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Case Comment: Amish Devgan vs Union of India

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INTRODUCTION

In so many words, the Indian Constitution does not explicitly safeguard journalistic freedom. These liberties, however, are granted to all people, and by implication, the press, under Article 19's Fundamental Right to Freedom of Speech and Expression¹. As a consequence, it is accurate to say that the media seems to have no unique rights under Indian law. The media, on the whole, is required to operate in accordance with the community's wider interests. The Indian criminal justice system requires journalists to follow specific guidelines. Simply stated, any effort to compromise the sanctity or existence of state organs, communities, or people is unlawful. When the media violates the aforementioned rules, numerous legal provisions are often applied. As a result, media personnel and journalists are often subjected to criminal charges filed by an injured individual or group of people. The current case² involving Amish Devgan bears some resemblance. The Supreme Court, in this landmark case, attempts to address one of today's most serious issues: what qualifies as "hate speech." The Supreme Court

¹ Constitution of India, 1950, art 19

² *Amish Devgan v Union of India* 2020

also considers other connected issues in this case, such as free speech, the right to freedom of speech and expression, the distinction between free speech and hate speech, and so on.

FACTS OF THE CASE

During a broadcast on 15th June 2020, the petitioner, a journalist, discussed the Places of Worship Act, 1991³, which was aired nationwide. Hindu priests' associations had filed a lawsuit against the Act, which outlaws' conversion and requires that places of worship retain their religious identity as they were on August 15, 1947, in order to test its constitutionality. The broadcast discussion included Devgan describing Pir Hazrat Moinuddin Chishti, a venerated Muslim Sufi saint, as a terrorist intruder who had compelled Hindus into accepting Islam using fear and intimidation. Following the discussion, the petitioner was accused of willfully and intentionally insulting a Pir, a person who is venerated even by Hindus. Several FIRs were filed against the petitioner at various police stations around the nation, under the jurisdiction of several state governments. The petitioner filed a petition on June 22, 2020, requesting that these reports be dismissed as a result of these findings under Section 482⁴ of the CrPc. In other instances, too, it has been used to dismiss actions that arose as a result of FIRs. The petitioner's plea for the same was met with opposition from a number of private respondents as well as from the state governments of Maharashtra, Telangana, etc.

LEGAL ISSUES

- Is it appropriate to dismiss a number of FIRs filed against the petitioner? (Contention put forward by the Petitioner).
- Whether all the other FIRs filed across the country should be clubbed up with the first FIR? (Contention put forward by the Petitioner).
- Whether the petition should be dismissed by invoking Article 32⁵ in a cavalier manner? (Contention put forward by the Respondents).

³ Places of Worship (Special Provisions) Act, 1991

⁴ Code of Criminal Procedure, 1973 s 482

⁵ Constitution of India, 1950, art 32

- Whether the petitioner's purpose was to foment unrest between the two groups and provoke chaos. (Contention put forward by the Respondents).
- The maintainability and merits of the registered FIRs.

OBSERVATIONS OF SUPREME COURT

The Supreme Court demonstrated comprehensive insights into the nature of hate speech offences across the world, as well as the Indian legislative framework surrounding freedom of speech and expression and the constraints that that right may confront in certain instances. It noted that it remains challenging in practise to identify the outer bounds of free expression and that democratic norms make it difficult to determine when outlawing speech is both fair and rational. The Court looked at hate speech policies and approaches in the United States, Australia, and South Africa, among other nations, in order to undertake a comparative jurisprudence assessment. It went on to say that the American stance demonstrates a strong preference for liberty over equality, as well as a dedication to individualism and that the goal of free expression protection is to protect individuals from the government, those who hold contrary ideas, and suppressed voices. It stated that Canadian courts function under the highest principle of human integrity and sanctity and foster pluralism. The Court said that Australian law is substantially the same as Canadian law and that South African jurisprudence, like Canadian law, placed dignity at the heart of a hateful speech enquiry.

In deciding the case, the Supreme Court of India examined Indian jurisprudence on the constitutional validity of outlawing insults to religious faith as well as threats to public order. The Court repeatedly stressed the importance of the rights to equality and dignity and interpreted dignity in the context of hateful speech as an individual's essential entitlement as a part of a civilised society in which they would have achieved their position. Later, the Court distinguished between free expression and hate speech. The objective of criminalising hate speech, according to the Court, is to safeguard people's rights and maintain political and social equality among individuals of all identities. The Court found that the most crucial requirement for democratic democracy is the right to speak for oneself. after spending substantial consideration on the question of free speech in contemporary democracies. It went on to clarify

that lying about government policy never constitutes hate speech and that the only time anything is labeled as hate speech is when it endangers public safety. Nonetheless, the Court observed that distinguishing between political or policy criticism and communication that incites or fosters hatred against a certain group or culture might be difficult. It also emphasised the importance of the speaker's intention and goal, and that genuine debate on tough topics should not be stifled as a consequence.

The Court then formulated a conclusion after evaluating the legislative provisions under which the petitioner's FIRs were filed. Section 153A of the Penal Code⁶, first enacted in 1898, makes it illegal to incite hatred between different groups based on religion, place of birth, and other characteristics, as well as to participate in acts that are harmful to the maintenance of peace. The court agreed that the words themselves are the main source, but also that courts may employ other materials if they so wish. The Court emphasised that there must be a motive for these offences, and that purpose must be premeditated and spiteful in order to induce religious sentiments. The Court said that in order to be prosecuted for hateful speech, there must be words spoken; mere thought is insufficient, and there must be a purpose and a strong link to do harm. The Court completed its comparative and statutory examination by declaring that it had a commitment to denounce and avoid discriminatory practises as well as to intervene to promote social peace and tolerance by forbidding hateful and improper conduct.

DECISION

As a result, the Court denied the petitioner's argument that criminal proceedings can only be instituted in a jurisdiction where the discussion was held, noting that the discussion was aired on a widely watched television network and that the petitioner's words affected people all throughout India. At the same time, it rejected the petitioner's argument that his actions were insubstantial and that the evidence on the nature of his actions would have to be accumulated and considered by law enforcement authorities, noting that the Court was not in a position to determine the triviality of the offence at this time. In order to decide whether an offence had

⁶ Indian Penal Code, 1860, s 153A

been established, the Court applied the standards of substance, context, purpose, and injury. Regarding the substance of the petitioner's words, the court determined that there was no ambiguity about what the petitioner had said and that the petitioner was a co-participant in the discussion rather than only a host. It dismissed the petitioner's claim that his activities were insignificant, stating that the court was not in a place to evaluate the offence's insignificance at this time. The Court stated that after a thorough investigation, it would not dismiss the FIRs and would instead defer to the respective authorities to implement its findings on the situation. The court specifically said that it may interfere at this stage of a criminal proceeding to achieve the objective of justice. It used the benchmarks for giving an exceptional redressal under CrPc Section 482⁷ to evaluate the situation. After applying the stringent and limited conditions for providing this remedy to the circumstances of the particular case, the Court found that they were not satisfied in this case. It was also established that all of the numerous complaints should be acknowledged as claims, but that they would all be amalgamated and addressed simultaneously at the place where the first complaint was filed.

ANALYSIS AND CONCLUSION

“In a polity committed to pluralism, hate speech cannot conceivably contribute in any legitimate way to democracy and, in fact, repudiates the right to equality.”

There must be a qualitative difference between free speech and hateful speech in order to create a clear distinction. As opposed to free speech, which is focused on political and economic concerns as well as policy considerations, the latter is concerned with the actual message, which is meant to demean and disaffect the discriminated group. Regardless of the fact that the court's decision relies heavily on the knowledge of multiple foreign jurisdictions as well as the court's own judicial precedent to re-examine the definition of hate speech, the court warned that trying to draw the outer boundaries of democracy and free speech, the restriction beyond which the right would run afoul and which it can be subjugated to other democratic principles, remains challenging. As a consequence of the ruling, in this case, a fresh

⁷ Code of Criminal Procedure, 1973 s 482

light has been shed on overbroad and unclear interpretations of hate speech statutes. At the same time, it highlights the reality that the court's responsiveness varies by case and that certain cases get more attention than others. The inconsistency of the courts' attitude in diverse cases adds to the continuing deterioration of the hate speech discussion. According to the court's reasoning, a controlled definition of hate speech might lead to further restrictions on the right to free expression. Despite the court's pragmatic distinction between free expression and hateful speech, the idea of what is and is not acceptable continues to be too broad to be applied universally. True, defining hate speech too narrowly might lead to overly tight limits on freedom of expression, but the Supreme Court of India should at the very least endeavour to maintain a uniform procedural approach when hearing instances involving allegedly incendiary speech.