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Case Comment: Javed Ahmed Hajam v State of Maharashtra: Dissent, Democracy, and the Limits of Section 153A

Idhayaveena M[a]

[a]Tamil Nadu National Law University, Trichy, India

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INTRODUCTION

The right to freedom of speech and expression, under Article 19(1)(a) of the Constitution of India,[1] forms the bedrock of a functioning democracy. It is not merely a civil liberty but a political necessity without the freedom to criticise, question, and dissent, democratic governance loses its very legitimacy. However, this right has never been absolute. Article 19(2) permits the State to impose reasonable restrictions in the interests of public order, sovereignty and integrity of India, and other specified grounds.[2] The challenge for the judiciary, therefore, lies not in acknowledging the existence of these restrictions but in ensuring that they are not weaponised to silence voices that are merely inconvenient to those in power.

In Javed Ahmad Hajam v State of Maharashtra,[3] decided on 7 March 2024, the Supreme Court of India reaffirmed this delicate balance with remarkable clarity. A Division Bench comprising Justice Abhay S. Oka and Justice Ujjal Bhuyan quashed a First Information Report

[1] Constitution of India 1950, art 19(1)(a)
[2] Constitution of India 1950, art 19(2)
[3] *Javed Ahmad Hajam v State of Maharashtra* (2024) INSC 187

(FIR) registered against a Kashmiri professor for WhatsApp statuses criticising the abrogation of Article 370 of the Constitution. The Court held that dissent and political criticism fall within the protection of Article 19(1)(a) and cannot constitute an offence under Section 153A of the Indian Penal Code, 1860[4] unless accompanied by a clear intention to promote enmity between communities. This case comment critically examines the factual background, the reasoning of the Court, and the broader implications of the judgment for free speech, social media governance, and constitutional democracy in India.

HISTORICAL BACKGROUND OF THE CASE

The appellant, Professor Javed Ahmad Hajam, was a faculty member at Sanjay Ghodawat College, Kolhapur, Maharashtra, though originally a resident of District Baramulla, Jammu and Kashmir. Between 13 and 15 August 2022, he posted two messages on WhatsApp. The first, displayed as his 'WhatsApp Status', referred to 5 August as a 'Black Day' for Jammu and Kashmir on account of the abrogation of Article 370 in 2019, accompanied by the expression 'we are not happy.' The second message, shared in a parent-teacher WhatsApp group of which he was a member, wished 'Happy Independence Day' to Pakistan on 14 August.

Based on these posts, an FIR was registered against the appellant at Hatkanangale Police Station, Kolhapur, charging him with the commission of an offence punishable under Section 153A of the IPC for allegedly promoting enmity between different groups and disturbing public harmony.[5] The appellant filed a writ petition before the Bombay High Court seeking to quash the FIR, which was dismissed. Aggrieved by the High Court's refusal, the appellant approached the Supreme Court by way of a Special Leave Petition under Article 136 of the Constitution.[6]

JUDGEMENT AND RATIONALE

The Supreme Court, by its judgment dated 7 March 2024, quashed the FIR and set aside the order of the Bombay High Court. The bench, speaking through Justice Abhay S. Oka, held that the appellant's WhatsApp posts were a constitutionally protected exercise of his right to freedom of speech and expression. The Court unambiguously observed that every citizen has

[4] Indian Penal Code 1860, s 153A
[5] Indian Penal Code 1860, s 153A
[6] Constitution of India 1950, art 136

the right to offer criticism of every decision of the State, however controversial, and that such criticism does not amount to an offence under Section 153A IPC in the absence of a discernible intention to promote communal disharmony.[7]

The Court identified three key legal propositions that governed its decision. First, it reaffirmed the test for invoking Section 153A IPC, namely, that the offending words or signs must have a clear tendency to promote enmity or ill-will between identifiable religious, racial, linguistic, or regional groups, judged by the standard of a reasonable, ordinary member of society, the 'common man' test as established in Balwant Singh v State of Punjab.[8] Second, the court held that merely expressing displeasure at a governmental decision, including a constitutional amendment, cannot be equated with an intention to incite communal discord. Third, and most significantly, the court elevated the right to lawful dissent to the plane of Article 21, observing that the right to lead a meaningful life includes the right to dissent lawfully.[9]

In doing so, the court also issued a notable direction calling for police sensitisation regarding constitutional freedoms, indicating that the misuse of penal provisions against legitimate political expression is not merely a legal error but a systemic failure that requires institutional correction.

CRITICAL ANALYSIS OF THE JUDGEMENT

The Reaffirmation of the Discussion-Incitement Distinction: The most doctrinally significant contribution of the judgment lies in its firm endorsement of the distinction between discussion, advocacy, and incitement, a distinction that traces its lineage in Indian constitutional law to the seminal decision in Shreya Singhal v Union of India.[10] In Shreya Singhal, the Supreme Court struck down Section 66A of the Information Technology Act, 2000,[11] on the ground that it criminalised speech that merely caused 'annoyance' or 'inconvenience' categories far removed from constitutionally permissible restrictions. The court in Hajam continues this trajectory. Criticising the abrogation of Article 370 and wishing

[7] *Javed Ahmad Hajam v State of Maharashtra* (2024) INSC 187
[8] *Balwant Singh & Anr v State of Punjab* (1955) 3 SCC 709
[9] *Javed Ahmad Hajam v State of Maharashtra* (2024) INSC 187
[10] *Shreya Singhal v Union of India* (2015) 5 SCC 1
[11] Information Technology Act 2000, s 66A

a neighbouring country on its Independence Day are expressions of political opinion and cultural identity, not instruments of communal incitement.

This distinction is vital because Section 153A IPC is frequently deployed as a tool to suppress political dissent, particularly when the speaker belongs to a minority community. The section requires that the speech be made with an intention to '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.[12] Intention is an indispensable ingredient that the court restated clearly, and which lower courts and police authorities often disregard in practice.

The Nexus Between Free Speech and Article 21: The court observed that the right to lawful dissent forms part of the right to lead a meaningful life under Article 21.[13] This is a constitutionally fertile observation. Article 21, which guarantees the right to life and personal liberty, has been progressively interpreted by the Supreme Court since Maneka Gandhi v Union of India[14] to encompass a wide range of dignitarian elements. Linking dissent to Article 21 locates political expression within the domain of human dignity itself, suggesting that a citizen who is silenced cannot truly live a complete life as a participant in democratic governance.

This approach finds partial resonance in the nine-judge bench decision in Justice K.S. Puttaswamy v Union of India,[15] where Justice D.Y. Chandrachud, in his concurring opinion, recognised that privacy encompasses the freedom to dissent from mainstream thought without surveillance or fear of reprisal. The Hajam judgement, by reading dissent into Article 21, enriches this framework and gives constitutional dissent a dual foundation where one is expressly guaranteed Article 19(1)(a), and another in the expansively interpreted Article 21.

Social media, Reach, and the Chilling Effect: A recurring concern in cases involving social media speech is the breadth of reach that digital platforms afford. Law enforcement agencies have frequently argued that WhatsApp, Facebook, and similar platforms amplify speech to potentially millions of users, thereby magnifying the risk of public disorder. While this

[12] Indian Penal Code 1860, s 153A
[13] *Javed Ahmad Hajam v State of Maharashtra* (2024) INSC 187
[14] *Maneka Gandhi v Union of India* AIR 1978 SC 597
[15] *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

concern is not entirely unfounded, the Hajam judgement correctly resists the temptation to treat reach as a substitute for intent. As the court observed in Shreya Singhal, the mere fact that speech is widely disseminated does not render it constitutionally unprotected. The constitutional test remains the same: Does the speech possess a proximate and direct tendency to disturb public order, and is it motivated by an intention to promote enmity between groups?[16] When professors, journalists, students, and ordinary citizens fear that a WhatsApp status mourning a constitutional change may expose them to criminal prosecution, the result is a culture of self-censorship that corrodes the very foundations of democratic discourse. The court's firm intervention in Hajam is therefore not only legally correct but socially necessary.

Police Accountability and Institutional Gaps: A court recognised that legal declarations by the Supreme Court are insufficient if ground-level enforcement agencies continue to register FIRs for speech that is clearly protected. This mirrors the concern expressed in the years following Shreya Singhal, where documented research showed that Section 66A of the IT Act continued to be invoked by police after it was struck down in 2015. The Hajam case arose in 2022, well after the constitutional guarantee of free speech had been repeatedly reaffirmed by the apex court. The fact that a professor had to litigate his way to the Supreme Court over a WhatsApp status reflects a broader failure of individual police officers and institutional culture that enables such overreach. Courts can correct individual injustices; systematic reform requires legislative action, executive accountability, and robust training of enforcement agencies in constitutional values.

A Note on the Abrogation of Article 370 as Context: The judgment must also be read against the politically charged backdrop of Article 370's abrogation in August 2019. The Supreme Court's refusal to criminalise expressions of grief or dissent regarding the abrogation sends a clear message: the constitutionality of a government action does not immunise it from criticism, nor does criticism of the government amount to disloyalty or communal incitement. This is a vital constitutional principle, especially when State action is contested or deeply felt by a section of the population.

[16] *Shreya Singhal v Union of India* (2015) 5 SCC 1

CONCLUSION

Javed Ahmad Hajam v State of Maharashtra is a landmark judgment that reinforces three fundamental constitutional truths. First, dissent is not sedition. The right to criticise governmental decisions, including constitutional amendments, is integral to Article 19(1)(a) and cannot be stifled by the invocation of penal provisions designed for a wholly different purpose. Second, Section 153A IPC is not an instrument to penalise political expression; it requires a clear, demonstrable intention to promote communal enmity, to be judged against the standard of a reasonable person and not the hypersensitive perception of any single person. Third, and most expansively, the right to dissent is not merely a political freedom but an aspect of human dignity in Article 21.

However, the judgment is not without limitations. The court's observation linking dissent to Article 21 is brief and lacks elaboration, an analytical opportunity that a more expansive judgment could have seized. Likewise, while the direction on police sensitisation is welcome, it lacks enforceability. Without institutional mechanisms, whether through mandatory training modules, accountability frameworks, or legislative amendments to Section 154 CrPC to impose scrutiny on FIR registration in speech-related cases, such as directions, risk remains aspirational rather than operational.

The Hajam judgement ultimately reminds us that constitutional guarantees require active custodians. The judiciary can correct overreach case by case, but the architecture of free expression depends equally on a citizenry that understands its rights, a legislature that drafts law with precision, and a media. Cases like Hajam's will continue to reach the Supreme Court, and the Court's doors at least remain open.