Macaulay's in Section 124-A.

Gwyer to Munshi

Decades later, in 1941, the Federal Court of India tried to bring the Indian law of sedition in line with its English counterpart. A case was brought before it by Niharendu Dutt Majumdar, a legislator from Bengal, who had, according to the Federal Court, made a "violent", "frothy and irresponsible" speech criticising the Governor and Ministry of Bengal for their inaction during the Dacca riots.
Chief Justice Maurice Gwyer adopted the post-1832 English law of seditious libels in order to interpret Section 124-A of the IPC. "The acts or words complained of," he said, "must… either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency." Majumdar was acquitted because Gwyer did not consider his speech "as inciting those who heard it… to attempt by violence or by public disorder to subvert the government".

However, Gwyer was overruled by the Privy Council in Sadashiv Narayan Bhalerao's case, decided in February 1947, a few months before India became independent. The Privy Council rejected Gwyer's interpretation of sedition and rather reiterated Strachey's charge to the jury.

The framers of India's Constitution decided to adopt the framework of the Irish Constitution in specifically enumerating exceptions to the right to free speech. In early drafts of the Constitution that were circulated within the Constituent Assembly, "sedition" was deemed one such exception to the right to free speech.

However, on the floor of the Assembly, one of the strongest supporters of free speech, K.M. Munshi, moved an amendment to omit the word "sedition" from the exceptions. He argued in the Constituent Assembly that the view taken by the Federal Court in Majumdar's case was, in fact, the correct one. It was because of his efforts that "sedition" was finally deleted as an exception to the right to free speech in what would become Article 19(2) of the Constitution.

Shortly after the Constitution came into existence, in November 1950, the Punjab High Court held Section 124-A to be unconstitutional. However, the first amendment to the Constitution was passed in 1951, and the words "public order" were inserted as an exception to the right to free speech. Soon, in Kedar Nath vs State of Bihar, the Supreme Court held that Section 124-A was a valid restriction on the fundamental right to free speech. Even so, the court accepted the view perspective of Chief Justice Gwyer in Majumdar's case. Kedar Nath was a communist who had made a fiery speech in Bihar, in which he had said, among other things: "We believe in that revolution… which will come and in the flames of which the capitalists, zamindars and the Congress leaders of India, who have made it their profession to loot the country, will be reduced to ashes."

It was later held that Section 124-A was aimed at "rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence". Merely inciting "bad feelings" or feelings of enmity or hatred towards the government would not be deemed seditious. Thus, Strachey's formulation in Tilak's case, as endorsed by the Privy Council, was rejected. The conviction of the appellant in this case, however, was upheld because "any written or spoken words…

which have implicit in them the idea of subverting government by violent means, which are compendiously included in the term 'revolution'", were covered by the offence of sedition.

Thereafter, in Balwant Singh vs State of Punjab, [(1995) 3 SCC 214], the appellants had been convicted for raising slogans like "Khalistan Zindabad" in a crowded place on the day Prime Minister Indira Gandhi was assassinated. The Supreme Court held that the "[r
]aising of some lonesome slogans, a couple of times by two individuals, without anything more", "which neither evoked any response nor reaction from anyone in the public", was insufficient to be termed sedition, that "[s]ome more overt act was necessary". The fact that the appellants did not intend to "incite people to create disorder" and that no "law and order problem" actually occurred was held sufficient to free them from the charge of sedition.

Sedition in the Indian Constitution

Sedition in India is a cognizable, non-compoundable, and non-bailable offence. The penalty can vary from a fine to three years or life imprisonment. But these penalties would be awarded after the judgement, which can take a lot of time to come. Meanwhile, the person charged with sedition must live without their passport, barred from government jobs, and must produce themselves in the court on a loop. All this, while paying the legal fee. The charges have rarely stuck, but the process itself becomes the punishment.

Section 124 A of IPC

"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 shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

- Explanation 1 – The expression "disaffection" includes disloyalty and all feelings of enmity.

- Explanation 2 – Comments expressing disapprobation of the measures of the attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

- Explanation 3 – Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

Sedition laws in India

Altogether, Sedition laws are found in the following laws in India:
the Indian Penal Code, 1860 (Section 124 (A))

- the Code of Criminal Procedure, 1973 (Section 95)

- the Seditious Meetings Act, 1911 and

- the Unlawful Activities (Prevention) Act (Section 2 (o) (iii)).

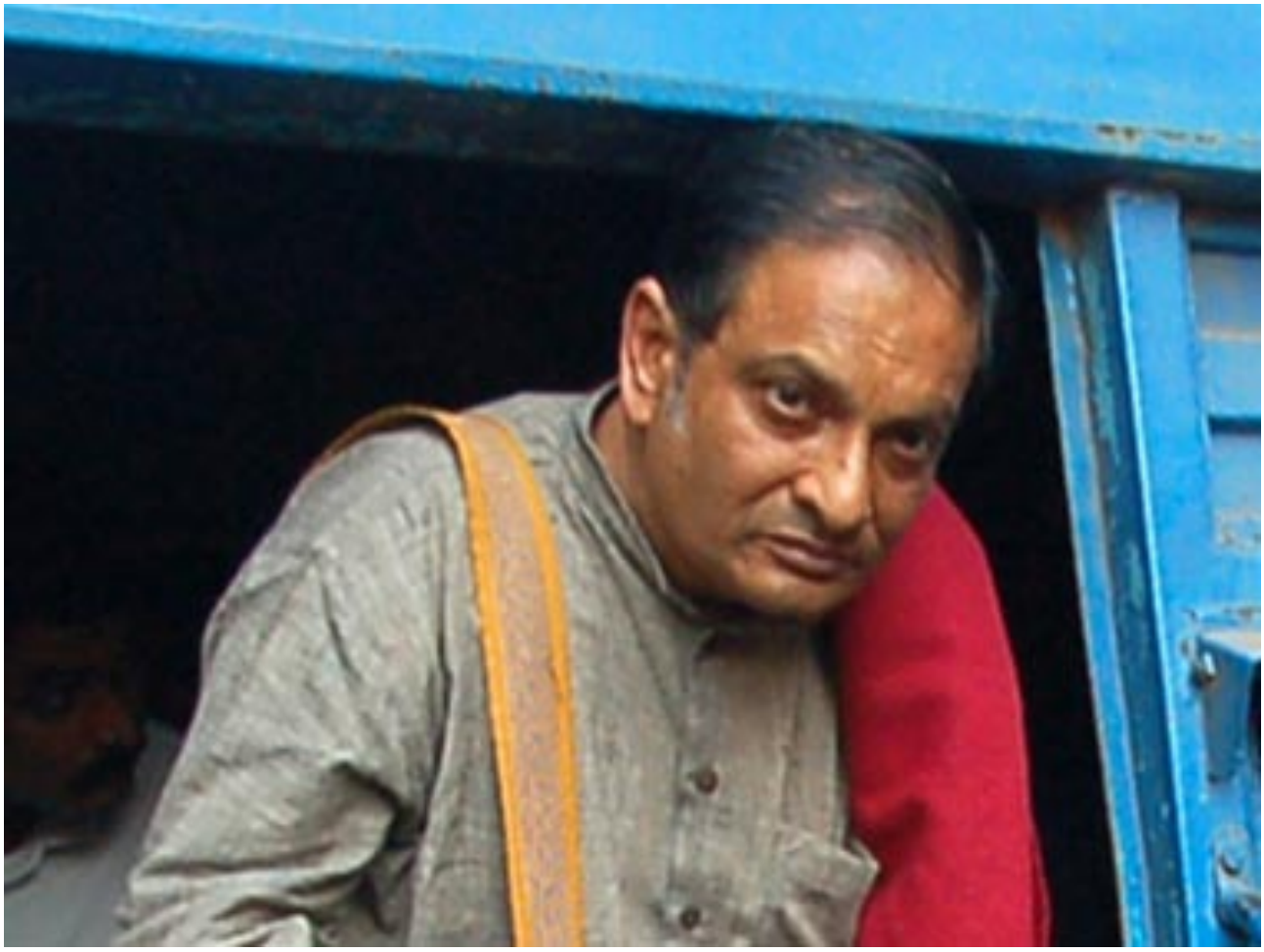
Recent Landmark Sedition Cases In India

Establishing a review on the sedition laws in India would essentially boil to reviewing the cases of sedition throughout pre- and post-independence history. In essence, the exact legal definition of sedition in India can only be derived from the plethora of cases and the judgements passed on them.

Dr. Binayak Sen vs. State of Chhattisgarh (2007)

Dr. Binayak Sen was charged for sedition, among other things, for allegedly aiding Naxalites, and sentenced to life imprisonment. He was accused of helping insurgents, who were active in the region at the time, by passing notes from a Maoist prisoner that was his patient to someone outside the jail. Denying all charges, Dr. Sen stated he was under the constant supervision of prison officials during his treatments so such an action would not be possible. It was his criticism of the killings committed by a vigilante group that led to his arrest and subsequent accusations, Dr. Sen stated to The Wall Street Journal. Salwa Judum is the group he is referring to, designed and supported by the state government of Chhattisgarh to curb the insurgency in

the villages of indigenous tribes where it thrived, according to them. But Dr. Sen, who is a human-rights activist apart from being a paediatrician, claims that the group's real job's to clear village land that's rich in iron ore, bauxite and diamonds for it to be quarried.



Dr. Binayak Sen

His arrest gained a lot of international attention, and the U.S.-based Global Health Council awarded Dr. Sen its 2008 Jonathan Mann Award for global health and human rights considering his services to poor and indigenous communities in India. Later that year, 22 Nobel laureates sent a letter to the Indian government criticizing the incarceration and asking that he be released to receive the award in person. "We also wish to express grave concern that Dr. Sen appears to be incarcerated solely for peacefully exercising his fundamental human rights…and that he is charged under two internal security laws that do not comport with international human rights standards," they wrote in the letter.

Aseem Trivedi vs. State of Maharashtra (2012)

Controversial political cartoonist and activist, Aseem Trivedi, most famously for his anti-corruption campaign, Cartoons Against Corruption, was arrested on charges of sedition, in 2010. The complaint, filed by Amit Katarayea who is a legal advisor for a Mumbai-based NGO, condemns Trivedi's display of 'insulting and derogatory' cartoons, that depicted the Parliament as a commode and the National Emblem in a demeaning manner having replaced the lions with rabid wolves, during an Anna Hazare protest against corruption, as well as posting them on social networking sites.

Aseem Trivedi

As reported by India Today, members of India Against Corruption (IAC) claimed that the cases were foisted on Trivedi by the government, as the government was angry with the anti-corruption crusade. Mayank Gandhi of the IAC reportedly said, "The case has been registered simply because Aseem had participated in the BKC protest organized by Anna Hazare and had raised his voice against corruption. So the government is trying to scuttle his protest in this manner." Trivedi's case seriously questioned freedom of speech and expression in the country.

Shreya Singhal vs. Union of India (2012-15)

This case is monumental in India's jurisprudence as its judgement took down Section 66A of the IT Act, sought to be in violation of Article 19 (1) of the

Constitution of India that accords the right to freedom of speech and expression to all citizens. A student of law at the time, Shreya Singhal filed a petition in 2012 seeking an amendment in the section 66A, triggered by the arrest of two young girls in Mumbai, for a Facebook post that was critical of the shutdown of the city after the death of Shiv Sena leader, Bal Thackeray; one of them posted the comment, the other merely 'liked' it.

What's critical about this judgement is the court's ruling that a person could not be tried for sedition unless their speech, had an established connection with any provocation to violence or disruption in public order. The Supreme Court differentiated between "advocacy" and "incitement", stating that only the latter is punishable by law. The Supreme Court judgement came after three years of the petition's filing in 2015, but Shreya did not deter. "I did feel saddened in between but never lost hope. I was also hurt to see that despite the matter pending before the SC, police continued to arrest people under section 66A of the IT act. What was heartening was that the arrests did not deter people from posting comments," Shreya told Hindustan Times.

The JNU Sedition Row

On 9 February 2016, some students of Jawaharlal Nehru University (JNU) held a protest on their campus against the capital punishment sentenced to the 2001 Indian Parliament attack convict Afzal Guru and Kashmiri separatist Maqbool Bhat. The event's organizers were former members of the Democratic Students Union (DSU). The event was held despite the University administration withdrawing permission for the event soon before it was due to begin, due to protests by members of the Hindu nationalist student union ABVP. The event saw violent clashes between various student groups. A video was circulated in which a small group of individuals, whom a later investigation described as outsiders to the University wearing masks, shouted "anti-India" slogans.

Four days later, JNU Students' Union President Kanhaiya Kumar was arrested by the Delhi police and charged with sedition. Two other students were arrested soon after, including Umar Khalid. The arrests drew heavy criticism from many sections of society, on the grounds that the Bharatiya Janata Party government was attempting to silence dissent. Thousands of students, faculty, and staff protested the arrest at JNU, and classes at the University were put to a halt for several days. The arrest was also heavily

criticized by a number of prominent scholars internationally. The slogans were criticized by many individuals, including political leaders and students of JNU.

Kanhaiya Kumar- Former JNUSU President

Investigations into the incident were carried out by both, the Delhi government and the University administration. Both found that the controversial slogans had been shouted by outsiders who did not belong to the University. The arrested students were all granted bail, with the judge noting in one case that there was no evidence of the accused shouting anti national slogans. However, the University inquiry found a number of students to have violated University rules and enacted sanctions, varying from fines to rustication, on 21 students. In response, the students went on an indefinite hunger strike. The Delhi High Court suspended the enactment of the University sanctions on the condition that the students end their strike.

Sedition Laws Versus Freedom of Speech

Freedom of speech and expression is one of the most important fundamental rights in any democracy. In India, this right is enshrined under Article 19(1)(a) of the Constitution of India. Currently, the law of sedition

under Section 124A has created big conflict with the right to freedom of speech and expression in the Constitutional jurisprudence of India.

In Romesh Thapper v. State, it was held that the limits set out under Article 19(2) are very narrow and strict. In Tara Singh v. State, the East Punjab High Court held that section 124-A has no place in a democratic setup and it limited the freedom of speech and expression. By virtue of the Constitution (First Amendment) Act, 1951 two big changes were made to the freedom of speech and expression. Firstly, more grounds were added as restrictions to free speech and secondly, it imposed that restrictions must be reasonable.

The question now arises whether Article 19(2) and Section 124-A are complementary or contradictory to each other. There are three arguments that can be made:
1. Section 124A ultra-vires the Constitution since it infringes article 19(1)(a) and is not saved by the expression 'in the interest of public order.'

2. Section 124A is not void because the expression 'in the interest of public order' has a wider amplitude and is not only confined to 'violence'. It must undermine the authority of the government by bringing in hatred or contempt or disaffection towards it.

3. In Indramani Singh v. State of Manipur, it was held that Section 124A is partly void and partly valid. Exciting mere disaffection or attempting to cause disaffection is ultra vires, but the restriction under Article 19(2) to excite hatred or contempt against the Government established by law in India, is valid.

Merits of The Sedition Laws

1.Narrow interpretation provides space for free speech

Survives test of constitutionality if interpreted narrowly to include only those cases where there was circumstantial evidence for disruption of public order and incitement of violence that led to harm of life and property.

2. Curbs incitement to revolution

Given the presence of insurgency in some states and well as ELW calls for revolution in others, provision for action against 'sedition' proves to be the opportunity to prevent loss of life, damage to property while ensuring security and stability.

3. Prevents Inflammatory speeches and resultant violence

It can be used hamper inflammatory speech which in some cases could lead to a cascade of uncontrollable events of hate and brutality.

Demerits

1. Misuse

Can be misused in democracy to curb political opposition and dissent. There are many examples of sedition cases filed against media houses and journalists for performing their duty. Similarly, human rights activists as well as other minority leaders are often harassed with this tool merely for expressing disapprobation or criticising government's actions or lack of thereof.

2. Restricts freedom of speech in democracy

It is quite plausible of those untrained in public speech being convicted of Sedition merely for acting as opposition outside the parliament then such a provision is a threat to freedom of speech and democracy. This holds true whether such speech results in violence or not as sedition attacks the root of Article 19(a) & Article 19(b).

Questions A Resolution Must Answer

1. Should the sedition laws be repealed?

2. Should the sedition laws be amended?

3. Should the definition of sedition in the IPC be narrowed down and be more specific?

4. If the definition is made more specific then what should be the new definition?

5. Should the previous judgements relating to sedition be taken as precedence to arrive at the definition?

6. Should the overall of extent of the sedition laws be reduced or expanded?

7. If the sedition laws are repealed, what will be the measures taken which will curb inflammatory speeches and writings which will have the potential to incite violence against the state?

Links For Further Research

https://frontline.thehindu.com/the-nation/history-of-sedition/article9049848.ece
https://www.irishtimes.com/news/world/asia-pacific/indian-politician-faces-sedition-charges-for-prai...
https://www.clearias.com/sedition-in-india/
http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=2844
https://homegrown.co.in/article/47919/5-landmark-cases-that-changed-the-way-we-look-at-indias-sediti...
https://www.youngbhartiya.com/article/sedition-and-free-speech-in-india