

Is Cheering for a Cricket Team a Crime?

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I. INTRODUCTION

On 27 January 2016, Umar Draz a Pakistani fan of Indian cricketer Virat Kohli was arrested by the Pakistani Police on allegation of raising the tricolour on his roof in Punjab Province. Police raided the house of Umar Draz and seized the Indian Flag from his rooftop, when asked why he had hoisted the Indian Flag, Draz said: "I am a big fan of Virat Kohli. I support the Indian team because of Kohli. Hoisting the Indian Flag on the rooftop of house only shows my love for the Indian Cricketer."

The police have filed a case against Draz under Section 123-A of the Pakistan Penal Code (PPC) and under the provisions of the West Pakistan Maintenance of Public Order Ordinance, 1960, which give unfettered power to the police to arrest suspected persons. He was presented in court and was remanded in police custody, if convicted he would receive 10 years of imprisonment.

It is not only a case of Pakistan, in India too such type of activities is being carried out by Indian Police and authorities.

For instance on February 23, 2015, 67 Kashmiri students were suspended from the Swami Vivekanand Subharti University, Meerut and expelled from the campus for cheering for the Pakistani cricket team in a match against India. They were accused by the police of disturbing communal harmony and were also briefly threatened with sedition charges, which carry a possible life sentence. Akhilesh Yadav, the Chief Minister of Uttar Pradesh, said that such a serious charge as sedition, which carries a possible life sentence, should not be used because the students probably didn't understand the gravity of their actions, ultimately those charges were dropped.

Cambridge Dictionary defined the word "Cheering" as the word used to describe something that encourages you and makes you feel happier. In other words it is a shouted encouragement and approval.

Umar Draz has been arrested for the commission of "offences against the State" and "condemnation of the creation of the State, and advocacy of abolition of its sovereignty" and not for hoisting flag of an enemy country, as commonly understood by the common people of both the Nations. Because neither the Indian Parliament or Central government notification nor the Pakistani Parliament or Pakistani Central government notification had declared India or Pakistan as the case may be, as an enemy country. Emphasis must be added to Draz version as he showed only love for Indian cricketer Virat Kohli not for doing any crime as alleged by the Pakistani Police.

One must keep in mind the well known Common Law Maxim "Actus non facit reum, nisi mens sit rea" which means act itself not culpable unless it is accompanied by guilty mind.

Here in these particular cases there was simply *actus reus* and no guilty mind.

Now the primary question is, whether cheering for a cricket team other than our own team is a crime? The answer of this question is totally dependent on the question whether BCCI represents sovereignty and integrity of India? Whether BCCI is a statutory body? Whether BCCI is a State within the meaning of Article 12 of the Constitution? If answer is affirmative then certainly it is a crime if answer is negative then it is not a crime rather authorities itself breaking the law.

For answering this question let us examine the legal status of BCCI. The Board of Control for Cricket in India (BCCI) was formed in 1928 as an unregistered association of persons. It was registered only in 1940 under the Societies Registration Act, 1860. It was later registered under the Tamil Nadu Societies Registration Act, 1975, which came into force on April 22, 1978.

On various occasion the courts in India got an opportunity to examine the legal status of BCCI under Article 12 of the Constitution viz; *Mohinder Amarnath & others v. BCCI*¹, *Ajay Jadeja v. Union of India & others*², *Rahul Mehra & Anr v. Union of India*³, *BCCI v Netaji Cricket Club and Ors*⁴, *Zee. Telefilms Ltd & Anr v. Union India & Ors.*⁵, *A.C. Muthiah v. BCCI and Anr.*⁶

*Mohinder Amarnath's*⁷ case was dealt with the question whether BCCI is a State or an instrumentality of State and finally BCCI was held not to be an instrumentality of State whereas in *Ajay Jadejas*⁸ case writ petition against BCCI was held to be maintainable by Delhi High Court. But decision in *Ajay Jadeja's* case was held as not a precedent. Subsequently in *Rahul Mehra Case* and it was affirmatively held that writ against BCCI is maintainable although Court declined to express any opinion regarding status of BCCI as an instrumentality of the State or not.

In *Zee Telefilms case*⁹ Apex Court elaborately discussed about the position of BCCI as an instrumentality of State under Article 12. Court squarely applied the test in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*¹⁰ and held that since BCCI is not financially, functionally and administratively controlled by government cumulatively and so it cannot be held as a State and thus writ petition under Article 12 is not

¹ CW 632/1989

² 95 (2002) DLT 14

³ 114 (2004) DLT 323

⁴ (2005) 4 SCC 741

⁵ (2005) 4 SCC 649

⁶ (2011) 6 SCC 617.

⁷ Supra

⁸ Supra

⁹ Supra

¹⁰ Supra

maintainable. Later in *Muthiahs'Case*¹¹ Supreme Court reaffirmed the decision in *Zee Telefilms Case*¹² and it was held categorically that BCCI is a private autonomous body and its actions have to be judged only like any other similar authority exercising public functions. The Court also rejected the claim that every entity regulating the fundamental rights under Article 19 (1) (g) is a State within the meaning of Article 12 of the Constitution. It was held that the functions of the Board do not amount to public functions.

Therefore in the light of above mentioned judgments of High Court and the Apex court it is clear that BCCI is neither representing the sovereignty & integrity of India nor a statutory body under any law made by Parliament nor a State within the meaning of Article 12 of the Constitution. It is simply a privately owned body registered under Tamilnadu Societies Registration Act, 1975.

Now one must keep in mind that cheering for or against a team which does not represents the sovereignty of a country is not a crime. Everyone has a right and liberty to cheer for or against a team or for a player irrespective of his/her nationality; it has nothing to do with sovereignty or integrity of the nation. All arrests and suspension of students from the university is being done only for creating hatred in the minds of common people.

So whatever is being done by the Pakistani Police, Indian Police or Swami Vivekanand Subharti University, Meerut is misuse of powers.

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¹¹ Supra

¹² Supra

