IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI

(RIOTS CASE)

CNR No. DLSH-01-00-3841-2020
SC No. 132-2020
FIR No. 22/2020
P.S. Crime Branch
U/S. 124A/153A/153B/505 (2) of IPC and
Section 13 of Unlawful Activities (Prevention) Act
State Vs. Sharjeel Imam

State

….. Prosecution

Versus

Sharjeel Imam
S/o Late Akbar Imam
R/o VPO-Kako, PS-Kako,
District-Jahanabad, Bihar.

…. Accused

ORDER ON THE POINT OF CHARGE

1. Vide this order, I shall decide the question of charge against accused **Sharjeel Imam**. The charge-sheet was filed against accused Sharjeel Imam under Section 124-A/153-A/153-B/505 Indian Penal Code (hereinafter referred to as "IPC") & Section 13 of Unlawful Activities (Prevention) Act (hereinafter referred to as "UAPA").

2. Cognizance was taken under Section 13 of UAPA against the accused Sharjeel Imam vide order dated 29.07.2020 while cognizance was taken under Section 124-A/153-A/153-B/505 IPC & Section 13 of UAPA against

the accused vide order dated 19.12.2020.

3. Compliance under Section 207 Cr.P.C was done. Thereafter, arguments on the point of charge were heard at length on behalf of both the prosecution and Ld. Counsel for accused. Written submissions and judgments on behalf of both prosecution and accused have also been filed. The entire record has been meticulously perused.

4. <u>CASE OF THE PROSECUTION</u> :-

The prosecution, during arguments and drawing from the contents of the charge-sheet, set-out its case as follows :-

4.1 Ld. Special Public Prosecutor had argued that there are four speeches given by accused Sharjeel Imam at Jamia Milia University at Delhi on 13.12.2019, Aligarh Muslim University in Uttar Pradesh on 16.01.2020, Asansol in West Bengal on 22.01.2020 and Chakand, Gaya in Bihar on 23.01.2020. The speeches given by the accused when read in totality alongwith other material and the subsequent events that occurred in Delhi unequivocally make out a case against the accused under all the Sections for which cognizance has been taken.

It was contended that the speeches given by the accused needs to be read in totality and piecemeal reference to either side should not be taken. The Special Public Prosecutor had gone through the speeches in its entirety and referred to published material to argue that it clearly demonstrates that

the speeches and published material not only had tendency to create disorder, disturbance of law and order and incitement to violence rather they were made with the intention to create disorder, disturbance of law and order and for incitement to violence.

It was further argued that the speeches and pamphlets on record demonstrates that they are aimed at causing a complete sense of hopelessness and insecurity in the minds of the Muslim population, to cause disharmony, feeling of animosity, hatred and ill-will between them and the non-Muslims, in particular the Hindu community. Various portions of speeches specifically refers to the discrimination being done against Muslims as compared to other religions, in particular the Hindus. Action plan as designed by the accused through his speeches is with reference to Muslim population, and are clearly prejudicial to the maintenance of harmony between different religious groups and this is not only likely to disturb public tranquility but also actually disturb the public tranquility.

4.2 It was argued that the accused in his speeches has clearly indicated his thoughts that non-Muslims should be used as an object for achieving his sinister design of bringing in a complete public disorder and his speech, when read as a whole, clearly reveals that he is against secularism or democracy.

4.3 The speeches and pamphlets, when read as a whole, clearly not only has the potential to fan the emotion of the Muslim population and incite

them against the government as well as the non-Muslim population rather in fact they actually created a communally surcharged environment sharply dividing the religious communities, hardening cleavages and eliminating any possibility of consensus apart from disavowing all belief in the efficacy and worth of the existing system and portraying the political establishment inimical to a religious community. He, through his speeches, repeatedly incited the public to commit acts which would jeopardize public tranquility, attempts to cause disaffection towards the lawfully elected Government of the country in the garb of democratically opposing the CAA.

4.4 The bare reading of the speeches given by accused clearly manifests the *mens rea* of the accused is not only to incite particular community against the Government of India, sovereignty of the country on communal lines but also to cause unrest, Public disorder, disturbance of peace, distract the rule of law and create violence by spreading false and misleading information/ rumors.

In the inflammatory speeches, the accused is urging Muslims to come together, amass strength and be united in large proportion to disrupt rule of law, cause Nationwide social disorder and chakka jam with malafide intention to disrupt public utilities and essential commodities such as supply of Milk, Water and other civic amenities which is basic right of other citizens peacefully living in India. The accused, by way of above spoken words and written pamphlets (which is being drafted and distributed by him, as seized) had incited Muslim people on communal lines to bring hatred or

contempt and excite disaffection towards Government of India, and guided them to organize themselves to cause large scale public disorder by resorting to unlawful means. He further challenged the sanctity of the Constitution of India and misguided Muslim people to believe that it has been drafted by Pandits of India i.e. person of other community which is apparent imputation and assertion prejudicial to National Integration and harmony. He challenged the Sovereignty of the Government of India i.e., its right to govern itself without any interference from external powers, by specifically saying that how can one country government (Indian Govt.) impose its laws in relation to CAA/NRC without reference to other countries. The Accused want only provoked and misguided Muslims to believe that the persons of their community has always been suppressed, brutally lynched and killed in India, and since ages, they are either put in Jail or would be kept in detention centre in future after CAA/NRC. The Accused didn't stop here and went on to intentionally incite and provoke Muslim community to act against the sovereignty of country and present day territorial integrity of India by clipping off the connectivity of India with North East states for at least a month and half. While he claims that he is protesting against CAA/NRC, perusal of text of speech clearly reveals that CAA/NRC is being used only as a ploy which he categorically mentions in his speech. Further, by way of the speeches given by accused, he is seeking to bring a feeling of hatred and contempt towards the Government of India (as opposed to any particular person in the Government). He is targeting various regimes irrespective of any political party and he is attempting to bring complete hopelessness and

disharmony amongst the members of Muslim Community. He is factually attempting to bring a complete anarchy by way of his speeches and published material.

4.5 The accused is a person having immense knowledge of riots having done his thesis on riots and is completely aware of how violence ignites when large number of unguided masses are brought together in the name of demonstrations and protests. Even the Hon'ble Supreme Court in Anita Thakur and Ors. Vs. Govt. of J and K and Ors. [(2016) 15 SCC 525] has been pleased to observe that "*Recent happenings show an unfortunate trend where such demonstrations and protests are on increase. There are all kinds of protests: on social issues, on political issues and on demands of various Sections of the society of varied kinds. It is also becoming a common ground that religious, ethnic, regional language, caste and class divisions are frequently exploited to foment violence whenever mass demonstrations or dharnas etc take place. It is unfortunate that more often than not, such protesters take to hooliganism, vandalism and even destroy public/private property.*" Thus, when accused was bringing together large mass of people and exhorting them by way of his speeches, he was doing so with complete knowledge that violence is likely to ignite. A pattern of violence that took place in Jamia/NFC area i.e., road blockage followed by assault on police personnel and then vandalism and destruction of public/private property clearly indicate that the same is on lines as planned by the accused. Thus, while giving the speeches, the accused clearly has

intention to create disorder, disturbance of law and order as well as incitement to violence.

4.6 In the present case, the accused by his speech clearly refers to "chakka jam" and "stopping and disrupting milk and water supply" and "bringing a complete halt to life of common man" which can by no means be comprehended to be effecting life of only an individual leaving the tranquility of society undisturbed. Further while doing so, he claims this to be within his rights to protest. The Hon'ble Supreme Court in Mazdoor Kisan Shakti Sangathan Vs. The Union of India (UOI) and Ors. [AIR 2018 SC 3476] has been pleased to hold that "*Going by the dicta in Asha Ranjan, principle of primacy cannot be given to one right whereby the right of the other gets totally extinguished. Total extinction is not balancing. Balancing would mean curtailing one right of one class to some extent so that the right of the other class is also protected.*" Thus, right to protest of the accused by completely disrupting the life of the common man and society at large is neither legally permissible nor acceptable. Clearly the speeches of accused and the published material had tendency to create disorder and disturbance of law and order.

4.7 It was vehemently argued that the real character of the anti-CAA protest is duly highlighted by a WhatsApp message circulated in WhatsApp Group named "Muslim Students of JNU_1" on 12.01.2020 – "*Cool. Shashi Tharoor should come and go as he wishes. Uski kitab "why I am a hindu"*

ka book stall bhi laga dete hain Phir pakka koi anti hindu nahi bolega. Sahih hai na?". This clearly reflects the requisite *mens rea* divisive and communal nature of these protest.

4.8 Ld. Prosecutor further stated that it is certainly an undisputed fact that freedom of speech and expression is the foundation of a free and fair democracy but, this freedom is not unfettered and unrestricted. It is to be exercised with responsibility keeping in view the complexity of the society and its inherent sensitivities. The penal provisions have been made in the statute books as reasonable restrictions in the exercise of such freedom with the object to regulate and maintain public order, decency, discipline and harmony in the society. If these regulatory provisions of the law are not implemented strictly, conflicts and confrontations will be the order of the day throwing the country into chaos and disorder.

4.9 It was vehemently argued that there was a deep-rooted conspiracy operating at various levels, in guise and under the cloak of right to protest, disruptive chakka jam were organized, people from a particular community were gathered, indoctrinated, mislead by instilling fear in them that they would lose their citizenship if CAA/NRC was implemented and thus a supercharged environment was created which forced the people so gathered to take arms into their hands. The length, magnitude and intensity made the situation different from one affecting merely law and order rather the same was within the ambit of public disorder. This breach of public order was

neither small nor insignificant but was grave and serious affecting public tranquility, impacting unity and integrity of the country. All this had in its foundation the speeches and published material which were creation of the accused in the present case and the accused is being prosecuted for the same in the present case.

4.10 The intention in giving the speeches and publishing such pamphlets are writ apparent from the speeches and pamphlets itself which are clearly offending. He, through his speeches, not only discriminates between Hindus and Muslims but also tries to draw a sharp wedge between the Hindu community by constantly referring to Brahminical conscience, and further labeling the Constitution as a document written by educated 'Pandits'.

4.11 The accused was giving call for "Chakka Jam" with a "difference". It was "to stop milk and water" i.e., essential supplies for survival of public at large. It was to be done not only in Delhi but in "every place where it was possible "for Muslims" to do so". It was also intended to cause unfounded fear. The CAA/NRC only provided an excuse for the agitation, the real motivation of which was to denounce the existing system and create extreme dis-enchantment with it. Thus, the *mens rea* to cause disharmony, feeling of animosity, hatred and ill-will between Muslims and the non-Muslims, in particular the Hindu community and further to disturb public tranquility on the part of the accused is absolutely clear.

4.12 It was contended that the accused is a student of modern history and that the material relied upon by the prosecution against him are very academic in nature and mostly derive it sources from the depth study of India's Modern History vis-a-vis the Minority rights.

It was submitted that since the speeches and pamphlets clearly show that they promote feelings of enmity or hatred, it is no defence to the charges under Section 153-A/505 IPC that the writing contains a truthful account of past events. It is submitted that even adherence to strict path of history is not by itself a complete defence to a charge under Section 153-A/505 IPC.

4.13 Ld. Special Public Prosecutor has referred to various judgments relied upon by the accused himself.

Kedar Nath Singh Vs. State of Bihar – AIR 1962 SC 955 *(running page 17 of compilation filed by counsel for the accused)*

(a) It was argued that Para 2/3 of the judgment reproduces the charges framed and also the content of speech in question. It is relevant to note that the content of speech in the said case as compared to the contents of the speeches in the present case reflect that the speech in the said case was far more milder than the speeches and material in the present case. Despites the milder form of speech, not only charges were framed but also trial lead to conviction both under Sections 124A and 505(b) IPC (ref. para 4) and the said conviction was challenged by way of Appeal before the Hon'ble High Court of Patna which was dismissed and the convictions and the sentence was upheld (ref. para 5). The convict Kedar Nath Singh then preferred

Criminal Appeal No. 169 of 1957 before this Hon'ble Court Hon'ble Supreme Court (ref. para 2) in which other connected matters were clubbed being Criminal Appeals 124-126 of 1958, where the State of Uttar Pradesh is the Appellant against acquittal, though the respondents are different (ref. para 7, 8 & 9). The Criminal Appeal 169 of 1957 (against conviction of Kedar Nath Singh) was dismissed (therefore conviction upheld) and Criminal Appeals 124-126 of 1958 (against acquittal in 3 cases) were remanded to the Hon'ble High Court (ref. para 42). Thus, it is submitted that even after reading down the provision of Section 124A IPC and in light of much milder form of speech as compared from the present case, the conviction was upheld by the Hon'ble Supreme Court and thus the said legal position completely supports the prosecution case.

(b) Further, it was submitted that the Hon'ble Supreme Court in conclusion was pleased to hold that (Para 38) "*The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim 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."* and further that "*Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order,or incitement to violence.*"

Thus, the relevant factor for considering in the present case would be if the speech and material relied upon against the accused (which are unequivocally admitted by the accused) show his intention to create disorder, or disturbance of law and order, or incitement to violence **OR** even had a tendency to create disorder, or disturbance of law and order, or incitement to violence then S. 124A IPC would be attracted.

4.14. In order to appreciate the phrase "create disorder, or disturbance of law and order", it would be relevant to refer to the pronouncement of Hon'ble Supreme Court in *Shreya Singhal Vs. UOI – (2015)5SCC 1.*

a) The Hon'ble Supreme Court in Para 30 referring on Romesh Thappar v. State of Madras was please to quote that "*While dealing with the expression "public order", this Court held that "public order" is an expression which signifies a state of tranquility which prevails amongst the members of a political society as a result of the internal Regulations enforced by the Government which they have established.*"

b) Further, in para 33, the Hon'ble Supreme Court was please to quote from Dr. Ram Manohar Lohia v. State of Bihar and Ors. that "*It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which*

is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.

c) Thereafter, in para 34, the Hon'ble Supreme Court was please to quote from Arun Ghosh v. State of West Bengal that "*Disturbance of public order is to be distinguished, from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order*." … and "*The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.*"

d) Finally, the Hon'ble Supreme Court in para 35 was pleased to hold that "*This decision lays down the test that has to be formulated in all these cases. We have to ask ourselves the question: does a particular act lead to disturbance of the current life of the community or does it merely affect an individual leaving the tranquility of society undisturbed?*"

4.15 The accused has by words, both spoken and written, brought and attempted to bring into hatred and contempt, and excite and attempted to excite disaffection towards the Government established by law in India, thus the accused has committed offences punishable under Section 124A IPC.

4.16 The accused has by words, both spoken and written, promoted on grounds of religion, disharmony and feelings of enmity, hatred and ill-will between religious groups and committed acts which are clearly prejudicial to the maintenance of harmony between different religious and which was not only likely to disturb the public tranquility but also actually disturbed the public tranquility. Thus the accused has committed offences punishable under Section 153A IPC. Since the acts so committed included publishing such contents, hence offence punishable under Section 505 IPC is also made out.

4.17 The accused made imputations by way of his speeches and published material whereby he imputes that Muslims cannot, by reason of their being members of a religious group, bear true faith and allegiance to

the Constitution of India as by law established and uphold the sovereignty and integrity of India. He further falsely propagates that Muslims, by reason of their being members of Islam religion, would be deprived of their rights as citizens of India. He intentionally makes these assertion with the knowledge that is likely to cause disharmony or feelings of enmity or hatred or ill-will between members Muslim community and other persons. Thus the accused has committed offences punishable under Section 153B IPC.

4.18 The accused has by words, both spoken and written, incited to bring about severance or cutting of the Northeast territory of India from the Chicken Neck Region, he questions sovereignty of India, he intended to disrupt the territorial integrity of India and also cause disaffection against India which amounts to commission of unlawful activity as defined in Section 2(o) of UAPA and thus the accused has committed offences punishable under Section 13 Unlawful Activities (Prevention) Act, 1967.

> Section 2(o) of the said Act defines, "Unlawful Activity", in relation to an individual or association, as any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—
>
> (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
>
> (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

Sovereignty means the principle of supreme authority within a territory. Each nation-state has sovereignty over its territory and domestic affairs to the exclusion of all external powers. Thus, Sovereignty includes right to govern oneself without any interference from external powers. The accused, in his speech, questions the Sovereignty of Indian Government in making laws pertaining to Indian Territory without consultation and say of other countries.

The accused, in his speech, further calls to bring about severance or cutting of the Northeast territory of India from the Chicken Neck Region to the extent possible. His call is for permanent if possible else for at least a month or two. The intent of the accused is abundantly clear.

Ld. Special Public Prosecutor concluded the arguments by stating that case for charge is made out without any shadow of doubt.

5. CASE OF THE ACCUSED :-

5.1 Ld. Counsel for accused argued that accused is a student pursuing his Ph.D (3rd year) in Modern History from Jawahar Lal Nehru University. He has earlier completed the courses of M.Phil and Masters in Modern History from JNU after completing his B.Tech and M.Tech in Computer Science from the Indian Institute of Technology, Mumbai.

He is also a recipient of the Maulana Azad National Fellowship and has also cleared the National Eligibility Test to become an Assistant Professor.

5.2 Ld. Counsel for accused has not denied that accused delivered all four said speeches. He also stated that two other FIRs at Assam and UP are also pending against him in different Courts.

5.3 It was vehemently argued that while ascertaining the criminality of the speeches in question, note of various judgments of the Hon'ble Supreme Court and the Delhi High Court which have laid down the standards of judging the effect of words or expression be made and strictly applied.

(A) ***S. Rangarajan and Ors. v. P. Jagjeevan Ram and Ors. reported in (1989) 2 SCC 574. (Para 20 and 21)***

> ***20.*** *Recently Sabyasachi Mukherji, J., in Ramesh v. Union of India [1988] 2 SCR 1011 which is popularly called "TAMAS" case laid down the standard of judging the effect of the words or expression used in the movie. The learned Judge quoting with approval of the observation of Vivian Dose, J., as he then was, in the Nagpur High Court in the case of Bhagwti Charan Charan Shukla v. Provincial Government:*
> *That the effect of the words must be judged from the standards of reasonable, strong minded, firm and courageous men, and not those of weak and vacillating. This in our opinion is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of ordinary reasonable man or as they say in English law, "the man on the top of a Clampham omnibus."*

21. We affirm and reiterate this principle. The standard to be applied by the Board or courts for judging the film should be that of an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man.

(B)***Pankaj Butalia Vs. Central Board of Film Certification and Ors.***

Reported in 221 (2015) DLT 29. (Para 27.2 and 30.2):-

27.2 Therefore, the substratum of the offence of sedition under Section 124A of the IPC is the intention with which the language is used and, in judging the intention, the utterances or the speech made should be looked at holistically and fairly without giving undue weight to isolated passages.

30.2 *In the context, of the argument raised before the court, that the film could create a law and order situation, the court had this to say:*
"....45 The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and social interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment to 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".***

5.4 It was argued that the speeches in question are not some rabble rousing speeches made in political rallies. Rather, the same are very academic in nature and mostly derive it sources from the depth study of India's Modern History vis-a-vis the Minority rights.

5.5 It was argued that at no point of time the Applicant had called for cession/secession of any part of the territory of India from India. The case of the Prosecution is completely misconceived and relies upon a extract from the Aligarh Speech, smartly and mischievously taken to somehow make out a case against the Applicant. The careful perusal of the extract in question and also the entire speech make it evidently clear that the words in question are only calling for a 'Chakka Jam' i.e. blocking of roads as a mode to register their protest against the CAA. In the extract, the Applicant opines that blocking roads and cutting off Assam and the North-East is the only way to get the government to listen to the issues faced by those in Assam because of the CAA and NRC already imposed there. The content extracted further discussed the detention of Bengalis, both Hindus and Muslims. The perusal of the entire speeches only demonstrate the call for Chakka Jam i.e blocking of Roads as a mode to register their protest against the passed legislation, as has been done in many other cases of protests including railway strikes in the 1970s and the farmers' demonstration against the three (3) farm laws enacted in 2020.

5.6 It was argued that the criticism of the Indian Constitutional

Principles i.e. Secularism and Democracy as it is there in the present form cannot be alleged to having being said to spread disaffection against the Govt. The Applicant in his speeches has given his own reasons to opine what he has and cites undisputed facts from History and also, the Constitutional Assembly Debates. None of the views expressed by the Applicant is unique and those were extensively debated by our forefathers while framing of our Constitution and continues to be debated even today by many scholars, professors of law and retired Judges. It is also noteworthy that it is not the case of the Prosecution that any facts from History have been manipulated and wrongly presented by the Applicant in his speeches to suit his agenda.

5.7 It was argued that the applicant has no political agenda as is also evident from the perusal of his speeches in question. Rather, he has in his speeches instead of speaking against the present Govt. has mostly denounced the earlier Govts. for having taken several measures and got the Indian Constitution drafted in a way which he believes to have proven detrimental to the interests of Minorities and Dalits. Applicant in his speeches has talked about "the place of minorities in majoritarian democracies; monopoly of the leftist narrative on the sensitization of the masses; silencing of opposition voices in history writing; integrity of nation states which hold their claimed territories using brute military force; decentralization of powers; advocacy of proportional representation of the members from the Minority community in each of the three pillars of the

democracy and role of traditional communal solidarities, particularly Islam, in anti-imperial and anti-colonial struggles today."

5.8 It was argued that being a Scholar in Modern History and having studied the same extensively, the Applicant believes that to make a better and informed choice in regard to the political decisions by the minority citizens of the country, it is imperative upon them to know the history pertaining to Minority Rights. Further in his speeches, he urges all the scholars to educate and sensitize the common people so that they may have a better understanding of how to contest election, form political parties and to make alliances and consequently, there interests are adequately and effectively put forth and represented. The below mentioned extract from his speech shall further the intention of the Applicant in proper perspective:"*Is tarah ke cheezon se aapko samajh me aa jayega ke ye dastoor kabhi bhi democratic ya secular nahi raha hai. Ye baat jab tak hum nahi samjhenge, hum aaghe ka raasta nahi dhoond payenge. Hume ye samajh me nahi aayega ke hum chunav kaise laden, hum partiyaan kaise banayen aur hum allinaces kaise banaye"* - **Aligarh Speech at Pg. No. 15 of the chargesheet.**

5.9 It was argued that whatever the Applicant has stated in his speeches hasn't been done only because the movement against the CAA was burgeoning and he wanted to exploit the situation. Rather, the Applicant has been constructively writing about the issues which he has discussed in his speeches for the last 5-6 years and several of his academic

expressions can be found in the leading digital media platforms.

5.10 It was contended that to get a better idea of who the Applicant is and what he stands for, the full transcripts of his speeches must be carefully perused and also, the articles he has written or co-written about the Idea of India in early 20th century Urdu poetry; role of Jinnah which has been distorted by the Congress; high prevalence of cow-related hate crimes in the last 100 years; hypocrisies of Kanhaiya Kumar and Indian liberals in the Begusarai parliamentary election; relevance for Krishna in the works of Urdu poets; 1980 Muradabad Muslim massacre, which is an indictment of left and secular politics. He has also written about how the Left parties in Bengal have done nothing for Muslims, about the dominance of men in left-wing groups which pay lip service to women empowerment, JNU's anti-Muslim left-wing students, and how Aleppo's coverage in Western media is indicative of the fundamentalism-imperialism nexus.

5.11 It was argued that while deciding on whether such kind of speeches shall attract any criminality i.e. 124A IPC, Section 13 UAPA and other penal offences as invoked in the present case, the following paragraphs from the Judgment passed by the Delhi High Court in *Pankaj Butalia Vs. Central Board of Film Certification and Ors.* are relevant for the correct appreciation of law.

(A) ***Pankaj Butalia Vs. Central Board of Film Certification and Ors. Reported in 221 (2015) DLT 29.***

46. Our remarkable faith in the freedom of speech and expression could be seen even from decisions earlier to our Constitution. In Kamal Krishna Sirkar v. Emperor [AIR 1935 Cal 636], the Calcutta High Court considered the effects of a speech advocating a change of Government. There the accused was convicted under Sec. 124A of Penal Code for making a speech recommending 'Bolshevik' form of Government to replace the then existing form of Government in Calcutta. While setting aside the conviction and acquitting the accused, Lord Williams, J., who delivered the judgment observed (at p. 637):

All that the speaker did was to encourage the youngmen, whom he was addressing, to join the Bengal Youth League and to carry on a propaganda for the purpose of inducing as large a number of people in India as possible to become supporters of the idea of communism as represented by the present Bolshevik system in Russia.

It is really absurd to say that speeches of this kind amount to sedition. If such were the case, then every argument against the present form of Government and in favour of some other form of Government might be allowed to lead to hatred of the Government, and it might be suggested that such ideas brought the Government into contempt. To suggest some other form of Government is not necessarily to bring the present Government into hatred or contempt."

47. To the same effect is the observation by the Bombay High Court in Manohar Damodar Patil v. Government of Bombay [AIR 1950 Bom. 210]. There the writer of an article in a newspaper was convicted for an offence under the Press (Emergency Powers) Act, 1931, for incitement to violence. The writer had suggested the people to follow the example of China by rising against Anglo-American Imperialism and their agents. He had also suggested his readers to pursue the path of violence, as the Chinese people did, in order that Anglo-American Imperialism should be driven out of this country. Chagla C.J., while quashing the conviction said:

"***It is true that the article does state that the working class and the toiling masses can get hold of power through the path of revolution alone. But the expression 'revolution' is used here, as is clear from the context, in contradistinction to reformism or gradual evolution. The revolution preached is not necessarily a violent revolution.....As the writer has not stated in this article***

that the toiling masses should take up arms and fight for their rights and thus achieve a revolution we refuse to read this expression as inciting the masses to violent methods."

5.12 It was argued that the prosecution has tried to create a narrative of communalism and religious extremism around the Applicant Sharjeel Imam by conflating purported discussion of issues affecting a particular religious community. While making such wild aspersions, the Prosecution has absurdly taken recourse to the Applicant's M.Phil thesis and also, his several academic expressions found in leading digital media platforms. The prosecution in it's unholy quest to somehow implicate the Applicant has absolutely blurred the line between the constructive criticism of laws/judgments/measures taken by the government and religious extremism. It defies all logic as much as it defies all laws that mere academic criticism of events perceived by the Applicant to be against a particular community doesn't make one communal much less an extremist. It also remains in the public domain that all the 4 events as relied upon by the Prosecution has faced sharp criticism from scholars, Professors of Law, Senior Advocates and even retired Supreme Court and High Courts Judges.

5.13 It was argued that the Applicant taking up the issues affecting one particular community cannot be attributed any criminality at all. Invocation of Muslim unity by the Applicant in the backdrop of a passage of law which the Applicant and many others believe to be discriminatory against the Muslims cannot be given the colour of religious extremism.

5.14 It was argued that the perusal of the speeches made by the Applicant clearly demonstrate that the Applicant actually has urged the non Muslims as well to come out and join the protest. The opinion of the Applicant that the Muslims don't have to wait for non-Muslims to join the protest cannot be read to mean that he was against their participation in the protest.

5.15 It was argued that the case of the Prosecution that the Applicant in his speeches was only referring to a particular community and therefore, was communal in nature must be rejected in strong terms. The same is sans any logic as much as sans any back up of law. If the arguments of the Prosecution are accepted then by the same logic, any Dalit movement would be rendered a casteist movement and movement by the women against a law which they believe to be Anti-women would be called to be spewing hatred against the other gender.

5.16 It was argued that the heavy reliance placed upon the Applicant's M. Phil thesis titled "Exodus before partition- The attack on Muslims in Bihar in 1946" by the prosecution to argue that the Applicant has exploited his full knowledge on riots to actually cause one is highly misplaced and unfounded. Rather, the Applicant in his speeches has warned the protesters against being disorganized and inviting political parties which would introduce the element of violence for the petty gains which would ultimately lead to de-legitimization of the entire protest. More than 20 such instances

where the Applicant urges the protesters to not take recourse to any violent activity has been very conveniently and purposely ignored by the Prosecution. Further, the emphasis of the Applicant on transparency (Not accepting cash as fund for running protest and CCTV footages being installed at protest sites) furthers the case of the defense. It is also important to note here that the Applicant in his speech has further advised the protesters to choose the place of protests very carefully and away from densely populated areas where there are chances of miscreants introducing violence. Rather, the Applicant has repeatedly urged all the protesters to do Chakka Jam at highways. Also, the Applicant in his speeches rather has denounced the so called extremist Muslim organizations namely Jamait-e-Ulema-e-Hind and Jamait-e Islami unequivocally. He further in his speeches opines that any form of extremism must be rejected while talking about the India's History on Moderate and Extremist nationalism.

Ld Counsel quoted certain parts from the 4 alleged speeches which go on to further the case of the Applicant:

> ● "*Doosri cheez ye ke ab Khatrat (dangers) kya hain? Ab jaise pehli raat wali baat, jo maulana numa Insaan jo kabhi nazar nahi aaya (Incident of one bearded man who started pelting stone at Pg. No. 18 of the chargesheet). wo kabhi nazar nahi aaya jo patthar chalva rahe the. To aapko ye yaad rakhna hoga ke agar hamari bheed unorganized hai to BJP ko ya RSS ko and even Congress ko, kyoke Conbress ko bhi polarisation ka fyada hota hai. Jahan 40-40 per cent Muslim vote hain wahan polarization se congress ko lagega ke kuch hume mil jaye, ye bahut important baat hai. To Congress aur BJP chahenge ke dange karna, jaise Muzafarnagar me hua. Muzaffarnagar me sirf BJP ne dange thode na karvaye the, to ye dono partiyaan chahengi dange karvana. To dangoon se*

bachne ka apne pas bas ek hi raasta hai ke hamare pas Cadre itna mazboot ho ke hum control me rakh payen. Nahi to hum unorganized bheed daawat de rahe hain saamne wale ko ke aap hamare bheed me dange karvayen."- **Aligarh Speech at Pg. No. 21**

- "*Agar Musalmaan organise ho kar ke respond kare, aur na kar paye to hum unorganised response denge aur agar unorganised response Musalmaano ne kiya to ye desh tahas nahas ho jayega, ye aapko bhi pta hai. To agar Musalmaan khud organised ho gye to usi se hum desh bhi bacha lenge, Insha Allah."* - **Aligarh Speech at Pg. No. 25 of the chargesheet**
- "*Achha ek aur cheez hai jisne preshan kya hum logon ko aur jo bahut aasan tareeqa hai sabotage karne ka, wo ye hai ke aap akar ek badi tahreek chala rahe hain to to usme cash ka fitna daal den, theek hai ? Matlab cash collection ka fitna daal den. Cash collection ka fitna phir police ke liye gift hota hai, aap cash ka hisaab nahi de sakte lekin aap samaan ka hisaab de sakte hain ke humne 100 kambla mangavaya, usse bam thode na banvaynege. Lekin cash ka hisaab nahi diya ja sakta to wo bhi ek fitna hai. …..Koi bhi badi tahreek hume chalani ho usme cash se door rehna hoga".*- **Aligarh Speech at Pg. No. 22 of the chargesheet.**
- "*Hum logon ne doosre hi din Shaheen Bagh par camera lagva diya. Matlab road ke kinare aaghe tak jo police aaye to jo hob cameras ke saamne ho. Aisa na ho ke raat ke andhere me maar kar nikal jayen. Jo ho sab camera ke saamne ho aur phir ye uthayen laathi, phot hum bhi dekhenge aur duniya dekhegi ke wo kya kar rahe hain. To ye auratoon se darte hain. Aaplogon ne jamia ka vo video dekha hoga ke wo ek ladke ko maar rahe hain aur do ladkiyan jo hain gher kar use bachane ki koshish kar rahi hain. Wo video dekha hoga applogon ne, hai na ? Aap us video me dekhiye ke camera chal raha hai to police walon ki himmat nahi ho rahi ke lathi maar payen. Wo idhar udhar se ghusane ki koshish kar rahe hain ke ladke ko maar payen. Hum to camera ke maujoodgi (presence) me kaam karenge. Hum koi bura kaam to kar nahi rahe ke hume camera se darna hai. Hum to apne haq ke liye lad rahe hain, to camere me hi karenge."* - **Asansol Speech at**

Pg. No. 42 of the chargesheet.

- "*Arey bhai humne Delhi me highway band kiya, to ye to choti cheez hai, ye kya kar lenge. Kheton me ho aap. Raat ko baithna hai subah tak tamboo laga denge. Aur mai ye nahi bol raha ke ye sadak. Ho sadak aap ko mauzoo (right) lage., kuch sdak aise hain jahan kahtrat aur fasaad bhi hote hain. Jo jaise purani delhi me, seelampur me, wahan koshish ki gyi, wahan aisa hai ke RSS ki aabadi zyada hai, samajhiye is baat ko. To whan ye hota hai ke bheed aake hamla ladai karvane lagegi. Kahin andar se gal-fasaad ki ummed rehti hai aabadiyon se. Phulwari me hua tha na, upar se pathrav karne lage the. To aabadiyoon ke khyal rakhna hota hai, hamare liye kaun si jagah secure hai, safe hai, ye dhyan rakhna hota hai."* - **Gaya Speech at Pg. No. 47 of the chargesheet**
- "*Musalmaan Hindustaan ke 500 shehron me chakka jam kar sakta hai, theek hai ? Ab usme road block kaun hai ? Road block BJP nahi hai, road block congress nahi hai. Road block hai Jamiat-e-ulmae-Hind. Road block hai Jamait-e-Islami, theek hai? Ye log hain road block."* - **Jamia Speech at Pg. No. 12 of the chargesheet.**

5.17 It was argued that the constitution bench of the Hon'ble Supreme Court in *Kedar Nath Singh v. State of Bihar* while adjudicating upon the constitutional validity of section 124A of the IPC which akin to section 2(1)(o)(iii) criminalizes 'actions or attempts to bring into hatred or contempt, or incitement or attempts to excite disaffection towards the Government established by law in India by words, either spoken or written, or by signs, or by visible representation, or otherwise', elaborated that if the provision was interpreted in any other manner, for example to punish speech that merely spreads disaffection or enmity without inciting a violent overthrow of the government, it would be unconstitutional. And therefore, the provision was read down to punish only those acts which have the "tendency to cause

public disorder by the use of actual violence or incitement to violence". Reliance is placed on the Judgement of the Hon'ble Supreme Court in ***Kedar Nath Singh v. State of Bihar,*** **reported in** ***AIR 1962 SC 955 (Para 38)***

> ***38.*** *In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of Sections 124A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. There can be no doubt that apart from the provisions of clause (2) of Art. 19, Sections 124A and 505 are clearly violative of Art. 19(1)(a) of the Constitution. But then we have to see how far the saving clause, namely, clause (2) of Art. 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended clause (2), quoted above, the expression "in the interest of.... public order" are words of great amplitude and are much more comprehensive than the expression "for the maintenance of", as observed by this Court in the case of Virendra v. The State of Punjab [1958]1SCR308 . Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity.* ***If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoke which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make then unconstitutional in view of Art. 19(1)(a) read with clause (2).*** *It is well settled that if certain provisions of law construed in one way would make them consistent with the*

Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. ***The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim 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****. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress (vide (1)). The Bengal Immunity Company Limited v. The State of Bihar [1955]2SCR603 and [1957]1SCR930 R. M. D. Chamarbaugwalla v. The Union of India [1957]1SCR930 . Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.*

5.18 It was argued that the 'test of incitement to violence' would therefore, even apply for the acts stipulated under section 2 (1) (o) (i) and 2 (1) (o) (ii) of UAPA to be made out.

(A) ***Arup Bhuyan v. State of Assam reported in (2011) 3 SCC 377 (para 16) :-***

> ***6.*** *In our opinion, Section 3(5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organisation will not make a person a criminal* ***unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence.***

(B) ***Kanchan Mishra @ Anu v. State of NCT of Delhi*** **reported in** ***2012 III AD (Delhi) 95 (Para 5) :-***

> ***5.*** *It may be noted that Section 43(D)(5) provides that a person accused of an offence under this Act shall not be released on bail, if on a perusal of the case diary or the report under Section 173 of the Cr.P.C., the Court is of the opinion that there are reasonable grounds for believing that the accusation against that person are prima facie true. The evidence on record and the FSL report proves that a substantial portion of the said literature is in the hand-writing of the Petitioner herein.* ***Though some of the documents recovered show incitement even towards violence, however the documents in the hand-writing of the Petitioner do not reveal incitement for violent activities.*** *The Hon'ble Supreme Court in Arup Bhuyan (supra) in relation to Section 3(5). of Terrorist and Destructive Activities Act (TADA) held that it cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution* ***and that mere membership of a banned organization will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence.***

(C) ***Union of India & Ors. v. Shameer and Ors.*** **reported at** ***2020 CriLJ 597 (Para 39):-***

> ***39. Of course in the speeches aforesaid, there had been a call to co operate with SIMI and to project their views despite all odds.*** *Primarily, the prosecution places reliance upon the speeches of accused 2 and 3 which was heard by PW 1 and the police officers and also the documents which were in possession of accused 1 to 5 in order to arrive at a conclusion that it was a meeting of SIMI. The punishment provided u/s. 13 is imprisonment for a term which may extend to 7 years and also fine. While considering the unlawful activity which is the subject matter u/s. 13, the argument of the defence is that none of the sub-clauses of S. 2(o) will come into play as far as the allegations are concerned. Sub clause (i) relates to supporting any claim for the cession of a part of the territory of India, or secession of a part of the territory of India from the Union. Prosecution of course has no such case. Clause (ii) of S. 2(o) is with reference to the action which amounts to disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India. There is no such statement in either of the speeches which has been extracted by PW 1. Clause (iii) of S. 2(o) which is relied upon by the prosecution is an activity which causes or is intended to cause disaffection against India.* ***Disaffection of course had been explained in Explanation 1 to S. 124A which includes disloyalty and all feelings of enmity. In fact, we have already held that no such factors are brought out. No such enmity or disloyalty to Government of India can be read into the impugned speeches as spoken to by PW 1. In the result, we are of the view that the offence u/s. 13(1)(b) has not made out.***

(D) ***Special Court for the trial of NIA Cases, Ernakulam in Allan Shuaib & Ors. v. Union of India. (Para 89):-***

> ***89.*** *The remaining offence is under Section 13 of UA(P) Act charged against A2.* ***The allegation is that he had prepared banner supporting secession of Kashmir from the Indian Union and this amounts to an unlawful activity. Right to protest is a constitutional right. Here the objectionable banner relates to Jammu and Kashmir issue. It was raised in the aftermath of the abrogation of Article 370 and 35 (A) of the Constitution of India. This context is to be kept in mind****. As I stated earlier, evaluation diverted from the context will lead to bad conclusions. I don't find it necessary to go into the details.* ***It is only to be observed that, at this stage, it will be difficult for this court to form an opinion that the accusations are prima facie true.***

5.19 It was argued that speeches delivered at student protests in universities against a measure taken by the government, in this case, CAA, by no stretch of imagination could be called an act with an idea to "subvert the Government by resorting to violent means". It remains a settled law that only those acts which have the effect of subverting the Government by violent means are penalized. Admittedly, in none of the speeches, the Applicant has even once called for overthrowing or subverting the Govt. Of India by resorting to violent means. Reliance in this regard may be placed on the decision of the Hon'ble Supreme Court in ***Kedar Nath Singh v. State of Bihar,*** **reported at** ***AIR 1962 SC 955 (Para 36 and 38)***

> ***36.*** *It has not been questioned before us that the fundamental right guaranteed by Art. 19(1)(a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable restrictions as would come within the purview of clause (2), which comprises (a) security of the State, (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc.,*

etc. With reference to the constitutionality of s. 124A or s. 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Art. 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoke or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the person's for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in s. 124A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports ***the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question.*** *But the section has taken care to indicate clearly 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. In other words, disloyalty to Government established*

by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence. (Para 38 has been reproduced above).

5.20 It was argued that the argument of the Prosecution that mere call for a public disorder in absence of any incitement to violence shall attract the offence of sedition is highly misconceived and is based on wrong appreciation of the law laid down in Kedar Nath's case. Further the emphasis of the Prosecution on the point that in Kedar Nath's case, the order framing charges under sedition was not interfered by the Hon'ble Supreme Court though is correct but the same was not interfered because it was not argued by the Appellant Kedar Nath in the Supreme Court that his case didn't fall within the purview of the definition as read down by the Hon'ble Judges. And it is only because of same that the order framing charges were not interfered *(Para 42 of the Judgment passed in Kedar Nath Singh Vs. State of Bihar)*. It also remains a fact that Kedar Nath Singh was never convicted under Section 124A.

5.21 It was argued that therefore, the argument of the Prosecution that mere call for Chakka Jam would attract the offence of sedition must be rejected. It is noteworthy that the issue of Chakka Jam in ***Amit Sahni Vs. Commissioner of Police & Ors. reported in 2020 (10) SCC 439*** did come

up before the Hon'ble Supreme Court wherein the Lordships treated the matter only as an illegal encroachment and obstruction issue and no where in the Judgment any view on any criminality be attributed to such protesters much less invoking 124A IPC was even hinted by the Hon'ble Supreme Court. Rather, interlocutors were appointed to mediate between the protesters and the Govt.

5.22 It was argued that the 'test of incitement to violence" as laid down in the Kedar Nath Singh's case remains the settled position of law to attract applicability of the offence U/s 124 IPC. The same has been reiterated in ***Romila Thapar and Ors. v. Union of India and Ors. [(2018) 10 SCC 753]; Shreya Singhal Vs. Union of India (2012) 13 SCC 73 (Para 12); Vinod Dua Vs. Union of India & Ors. Writ Petition (Crl No. 154 of 2020); Gurjatinder Pal Singh v. State of Punjab,*** **reported in** ***[(2009) 3 RCR (Cri) 224.***

5.23 It was argued that the prosecution has absolutely no material whatsoever to even remotely suggest that the Applicant even once called for or incited violence. Rather, from perusal of the materials part of the charge-sheet, it becomes all more clear that the Applicant on multiple occasions rather urged the protesters to not resort to violence at any cost. Ld. Counsel referred to passages from the different speeches relied upon by the Prosecution :-

> "*Constitution ka jahan tak mamla hai, hume poora istemaal karna hai. Constitutionality alag cheez hai, Constitution alag*

cheez hai. Ye yaad rakhiyega, constitutionality ka matlab hai hum property nahi jalayenge, theek hai ? Hum logon ko nahi marenge, theek hai ? Magar bhai hum disrupt to kar sakte hain?" -
Jamia Speech, Pg. No. 13 of the charge-sheet

"*There is no way to get out of it, agar Constitution hi hamara sahara hai. Constitutionality ki batein alag hai, Ek political leader hain jo Constitutionality ki baat karte hain, ke hume property damage nahi karna hai, hume self defence ke ilava kisi pe hamla nahi karna hai, kisi pe hathiyar nahi uthana hai. Ye batein hui ke jo constitutional debate jo chal raha hai hamare beech ke what is the constitutional way ya constitutional spirit. Is had tak constitutional spirit ki baat ki ja sakti hai."* - **Aligarh Speech, Pg. No. 16 of the chargesheet.**

"*Hum plan banayenge, ek dossre ko samjhayenge, jama karenege aur phir ja kar baith jayenge. Aur phir tab tak nahi uthenge jab tak hume maar kar na uthaya jaye."*- **Asansol Speech, Pg. No. 39 of the chargesheet.**

"*To himmat se kaam lena padega, jo padhe likhe hain, jo vakeel hain, jo engineer hain, unko maar khani padegi. Bina hamare padhe likhe tabqe ke maar khaye kuch nahi hona wala. Aawam ke saamne shield banke hame hi khada rehna hoga, ke pehle humko maaro phir peeche dekhna, theek hai ? Ek baat yaad rakhiye tareeqa yahi hona chahiye aur koi tareeqa kargar nahi hoga. Aur koi neta banne na aaye, jo aaye laathi khane ke niyat se aaye"* - **Asansol Speech, Pg. No. 40 of the chargesheet.**

"*100 shaheen Bagh kaise banenge ? Jab aap himmat vale 100 jawaan ladke pehle saft (line) me baithe hoonge, aao humko maaro, jitna maarna hai maaro lekin hum yahan se hilne wale nahi hain, samajhiye is baat ko. Hume pathhar nahi uthana hai, hume lathi nahi uthana hai, humko goli nahi chalani. Humko karna kya hai ? Hume sadak jaam*

karni hai aur humko har highway band karna hai." - **Gaya Speech, Pg. No. 46 of the chargesheet**

"Hamare paas Bihar me 2 crore Muslim aabadi hai. Kuch hamare sath ghair Muslim bhi aa jayenge. Maan lijiye 3 crore, bhai itne me aap kya kya nahi kar sakte, zara btaiye? Ye jo bheed hamari sadko pe aawara phir rahi hai, kya us bheed ka kuch istemaal nahi kar sakte hum ? Pur-aman (peaceful) tareeke se, saare kaam pur-aman tareeke se karne hain. Koi pathhar nahi uthana, kahin laathi nahi uthana, lekin karna kya hai ? Hume Hindustaan ko band karna hai." - **Gaya Speech at Pg. No. 46 of the chargesheet.**

"*Ke dekh lo bhai ladna hume apne liye hai. Jab apne liye ladna hai to muttahid (determined) ho kar ke, organised hokar ke, ke 100-200 jabaaz ladke to hume maar khane wale, maarne wale nahi. Maar khane wale to taiyaar ho sakte hain na ?"* - **Gaya Speech at Pg. No. 48 of the chargesheet** ●

"*Bihar me alag chal raha hai, Bihar akela suba (region) hai, jahan alhamd o-lillah ye Jahanabad chod kar ke, dange kahin nahi hue. 30-40 saal se kam se kam hum is ilaqe me pur-aman tareeqe se reh rahe the. Reh rahe the na ? Ab dange shuru ho rahe hain aur ye aaghe bhi karvayenge. Hume kya paigham dena hai ke ? Ke hum hathiyar nahi uthayenge. Hum lathi nahi uthaynege. Hum kya karenge bhai ? Hum pur-aman tareeqe se aisi aisi jagah baithenge jahan se inko preshani ho, aap ko inhe preshan karne padega."*-**Gaya Speech at Pg. No. 49 of the chargesheet.**

5.24 It was argued that the prosecution in order to make out a case against the Applicant under section 13 of UAPA and 124A of IPC has referred to multiple cases of violence in which FIRs have been registered in Delhi and Aligarh which the prosecution is attributing to the speeches

delivered by the Applicant. Firstly, at the cost of repetition it is most humbly submitted that there was absolutely no call for violence/incitement to violence in any of the speeches and secondly, in none of the FIRs referred by the prosecution, the Applicant is an accused but in case FIR No. 242/19, P.S. NFC as already disclosed in para 11 and 12 of the bail application.

5.25 It is important to mention here that admittedly even in the aforesaid NFC FIR in which the Applicant is already in custody and the bail application is pending final hearing, the only evidence produced by the prosecution as also evident from the charge-sheet in this case is the disclosure statement of one co-accused namely Furkan, the same having no evidentiary value in the eyes of law.

5.26 It was argued that admittedly, no case was ever registered either in West Bengal and Bihar for the Applicant's speeches delivered in Asansol and Gaya and nor did any violence ever happened which could be attributed to the Applicant's speeches. The fact that FIRs have only been registered against the Applicant in the States where the party in govt. happens to be the same party enjoying the Govt. in the Centre speaks volume about the nature of these criminal prosecutions launched against the Applicant.

5.27 It was argued that not even a single individual from the public has come out and supported the case of the prosecution that the Applicant in his speeches instigated/ incited violence or they got instigated by the same.

Admittedly, in the instant case, the prosecution does not even propose to adduce even a single public witness as evidence to prove its case. Rather, all of them are police personnel.

Hence, it was argued that in view the aforesaid judgments and also taking into consideration the relevant extracted portions of the Speeches, no offence under Section 124A is made out against the Applicant.

5.28 It was argued that the mere invocation of Muslim Unity by the Applicant in his speeches would not attract applicability of section 153A and 153B and 505 (2) in absence of no pitting up of two religious groups, caste or community against each other. It is noteworthy that there is absolutely nothing in the speeches from where it could be even remotely suggested that the Applicant at any point of time intended to cause violence or create disaffection between any group/s and the Muslim Unity has only been invoked as a reaction to non consideration of Muslims in CAA. Rather, the Applicant in his speeches has urged non-Muslims as well to participate in the protest against the CAA. Relevant extracts from the four speeches delivered by the Applicant:_

> **"***To humlog Delhi me koshish jo kar rahe hain wo ye hai ke agar hamare pas, dejhiye ke hum log scholar hain to itna to kar hi sakte hain ke hum ek aur ghar Muslim ko apne sath la sakte hain. Delhi ke scholars ke ye zimmedari hai ke agar hum 500 scholars ki team Delhi me bana le Musalmaan to 500 Hindus unke sath aayenge jab urgent maamla ho. Ye zindagi humne yahin guzari hai, itna to kar hi sakte hain, ek aadmi ko to la hi sakte hain. Hamari koshish ye honi chahiye*

ke agar 500 hain Delhi me, to hum 500 Musalmaan aur 500 Hindu road pe khada kar den apni sharton pe, apne cause ke liye, arey bhai ek Hindu ko to aap la hi sakte hain na apne sharton peaur hume kisi aur ki zaroorat nahi hai."- **Aligarh Speech at Pg. No. 23 of the chargesheet.**

"*Ab waqt ye hai ke hum ghair Muslimon ko bole ke agar hamdard ho to hamari sharton pe aake khade ho aur agar hamari sharton pe nahi khade ho sakte to hamare hamdrad nahi mana jaye."* - **Aligarh Speech at Pg. No. 24 of the chargesheet.**

"*Arey bhai agar NRC ka paper nahi hai to kya manoge ke hum Pakistani Hindu the ke Bangladeshi Hindu. Jiske maa baap 10 generation se yahin mehnat karte hue mare hue hain, wo bolenge ke mai Pakistani Hindu the ? Kabhi nahi bolenge. To unki bhi ghairat ye qubool nahi karenge. Unki bhi hume madad leni hai. CAA par bhi leni hai aur NRC pe bhi leni hai, lekin apne sharton pe. Hume aake ye na btaye ke hume kya karna hai. Agar hum sadak jam kar rahe hain aur aap madam karna chahte hain to aaiye aap, khair maqdam (welcome) hai aapka."* - **Asansol Speech at Pg. No. 39 of the chargesheet**

"*Samajh lijiye baat ko ke agar aap apne aawam ke , ghair Muslim aawam ke bahut bade neta hain to jayen apna mohalla band kar ke dikhayen. Arey zyada nahi sirf 200 log la kar dikhaye ke 200 meri quam ke hain. Aap kisi bhi qaum se ho. Yadav ho, baniya ho, Dalit ho jo bhi ho aap se guzaarish hai ke apne 200 log le kar apne mohalle me baith jayen aur phir hum bolenge Shukriya."*- **Asansol Speech at Pg. No. 39 of the chargesheet.**

"*Jo hamare Hindu allies hain, hamare Hindu hamdard hain wo bhi baat agar hamari samjhenge to hamare sath aa kar sadkon pe baithenge, hai ke nahi ? Agar hamare humdard ho to baitho na bhai, sath aa kar baitho."* - **Gaya Speech at Pg. No. 45 of the chargesheet**

5.29 It was argued that that the common essential ingredient to constitute offences U/s 153A. 153B and 505 (2) IPC is the intention to promote feelings of enmity or hatred between different classes of people. And also further remains a trite law that mere inciting the feelings of one community or the group without any reference to any other community or group cannot attract any of these penal provisions. Reliance was placed upon the following judgments.

(A) ***Bilal Ahmad Kaloo Vs. State of A.P. (1997) 7 SCC 431 (Para 15):-***

> ***15. The common feature in both sections being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or language or regional groups or castes and communities it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.***

(B) ***Patricia Mukhim Vs. State of Meghalaya & Ors reported in AIR 2021 SC 1632 (Para 11 and 12):-***

> ***11.*** *In Bilal Ahmed Kaloo v. State of A.P. (1997) 7 SCC 431, this Court analysed the ingredients of Sections 153A and 505(2) Indian Penal Code. It was held that Section 153A covers a case where a person by "words, either spoken or written, or by signs or by visible representations", promotes or attempts to promote feeling of enmity, hatred or ill will. Under Section 505(2) promotion of such feeling should have been done by making a publication or circulating any statement or report containing rumour or alarming news. Mens rea was held to be a necessary ingredient for the offence Under Section 153A and Section 505(2). The*

common factor of both the Sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. It was further held in Bilal Ahmed Kaloo (supra) that merely inciting the feelings of one community or group without any reference to any other community or group cannot attract any of the two sections. The Court went on to highlight the distinction between the two offences, holding that publication of words or representation is sine qua non Under Section 505. It is also relevant to refer to the judgment of this Court in Ramesh v. Union of India (1988) 1 SCC 668 in which it was held that words used in the alleged criminal speech should be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The standard of an ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus" should be applied.

12. *This Court in Pravasi Bhalai Sangathan v. Union of India and Ors. (2014) 11 SCC 477 had referred to the Canadian Supreme Court decision in Saskatchewan (Human Rights Commission) v. Whatcott [2013] 1 SCR 467. In that judgment, the Canadian Supreme Court set out what it considered to be a workable approach in interpreting "hatred" as is used in legislative provisions prohibiting hate speech.* ***The first test was for the Courts to apply the hate speech prohibition objectively and in so doing, ask whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. The second test was to restrict interpretation of the legislative term "hatred" to those extreme manifestations of the emotion described by the words "detestation" and "vilification"****. This would filter out and protect speech which might be repugnant and offensive, but does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or injury.* ***The***

third test was for Courts to focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. Mere repugnancy of the ideas expressed is insufficient to constitute the crime attracting penalty.

5.30 Even otherwise, against the Applicant multiple FIRs have been registered as a consequence of a concerted attempt of the govt. in dispensation for the same alleged speeches in complete contravention of the law laid down in ***TT Antony Vs. State of Kerala & Ors. reported in 2001 (6) SCC 181. (Para 19):-***

> **19.** *A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case.* ***In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in***

respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.

5.31 It was stated that the present FIR isn't even the first FIR in the chronology of the FIRs registered against him. Also, the Applicant is on default bail in the Assam FIR which is the first FIR to be registered against the Applicant for the same alleged speech. Furthermore, even the Hon'ble Supreme Court has issued notice in the Applicant's application preferred under Article 32 of the Constitution of India seeking quashing of all the subsequent FIRs but the first one against the Applicant.

Thus, based on the said submissions, it was prayed that accused be discharged of all the offences.

5.32 On the question of discharge, Ld. Counsel has referred to the judgment of ***P. Vijayan v. State of Kerala and Anr reported in (2010) 2 SCC 398*** which stated the following principles:-

i. *If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the Accused.*
ii. *The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.*
iii. *The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.*

iv. *If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the Accused, even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, "cannot show that the Accused committed offence, then, there will be no sufficient ground for proceeding with the trial".*

v. *It is open to the Accused to explain away the materials giving rise to the grave suspicion.*

vi. *The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.*

vii. *At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.*

viii. *There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the Accused.*

6. The law relating to framing of charge is elucidated in Section 228 of Code Of Criminal Procedure, 1973

6.1 Section 228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b)is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

6.2 Hon'ble Supreme Court of India in ***Bhawna Bai vs. Ghanshyam And Others.,*** (2020) 2 Supreme Court Cases 217 held as follows :-

16. After referring to Amit Kapoor, in Dinesh Tiwari v. State of Uttar Pradesh and another (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 Crl.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

17. .....For framing the charges under Section 228 Crl.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in Knati Bhadra Shah and another v. State of West Bengal (2000) 1 SCC 722, while exercising power under Section 228 Crl.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused- respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

Thus, at the time of framing of charge, only prima facie case has to be seen and whether the case is beyond reasonable doubt is not to be seen at this stage. It is not required that detailed reasons must be recorded at the stage of charge.

6.3 Hon'ble Supreme Court of India in ***State of Rajasthan Versus Ashok Kumar Kashyap*** in Criminal Appeal No. 407 of 2021 (Arising from SLP (Crl.) No. 3194 of 2021) observed that :

> "23. In the case of P. Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

24. In the recent decision of this Court in the case of M.R. Hiremath (supra), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed onthe assumption that the material which has been brought on the record by theprosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N.v. N. Suresh Rajan [State of T.N.v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

"29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage." ….....

It was held that..…

….....As observed hereinabove, the High Court was required to consider whether a prima facie case has

> been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible."

Thus, the material brought by the prosecution is taken at its face value and if the ingredients necessary to constitute an offence are made out, then charges have to be framed.

It is also correct, as argued by Ld. Counsel for accused, that the Trial Court is not just a post-office to frame charges at the instance of the prosecution but it also has to sift through the material to see if grave suspicion exists and there are sufficient grounds for proceeding against the accused.

7. The present case involves the applicability of offences under Section 124-A, 153-A, 153-B, 505 (2) IPC and Section 13 of the UAPA against the accused Sharjeel Imam.

Before dwelling into the factual narrative of the case, it would be in the fitness of things to refer to the legal provisions as laid down by the statute and the judicial pronouncements of the Constitutional Courts.

7.1 <u>Sedition</u> :-

> **124A 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 in [India], 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 Government with a view to obtain their alteration by lawful means, without exciting or 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.]

7.2 Hon'ble Supreme Court of India in ***Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955*** had upheld the Constitutional validity of Section 124A IPC. In the said case, the Hon'ble Apex Court held as follows :-

> **35.** In this case, we are directly concerned with the question how for the offence, as defined in s. 124A of the Indian Penal Code, is consistent with the fundamental right guaranteed by Art. 19(1)(a) of the Constitution, which is in these terms :
>
> "19. (1) All citizens shall have the right.
> (a) to freedom of speech and expression..." This guaranteed right is subject to the right of the legislature to impose reasonable restrictions, the ambit of which is indicated by clause (2), which, in its amended form, reads as follows :
>
> > "(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order,

> decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

36. It has not been questioned before us that the fundamental right guaranteed by Art. 19(1)(a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable restrictions as would come within the purview of clause (2), which comprises (a) security of the State, (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc., etc. With reference to the constitutionality of s. 124A or s. 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Art. 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoke or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the person's for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'sedition', as the offence in s. 124A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution',

have been made penal by the section in question. But the section has taken care to indicate clearly 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. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

37. It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of 'sedition'. What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But, in our opinion, such words written or spoke would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has

to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court, has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Sections 124A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. If is held, in consonance with the views expressed by the Federal Court in the case of Niharendu Dutt Majumdar v. The King Emperor MANU/FE/0005/1942 : (1942) F.C.R.38 that the gist of the offence of 'sedition' is incitement to violence or the tendency or the intention to create public disorders by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when they introduced s. 124A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in clause (2) of Art. 19 of the Constitution, if on the other hand we give a literal meaning to the words of the section, divorced from all the antecedent background in which the law of sedition has grown, as load down in the several decisions of the Judicial Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in clause (2) aforesaid.

38. In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to

determine whether and how far the provisions of Sections 124A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. There can be no doubt that apart from the provisions of clause (2) of Art. 19, Sections 124A and 505 are clearly violative of Art. 19(1)(a) of the Constitution. But then we have to see how far the saving clause, namely, clause (2) of Art. 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended clause (2), quoted above, the expression "in the interest of.... public order" are words of great amplitude and are much more comprehensive than the expression "for the maintenance of", as observed by this Court in the case of Virendra v. The State of Punjab MANU/SC/0023/1957 : [1958]1SCR308 . Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoke which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make then unconstitutional in view of Art. 19(1)(a) read with clause (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim 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. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded,

would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress (vide (1)). The Bengal Immunity Company Limited v. The State of Bihar MANU/SC/0083/1955 : [1955]2SCR603 and MANU/SC/0020/1957 : [1957]1SCR930 R. M. D. Chamarbaugwalla v. The Union of India MANU/SC/0020/1957 : [1957]1SCR930 . Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.

39. We may also consider the legal position, as it should emerge, assuming that the main s. 124A is capable of being construed in the literal sense in which the Judicial Committee of the Privy Council has construed it in the cases referred to above. On that assumption, it is not open to this Court to construe the section in such a way as to avoid the alleged unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it ? In our opinion, there are decisions of this Court which amply justify our taking that view of the legal position. This Court, in the case of R.M.D. Chamarbaugwalla v. The Union of India MANU/SC/0020/1957 : [1957]1SCR930 has examined in detail the several decisions of this Court, as also of the Courts in America and Australia. After examining those decisions, this Court came to the conclusion that if the impugned

provisions of a law come within the constitutional powers of the legislature by adopting one view of the words of the impugned section or Act, the Court will take that view of the matter and limit its application accordingly, in preference to the view which would make it unconstitutional on another view of the interpretation of the words in question. In that case, the Court had to choose between a definition of the expression "Prize Competitions" as limited to those competitions which were of a gambling character and those which were not. The Court chose the former interpretation which made the rest of the provisions of the Act, Prize Competitions Act (XLII of 1955), with particular reference to Sections 4 and 5 of the Act and Rules 11 and 12 framed thereunder, valid. The Court held that the penalty attached only to those competitions which involved the element of gambling and those competitions in which success depended to a substantial degree on skill were held to be out of the purview of the Act. The ratio decidendi in that case, in our opinion, applied to the case in hand in so far as we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace.

40. We do not think it necessary to discuss or to refer in detail to the authorities cited and discussed in the reported case R. M. D. Chamarbaugwalla v. The Union of India MANU/SC/0020/1957 : [1957]1SCR930 . We may add that the provisions of the impugned sections, impose restrictions on the fundamental freedom of speech and expression, but those restrictions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that fundamental right.

7.3 In ***Balwant Singh and Ors. vs. State of Punjab****, AIR 1995 SC1785,* the Hon'ble Supreme Court of India in a case of appeal against

judgment had held that :-

> *A plain reading of Section 124A IPC would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded. It is not the prosecution case that the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that the slogans in fact created any law and order problem. It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read to much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that inspite of the fact that the appellants raised the slogans a couple of tunes, the people, in general, were un-affected and carried on with their normal activities. The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.*

7.4 Thus, the offence of Sedition as made out in Section 124A IPC make it abundantly clear that any words, spoken or written, or signs or visible representation or otherwise which brings or attempts to bring into

hatred or contempt or excites or attempt to excite disaffection towards the government established by law in India is punishable under the said Section.

Any comment by itself marking disapproval of any measures of the government is not within the purview of this Section. Criticism of any government, government policies or even institutions is fundamentally within the reach of freedom of speech and expression. In fact, criticism and rallying people against what one perceives to be incorrect policy or even law is what makes a country democratic. Dissent is the hallmark of a progressive and democratic nation. Even advocacy of a point of view regardless of its force or reasoning or even palpable reprehensibility is not touched by this provision.

What the Court has to discern is whether the activities of an accused brings or attempts to bring into hatred or contempt or excites or attempts to excites disaffection towards government established by law. What is objectionable and punishable is the activities intending or having a tendency to create disorder or disturbance of public peace by resort to violence. Thus, the gist of the offence is finding out the meas rea which is the intention of accused by means of words or otherwise and to show a tendency to create disorder or disturbance of public peace by incitement to violence.

7.5 As regards public order, law and order and security of State, Hon'ble Supreme Court of India has dealt with the issue at various times.

In ***Shreya Singhal Vs. UOI - (2015)5SC C1,*** the Hon'ble Apex Court had held as under :-

33. *In Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia MANU/SC/0058/1960 : (1960) 2 S.C.R. 821, this Court held that public order is synonymous with public safety and tranquility; it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State. This definition was further refined in Dr. Ram Manohar Lohia v. State of Bihar and Ors. MANU/SC/0054/1965 : (1966) 1 S.C.R. 709, where this Court held:*

> *It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. (at page 746)*

34. *In Arun Ghosh v. State of West Bengal MANU/SC/0035/1969 : (1970) 3 S.C.R. 288, Ram Manohar Lohia's case was referred to with approval in the following terms:*

> *In Dr. Ram Manohar Lohia's case this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished, from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public*

tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of

public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia's case examples were given by Sarkar, and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another. (at pages 290 and 291).

In ***The Superintendent, Central Prison, Fatehgarh vs. Ram Manohar Lohia****, AIR 1960 SC633, it was held :-*

> ***18.*** *The foregoing discussion yields the following results : (1) "Public order" is synonymous with public safety and tranquillity : it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State; (2) there must be proximate and reasonable nexus between the speech and the public order; (3) s. 3, as it now stands, does not establish in most of the cases comprehended by it any such nexus; (4) there is a conflict of decision on the on the question of severability in the context of an offending provision the language whereof is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislation; one view is that it cannot be split up if there is possibility of its being applied for purposes not sanctioned by the Constitution and the other view is that such a provision is valid if it is severable in its application to an object which is clearly demarcated from other object or objects falling outside the limits of constitutionally permissible legislation; and (5) and the provisions of the section are so inextricably mixed up that it is not possible to apply the doctrine of severability so as to enable us to affirm the validity of a part of it and reject the rest.*

Thus, the activity should have reference to public disorder or public peace and tranquility.

8.1 Section 153A in The Indian Penal Code.

> [153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—
> (1) Whoever—
> (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to

promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, 2[or] 2[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

In ***Balwant Singh and Ors. vs. State of Punjab****, AIR 1995 SC 1785,* it was held *:-*

> ***8.*** *In so far as the offence under Section 153A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other*

ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquility, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquility in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153A IPC and the prosecution has to prove the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153A IPC, by their raising causally the three slogans a couple of times. The offence under Section 153A IPC is, therefore, not made out".

Thus, on the reading of the said Section and judicial pronouncements, it is necessary for the applicability of Section 153A IPC that through words spoken or written or by signs or by visible representations or otherwise, the accused promotes or attempts to promotes on the ground of religion, etc. disharmony or feelings of enmity, hatred or ill-will between different religious groups or castes or which is prejudicial to the maintenance of harmony and disturbs or likely to disturb public tranquility. The intention of the accused is again of fundamental importance in ascertaining the

applicability of the said Section.

8.2 Section 153B in The Indian Penal Code.

> [153B. Imputations, assertions prejudicial to national-integration.—
> (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—
> (a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or
> (b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or
> (c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.
> (2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

Again for the applicability of Section 153B IPC, it is essential that there is a usage of words either spoken or written or by signs or by visible

representations or otherwise by which an accused makes an imputation that any class of person by reason of their religion cannot bear true faith and allegiance to the Constitution of India or to uphold the sovereignty of India or to assert or propagate that any religious community would be deprived of their rights as citizens of India or make assertion which causes or is likely to cause disharmony or feeling of ill-will or hatred between members of religious community and others.

8.3 Section 505 in The Indian Penal Code.

> 1[505. Statements conducing to public mischief.—2[(1)] Whoever makes, publishes or circulates any statement, rumor or report,—
> (a) with intent to cause, or which is likely to cause, any officer, soldier, 3[sailor or airman] in the Army, 4[Navy or Air Force] 5[of India] to mutiny or otherwise disregard or fail in his duty as such; or
> (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or
> (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to 6[three years], or with fine, or with both. 7[(2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished

with imprisonment which may extend to three years, or with fine, or with both.

(3) Offence under sub-section (2) committed in place of worship, etc.—Whoever commits an offence specified in sub-section (2) in any place of worship or in an assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

(Exception) —It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it 8[in good faith and] without any such intent as aforesaid.]

Hon'ble Supreme Court of India in ***Kedar Nath Singh v. State of Bihar,*** **in** ***AIR 1962 SC 955,*** *held as under :-*

41 . It is only necessary to add a few observations with respect to the constitutionality of s. 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, May or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquility or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under s. 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that clause (2) of Art. 19 clearly saves the section from the vice of unconstitutionality.

8.4 Section 13 in The Unlawful Activities (Prevention) Act, 1967

13. Punishment for unlawful activities.—
(1) Whoever—
(a) takes part in or commits, or
(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.
(2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.
(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

Section 2(o) of the said Act defines, "Unlawful Activity", in relation to an individual or association, as any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—
(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
(iii) which causes or is intended to cause disaffection against India;

9. THE CASE AS PER THE CHARGE-SHEET

9.1 The present case was registered in the context of enactment of Citizenship Amendment Act (CAA) by Parliament. The partition of India in 1947 led to the largest displacement and movement of human beings in modern world history. A special treaty between Government of India and Pakistan was signed in 1950 regarding security and rights of minorities. While the Government of India honestly abided by the terms of Agreement, the same was not done by Pakistan. The Citizenship Amendment Act, 2019 is aimed at conferring citizenship to victims of religious persecution. The said amendment is a positive action which provides citizenship to a particular class of persons and in no way takes away the citizenship of anyone. A lot of falsehood and rumors were spread with mischievous intent in the country stating that the said Act is against one community and discriminatory in nature.

On 04.12.2019, the Citizenship Amendment Bill, 2019 was cleared by Union Cabinet for introduction in Parliament. On 09.12.2019, the Bill was introduced in Lok Sabha and passed on 10.12.2019. On 11.12.2019, the Bill was passed by Rajya Sabha. The said Bill received the ascent of Hon'ble President of India and became a law on 12.12.2019. By the said Act, any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh and Pakistan, who had entered into India on or before 31st December 2014 and who had been exempted by the Central Government by any Rule or Order made thereunder shall not be treated as illegal migrant.

9.2 As per prosecution, the present accused alongwith his associates was circulating falsehood by canvassing in the Muslims dominated areas about the Bill and that the Govt. of India intended to take away citizenships of Muslims and Muslims would be put in detention camps. False messages were shared over social-media, pamphlets were distributed, speeches delivered to make innocent citizens believe that due to CAB coupled with National Register for Citizens, their citizenship will be taken away and deliberately created a sense of insecurity among the Muslims. Speeches were given to incite hatred, contempt and disaffection towards the government established by law. These were meant to promote enmity between different groups on the grounds of religion.

9.3 As a result of speeches and protest, riots took place in Delhi on 15.12.2019, 16.12.2019 & 20.12.2019. Accused Sharjeel Imam gave a speech at Jamia on 13.12.2019 regarding his opposition to CAA and NRC. He also gave speeches at Aligarh Muslim University, U.P, at Asansol in West Bengal and Chakand Gaya in Bihar.

9.4 The accused was arrested on 28.01.2020 from Imambada, Kako Kasba Village, Jahanabad, Bihar. The rented accommodation of accused at Vasant Kunj, Delhi was located and from his gmail account, word files of pamphlets containing misleading information regarding CAB were copied from the desktop installed at the rented room of the accused. These pamphlets were circulated by the accused among the Muslim community to

incite them to demonstrate and carry out violent protest against CAB and NRC.

It was also stated that accused has done his thesis in M.Phil on "Exodus before Partition: the attack on Muslims of Bihar, 1946". He has referred to various other books on violence, riots and pogroms by reading such literature and not researching alternative sources, the accused became highly radicalized and religiously bigoted.

9.5 After the introduction of CAA Bill on 04.12.2019, he called a meeting of Muslims students in JNU and to prepare them to protest against the Bill on 05.12.2019. He took the signatures of students attending the meeting, he convinced the students and also created a Whatsapp group by the name of Muslims Students of JNU to rise against CAB/NRC. The signatures were obtained on 05.12.2019 but the group was created on 06.12.2019 to coincide with the Babri Masjid demolition so as to give it a strong communal fervour.

The accused had prepared three pamphlets on 06.12.2019 and distributed them among the Muslim community. The Whatsapp chat between the accused and associates was referred to indicate that deliberate falsehood was propagated in the Muslim community to instigate them against CAA and NRC on religious ground by specifically choosing mosque for dissemination of narrative. Funds were also sought on the Whatsapp group. Accused Sharjeel got printed the pamphlets from Taufiq Khan at Munirka Village, Delhi and who also gave the statement. He identified

various mosques and assigned the task of distribution of pamphlets in these mosque to particular individuals to mobilize Muslims mass in large numbers in the garb of protesting against CAB/NRC.

On 07.12.2019, a protest was called by United Against Hate at Jantar Mantar Delhi where accused not only supported the protest but also actively mobilized number of Muslim students of JNU to take part in the protest.

The accused wanted to make the Friday prayer of Jumma for mobilization on a mass level. He ran a campaign against the Bill through Twitter on 09.12.2019. On 10.12.2019, a massive protest was called at AMU where roads were blocked and violence took place. Sharjeel Usmani, a friend of Sharjeel Imam is one of the accused in the said case at Aligarh. On 11.12.2019, on the asking of Sharjeel Usmani, accused Sharjeel Imam joined a hunger strike and also delivered a speech to incite and mobilize the Muslim students and pamphlets were distributed. All the material was to have an inflammatory impact by inciting them to disrupt communal harmony.

On 12.12.2019, CAA came into existence. He burnt the copies of the Act at JNU. Arshad Warsi asked him to join the protest at Jamia and the accused not only joined the protest but also got printed the pamphlets calling for disruptive chakka-jam. The said pamphlets stated that the law is unconstitutional and intends to disenfranchise Muslims and put them in detention camps. It has already started in Assam and will follow elsewhere. Thousands of Muslims are ready to disrupt Delhi which will give International media attention to our issue and then plans for a disruptive

chakka-jam.

9.6 On 13.12.2019, accused alongwith his associates took part in a protest at Jamia and adopted the strategy of disruptive chakka-jam which turned into violence. He actively took part in the said riots due to which his spectacles were also damaged. He admitted it in his Whatsapp chat dated 13.12.2019 and also in his speech at Aligarh Muslim University on 16.01.2020. The rioters pelted stones on public persons, police personnels and vehicles due to which number of police personnel and people were injured and property damaged. A case of riots was registered.

Soon after the riots, accused Sharjeel delivered a speech at Jamia and provoked the gathering for chakka-jam as a means of protest against the government and set the ground work for other incidents of riots.

After his delivery of speech at Jamia, the protest against CAA & NRC in other areas of Delhi and its adjoining States increased and they started encroaching and blocking the main roads in a planned and coordinated manner reflecting the adoption of modus-operandi i.e. disruptive chakka-jam by the crowds as suggested by accused Sharjeel Imam. The mob was communally surcharged and there were frequent incidents of communal riots. On 15.12.2019, accused also incited the gathering by way of his instigating speech available in his facebook post.

Later, the incidents of riots took place in the area of Jamia and New Friends Colony, Delhi and cases were registered vide FIR No. 298/2019, P.S. Jamia Nagar and FIR No. 242/2019, P.S. New Friends Colony. The

accused Sharjeel Imam is charge-sheeted in FIR No. 242/2019.

On 11.12.2019, accused delivered a speech and distributed pamphlets at AMU asking for disruptive chakka-jam. An incident of riot took place at AMU on 15/16.12.2019 after the Jamia riots. In the riots, the same modus-operandi was adopted.

The accused had devised the concept that the critical mass of a particular community could effectively completely block various cities of India and crippled their day-to-day life. On the night of 15/16.12.2019, the Road No. 13-A, Shaheen Bagh, Delhi was blocked by the protesters to cause inconvenience to lakhs of commuters using the said road on a regular basis. He addressed the people gathered there. He also created Shaheen Bagh Coordination Committee.

The accused had managed to mobilize the Muslim community and set stage for disruptive chakka-jam across Delhi and other parts of India. He succeeded in getting the media attention.

Thereafter, incident of riots took place in the area of Police Station Dayal Pur on 16.12.2019, in Seelampur and Jafrabad on 17.12.2019, Dayal Pur on 17.12.2019, Seema Puri, Nand Nagri on 20.12.2019, Darya Ganj on 20.12.2019. There is also a Whatsapp chat in group Muslim Students of JNU retrieved from his mobile where he is asking back-up should there be an attempt by some people to unblock the roads. He asks Jumma prayer to be held on road and to build up the momentum and even providing logistics to those joining the blocking of road.

The accused also visited North-East Delhi on 15.01.2020. In all the

incidents of riots, the strategy given by Sharjeel Imam was adopted. Accused Sharjeel is also arrested in FIR No. 242/2019, P.S. Jamia, Delhi. In the said case, another accused Furkan disclosed that he got emotionally stirred after hearing the speech by accused Sharjeel Imam delivered in Jamia on 13.12.2019. The voice sample of the accused was taken and the CFSL report gave a finding that the speeches by the accused Jamia and Aligarh Muslim University were delivered by him.

10. At the outset, even at the cost of repetition, I must underscore the inalienability of Fundamental Rights granted to the citizens under the Constitution of India. The cherished Fundamental Rights of Speech and Expression under Article 19 of the Constitution is one of the pillars of a modern democratic nation which seeks to enhance its progress by constant exchange of ideas and meaningful discourse. This will take, within its ambit, the right to offend as naturally curbing any idea or expression which tends to be away from the mainstream and causes affront or offence to some people, would remove the efficacy of the right itself.

It is equally true, however, that such right is subject to reasonable restrictions. But whenever, one talks of said rights of an individual, it must also be cognizant of the Fundamental Rights of other citizens. While maintaining this balance, the Directive Principles of State policy and Fundamental Duties cannot be just given a go by or consigned to ignominious side existence.

10.1 An argument put forth by the Ld. Counsel for accused was that accused is a highly intelligent and well read person and what he says and believes are a result of his study of History.

The present applicant/accused Sharjeel Imam is indubitably an intelligent and educated person but what this case tests is not the intelligence or the qualifications of the accused but the legality or otherwise committed by him by way of utterances and actions in respect of the charges brought against him.

That the accused has done his thesis on Bihar Riots 1946 is a matter of record.

10.2 Therefore, the fulcrum of the entire discussion has to be based upon the speeches which the accused has admitted to have been delivered by him at Delhi, Uttar Pradesh, West Bengal and Bihar.

10.3 What is called into question is to decide the nature of speeches made by accused Sharjeel Imam. As rightly canvassed by the Ld. Counsel for accused as also the Ld. Special Public Prosecutor, speeches must always be interpreted after scrutinizing them in complete detail and any piecemeal construction is deleterious to our understanding. Speeches are a reflection of one's thoughts. All the speeches made by accused Sharjeel Imam have to be read in complete to decipher what he was thinking and what he was trying to convince all those who had gathered around him and to whom the speech would get disseminated to. When one tries to interpret a speech, one must

consider who is a speaker, to whom it is addressed, to whom it will disseminate to, what is the context in which speeches are made. The manner in which it is said, the choice of words in the speech, all are relevant.

10.4 What you speak is the translation of chain of thoughts and one must wisely put his thoughts into words because that is what the Court looks into in finding out the intention of the accused. There is nothing wrong in having a view point. It may not necessarily coincide with the view of any individual or organization or a community harboring a particular ideology or even against the ideology of the dispensation. In fact, discourses happen in society on the evaluation of different view points.

What we have to see is whether the 'laxman-rekha' is crossed or not i.e. the point where stand point crosses the boundaries laid-down by the Statutes and judicial pronouncements, the law steps in. It is about respecting other people views and finding out legitimate ways of pushing your thinking. To expound an argument to say that a speech howsoever incorrect or incendiary or provocative and threatening must be accepted in complete deference to the right of free speech, is beyond the pale. The contention of the counsel of the accused that the views of a man of common understanding and not of a hyper sensitive emotional being should be the benchmark while construing the intention of the speech, has rational and legal reasoning. Speech can raise disparate issues which provides a fertile ground on which receiver of a speech understands what he is being asked to understand. As they say, intention has to be gathered from the words spoken, written or

other expressions, therefore, a speaker will be taken to have intent of the consequences that followed.

10.5 The speeches are made in public and not in a conference or a court.

11. SPEECHES IN QUESTION

11.1 JAMIA MILIA ISLAMIA ON 13.12.2019

Though the provocation for speeches is shown to be an enactment of CAA, yet the speeches cover a whole gamut of other issues. The accused says in the speech that Muslims have been driven out and their property confiscated from 1955 to 1995 and the numbers are in lakhs. The Muslim population of Tripura has been driven out. He then draws reference to Quran. He further says that his desire is to see chakka-jam in Delhi and that platform of 100-200 Muslim students has been created. He openly says that Indian Muslims can do chakka-jam in 500 cities in India but there are certain road blocks in this. He then poses a question whether Muslims do not have that standing to close down cities of North-India to which the immediate reply is 'bilkul (yes)'. He apprises the crowd that Indian Muslims reside in cities where its population is more than 30% and states that despite being such percentage demographically, why the cities are running as normal. He asks Muslims to fight if somebody is trying to turn you away by making

reference to Quran. He does not want secularism to be spoken or practiced. Then, he talks about fascism, being bandied about and tells that this 'dastoor' (law or tradition) allows fascism from the very beginning. He tells that whether it is cow protection, definition of Hindu or manner of elections, it shows that the Constitution itself is fascist but you should take the help of these in Courts. However, it cannot be the last resort for you all. He then talks about constitutionality and does say that meaning of constitutionality is that people will not be killed or property burnt. However, in the same breath, he says that we can disrupt (life) which is not a difficult thing if we organize ourselves. He says that he and others are distributing pamphlets in Masjids for the last two weeks and will continue to do so. He then goes on to explain the importance of Delhi and how an incident in Delhi would result in a wide scale coverage worldwide. He tries to tell people about not reposing faith in any of the political parties. He asks the listeners to form groups and sub-groups and to carry out chakka-jam. He then uses a reference to the leadership position of Iqbal Ahmed to drive home his point that leaders can emerges out of a situation. Importantly, the reference point of this story is not an ordinary one but from 1947 partition. He stresses again the need for chakka-jam as the goal and tells that water supply, milk supply should be stopped in Delhi and then says that 55,000 people are in detention camp. He concludes his speech by reading a couplet in the context of 1946 Bihar Riots which again is a reference to Islam religion.

11.2. ALIGARH MUSLIM UNIVERSITY, U.P ON 16.01.2020

The speech at Aligarh Muslim University is at a later point of time in January 2020. He starts off by saying that he had come there on 10th and 11th of December and had talked about blockade of roads and ideas of secularism. In his speech, he again shares his ideas casting doubts about secularism in India. He starts off by telling that if India was to be secular, then scheduled castes would have been Muslims. He again repeats the idea that India is not truly secular or democratic and harps upon cow protection as one of the examples. He terms the Constitution of India as a document by the Pandits and says that educated Brahmins are very dangerous. He then says that the idea of India is a construct upon the grave of Muslims and it is essentially a unification project by the Pandits. He is not only denigrating the Constitution and the idea that makes this country but also creating resentment and ill-will towards a particular caste in the minds of everyone.

He talks that lynching has been happening for the last hundred years but it is only now being reported. He then talks of Kashmir issue, Triple Talaq issue, Ayodhya-Babri issue and also now CAA/NRC. He then proposes a theory that everyone talks about sensitization, awareness but nobody has the plan of action. He then discloses his plan of action-when critical mass of people had been assembled; then what all can be done and what should be got done from them. He talks about the events in Delhi from 5th to 15th December 2019 and then disparages the peaceful mode of protest by political personalities. He acknowledges violence at Jamia. He then

rallies everyone to say that they will have to close down India and which they are capable of. He then talks about Shaheen Bagh and that political parties of all hues are of no use. He also says that non-Muslims are not allies and they are lying and if they were truly allying with us, then Delhi would have been closed. He says that the argument that a lot of citizens are being inconvenienced due to chakka-jam, is in fact our achievement. He talks about the polarization done by both BJP and the Congress alike in Muzaffarnagar where the two have got the riots done. He talks about highways being closed and properties being damaged. He indeed does talk about cash not being taken in their struggle. He talks about ABVP and CPM as being violent and quotes Kerala and Bengal. He also then talks that if 05 lakhs people were to get organized, then North-East and India can be permanently cut off and if not, then at least for a few months. He exhorts people to block the roads to cut-off Assam and India and again raises the issue of detention camp. He says that 'chicken-neck' belongs to Muslims and all the supplies to Army in the North-East should be cut-off. He talks about CAA and State sponsored violence over the last 70 years. He terms Legislation, Judiciary and Executive as working against the interests of Muslims. He puts Jinnah and Gokhle as early moderates. Even extreme nationalism is termed as Hindu nationalism and which grew under the tutelage of Gandhi. He also ridicules all those Muslims who are with the Pandits. He then criticizes historian Irfan Habib and other such historians who might have written history expecting something from the Congress in return. He tells people that Muslims have never supported the Congress in

the entire history except after 1947 when it became a necessity because Muslim League leaders left to join Congress. He then ridicules the cow protection and this support from some Muslims. He then gives reference to the necessity of cow killing and says that we will never stop cow killing. He then talks about Deobandis. He stresses the need to do Namaz five times a day and says that it is their right to do it where ever they are standing. It is part of their daily schedule and will not go to Masjid if it is at some distance away. Then he talks about university and the need to organize themselves.

11.3 ASANSOL, WEST BENGAL ON 22.01.2020

The speech at Asansol does talk about CAA & NRC. It tries to evoke the feeling against the said law but also asks if Muslims have come on road for CAA & NRC only. He talks about Triple Talaq issue, property issue and Kashmir issue. He talks about the repercussions after the 1971 War between India and Pakistan and migration consequent to it and terms it as a international problem. He, in his speeches, is talking about detention camps, and the need to burn it, should they be sent there. He stresses the need to create 15-100 Shaheen Bagh and says that if by wishes of God, it is successful then Hindustan would be closed and they will be brought to their knees. Muslims have not closed down India in the last 70 years and now they will do it and do it completely. He also talks about problems faced by ordinary people/citizens due to highway closing at Shaheen Bagh, which he terms it as a success. He asks them to get organized. He ends the speech

again with a reference to a couplet in the context of Bihar Riots or attacks on Muslims in 1946 drawing reference to the religion Islam.

11.4 CHAKBAND, GAYA, BIHAR ON 23.01.2020

This speech again finds mention and talk of CAA & NRC He says that the Citizenship Amendment Act has come and it is an attack on Muslims. Muslims will be put in the detention camps and the Courts will do nothing. In four weeks, the government would have put 10-20 thousands Muslims in detention camps and the work is going on in this regard. He lauds the efforts in Shaheen Bagh where highway has been blocked, Petrol Pump made vacant, show-rooms closed and every citizen living in Noida reaching home at least four hours late. He compliments this as his achievement that he has blocked the traffic for one and half months in Delhi. He then goes on to say that over the last 70 years, Home Ministry, Army have been ridiculing them. He then states that they should sit on the highways and not get up till detention camps are closed. He asks rhetorically to the crowd what will happen if detention camps are created in Bihar and what will you do when the ladies from the houses are taken away and then replies that you will have to burn those detention camps. He then says that this is happening in Assam. He does say that Hindus can also join who are with their cause. He then criticizes all the mainstream parties like Congress and CPM as they do not come unless there are cameras around. He is asking the crowd to accept only those who have a plan of action. He

says that he would term it as a victory only if hundreds Shaheen Bagh are created. We have to jam the roads and close the highways in the next four weeks. He also says that there are two crore Muslims in Bihar and even if some non-Muslims join us then what is there that we can't do. He says that these things were tried in Old Delhi and Seelampur in Delhi. He does say that they don't have to throw stones or pick sticks but we have to close down India. Later, he says that it is very easy for them to block 5-10 highways. They will not let the goods travel and they will paralyze the government. He then says that there are many loopholes in CAA and in fact, the law should have allowed Rohingya Muslims from Burma and Muslims from Sri Lanka to be covered by the law. He also says that Assam is burning and government cannot create havoc in Delhi because of the media.

12. *In* ***Amit Sahni v. Commissioner of Police and Ors., (2020) 10 SCC 439****,* Hon'ble Supreme Court of India in the context of Shaheen Bagh has observed as under :-

> **17.** However, while appreciating the existence of the right to peaceful protest against a legislation (keeping in mind the words of Pulitzer Prize winner, Walter Lippmann, who said "In a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable"), we have to make it unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. We cannot accept the plea of the

> applicants that an indeterminable number of people can assemble whenever they choose to protest. Justice K.K. Mathew in the Himat Lal case 2 had eloquently observed that "Streets and public parks exist primarily for other purposes and the social interest promoted by untrammeled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and Regulation of speech are designed to protect. But there is a constitutional difference between reasonable Regulation and arbitrary exclusion."

13.1 On a reading and re-reading of entire speeches of accused Sharjeel Imam, at least on a prima facie level, it brings to the core the fundamental thinking, ideas and intent of the accused. The speeches are delivered and aimed at Muslim audience present there and to whom it will disseminate to. It will also be read and heard by people of other communities. The speeches seems to be indicative of showing the worthlessness of the community and existential crises. The issue of demographic profile in certain cities is misleading and needs to be explained at trial. Again the issue of ridiculing cow protection and in the context of secularism requires explanation at trial.

13.2 It is indeed correct at one level to say that the accused has lambasted almost every institution, Constitution and ideas of democracy and secularism as practiced, and the entire polity. The accused in his speeches has made vituperative utterances against even the Father of the Nation. He seems to be skeptical of the ideas of secularism and democracy that has come about post Constitution.

13.3 Even though the apparent reason for making speeches is the CAA/NRC,yet the references to other incidents or flash-points in history requires to be explained. At prima facie level, it appears that he is trying to convince them that Muslims as a community have been deprived because of the Constitution and people who made the Constitution or who are required to protect it. The religious slogans having been used in the context of the Constitution and CAA/NRC at this stage may be taken as an indicative of his thought process. The references to cow-killing or reservations not being given to Muslims who had converted from Hindus as such have no relevance for the protest which is ostensibly shown in the arguments as against the CAA law. The speeches appear to be completely pessimistic. In his admitted speech , he focuses that Muslims are concentrated in urban areas and there are 24 cities in the country where the Muslim population can stop the functioning and put to the city at halt and bring the government to its knees.

The accused has made utterances not just once but many times over. It is not as if the words are spelt out in a moment of haste or anger or antagonism without intending it.

13.4 As per the case of the prosecution the speeches made by the accused created a debilitating sense of existence among Muslims. As per Ld.Special PP ,through the speech the accused intended to drive home the point that there is no other way from this trap and the only way out is the disruptive chakka-jam, blocking of highways, damage to public and private

property, harm to the common man, by disrupting and stopping the supply of water, food and essential services and feeling happy about it, showing the strength of their demography in major cities and to cause a severance between the mainland India and North-East by blocking 'chicken-neck' which he calls his own and almost pitches one community against the ideals of the State and its national character as if to say that co-existence of the two is anathema. On the other hand the stand of the Ld.Counsel for the accused has been that the intent of the speech was not as such. However , after going through the speech and other relevant material on record, the court is of the view that on the account of positive assertions of the accused in the speech, the trial is required and sufficient material exists to proceed against him.

As per charge-sheet, the plan of action he tells and wants the readers and listeners to believe results into various incidents of riots of December 2019 in Delhi, as stated in para no. 09 above, which he makes reference to in his speeches as well. As per the charge-sheet, there were incidents of riots at Jamia, New Friends Colony, Seelampur, Darya Ganj, North-East Delhi in December 2019 post his speeches and dissemination of material by pamphlets by adoption of strategy propagated by the accused. As set-out above, accused is also arraigned in another FIR relating to those incidents of riots of 2019. Violence did happen consequent to his speeches.

13.5 In the speeches and other material of accused produced by prosecution, on a prima facie level, there appears to be a tendency to create public disorder and incitement to violence. Speech also appears to challenge

the territorial integrity and sovereignty of India. It also appears to create hatred/contempt for the lawful institutions of the State and to challenge them by unlawful means. Prima facie, the religious groups are sought to be divided on emotive issues and one community is sought to be (mis)guided in a particular way of resentment, ill-will and hatred towards others which can then be remedied by a plan of action which will result in violence. The accused by referring to the blockage/cut-off of 'chicken-neck' which joins mainland India to the North-East by seems to remind everyone that the said land belongs to Muslims and the call to do it, by certain means is indicative of his intention.

13.6 This is the stage of charge and the accused will get an opportunity to explain himself about the contents of the charge-sheet including the speeches but for the purpose of charge, a case is made out.

14. To add to the above discussion, to understand whether offence of Sedition under Section 124-A IPC and 153-A IPC is made out in the present factual matrix, factual contents of the Kedar Nath (supra) must also be considered. There the appellant Kedar Nath had filed an appeal before Hon'ble Supreme Court of India as he was prosecuted/charged under the said Sections.

In para no. 2 of the said order, which is in reference to Crl. Appeal No. 169 of 1957, the charge framed against Kedar Nath is set-out. The same is reproduced as under :-

2. *In Criminal Appeal 169 of 1957, the appellant is one Kedar Nath Singh, who was prosecuted before a Magistrate, 1st Class, at Begusarai, in the district of Monghyr, in Bihar. He framed the following charges against the accused person, which are set out in extenso in order to bring out the gravamen of the charge against him.*

"First. - That you on 26th day of May, 1953 at village Barauni, P. S. Taghra (Monghyr) by speaking the words, to wit,

(a) To-day the dogs of the C.I.D. are loitering round Barauni. Many official dogs are sitting even in this meeting. The people of India drove out the Britishers from this country and elected these Congress goondas to the gaddi and seated them on it. To-day these Congress goondas are sitting on the gaddi due to mistake of the people. When we drove out the Britishers, we shall strike and turn out these Congress goondas as well. These official dogs will also be liquidated along with these Congress goondas. These Congress goondas are banking upon the American dollars and imposing various kinds of taxes on the people to-day. The blood of our brothers - mazdoors and Kishans is being sucked. The capitalists and the zamindars of this country help these Congress goondas. These zamindars and capitalists will also have to be brought before the people's court along with these Congress goondas.

(b) On the strength of the organization and unity of Kisans and mazdoors the Forward Communists Party will expose the black deeds of the Congress goondas, who are just like the Britishers. Only the colour of the body has changed. They have to-day established a rule of lathis and bullets in the country. The Britishers had to go away from this land. They had aeroplanes, guns, bombs and other weapons with them.

(c) The Forward Communist Party does not believe in the doctrine of vote itself. The party had always been believing in revolution and does so even at present. 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 and on their ashes will be established a Government of the poor and the downtrodden people of India.

(d) It will be a mistake to expect anything from the Congress rulers. They (Congress rulers) have set up V. Bhave in the midst of the people by causing him wear a langoti in order to divert the people's attention from their mistakes. To-day Vinova is playing a drama on the stage of Indian politics. Confusion is being created among the people. I want to tell Vinova and advice his agents, "you should understand it that the people cannot be deceived by this Yojna, illusion and fraud of Vinova". I shall advise Vinova not to become a puppet in the hands of the Congress men. These persons, who understand the Yojna of Vinova, realise that Vinova is an agent of the Congress Government.

(e) I tell you that this Congress Government will do no good to you.

(f) I want to tell the last word even to the Congress Tyrants, "you play with the people and ruin them by entangling them in the mesh of bribery, black-marketing and corruption. To-day the children of the poor are hankering for food and you Congress men are assuming the attitude of Nawabs sitting on the chairs....."

After discussing all the law, Hon'ble Supreme Court of India dismissed the said criminal appeal and thus, upheld the charges against Kedar Nath. The facts of the case of Kedar Nath clearly shows that comments are by far less offensive, seditious then the contents of speeches and pamphlets of accused Sharjeel Imam in the present case.

Thus, offences for the purpose of charge against the accused Sharjeel Imam, is made out on this count as well.

15. Thus, on the basis of material on record, I am of the opinion that there are sufficient grounds for presuming that the accused Sharjeel Imam has committed offences under Section 124A IPC, 153A IPC, 153B IPC, 505 IPC & Section 13 of UAPA. Ordered accordingly.

AMITABH RAWAT
Digitally signed by AMITABH RAWAT
Date: 2022.01.24 18:35:56 +0530

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 24.01.2022