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A. EDITORIAL

26th January 2021

Dear all,

Article 19(1) (a) of the Constitution of India recognizes and protects freedom of speech and expression. Implicit under this notion is of course the liberty to protest. However, the question which we need to grapple with in light of the current crisis surrounding protest in India as well as in other parts of the world is whether the so-called freedom to protest is absolute, is it unconditional, should this freedom be used to hold hostage the other institutions of the governance? Should the right to protest have primacy over all other rights?

Let me grapple with this question very cursorily. In my opinion, be it India or any other civilized state, there cannot be any debate about the threshold and extent of the right to protest. Indeed, the right to protest is at the heart of counter majoritarianism and liberal democracy, and therefore it has to be safeguarded lock, stock and barrel. At the same time, it has to be also ensured that recognition and protection to the right to protest do not amount to overlooking other rights and undermining other institutions of the governance. At any rate, philosophically and jurisprudentially, it is a well-established proposition that no right is absolute and in case of conflict between the two rights, the balance has to be struck delicately to ensure that both rights are proportionately protected and affected.

Take the case of farming laws in India. The Parliament has passed these laws by following the prescribed procedure and if the court has not found these laws ultra-virus, how far is it justified to still insist for the repeal of these laws through extra-parliamentary methods? Strangely, the Supreme Court by pronouncing stay order on the enforcement of these laws has further muddled the matter. Is it justified on part of

the judiciary to issue such an order against any legislation without providing any rationale and legal justification, merely because the law is not acceptable to a certain section of society and if such a section resorts to non-negotiated and obstinate protest, should such section be worthy of cognizance by the Supreme Court to the extent of pronouncement of such order? In my opinion, the Court has set a very controversial precedent by issuing such order in respect of farming laws. Should it be hereafter assumed that if a group can launch a very enormous and prolonged protest over legislation which is not acceptable to it, then it has a fit case for pleading for a stay order?

Nothing different has happened in the US either. Mr Donald Trump, by repeatedly questioning the legality of elections and by resorting to violence to protest against his defeat, has merely perpetuated the cliché that power corrupts and absolute power corrupts absolutely. The House the Representatives during his impeachment also displayed a very divisive and dirty politics with more than sizeable of its members siding Mr Trump politically. How far is it even politically justified to oppose the impeachment of a president who had openly advocated violence?

To sum up, both these anecdotes justify my proposition that populist constitutionalism is a very dangerous ball game. It may look exciting, at times it may look politically viable but its ultimate result is always going to be catastrophic and calamitous. No civilized state can afford a completely unrestricted, unhampered and unregulated right to protest.

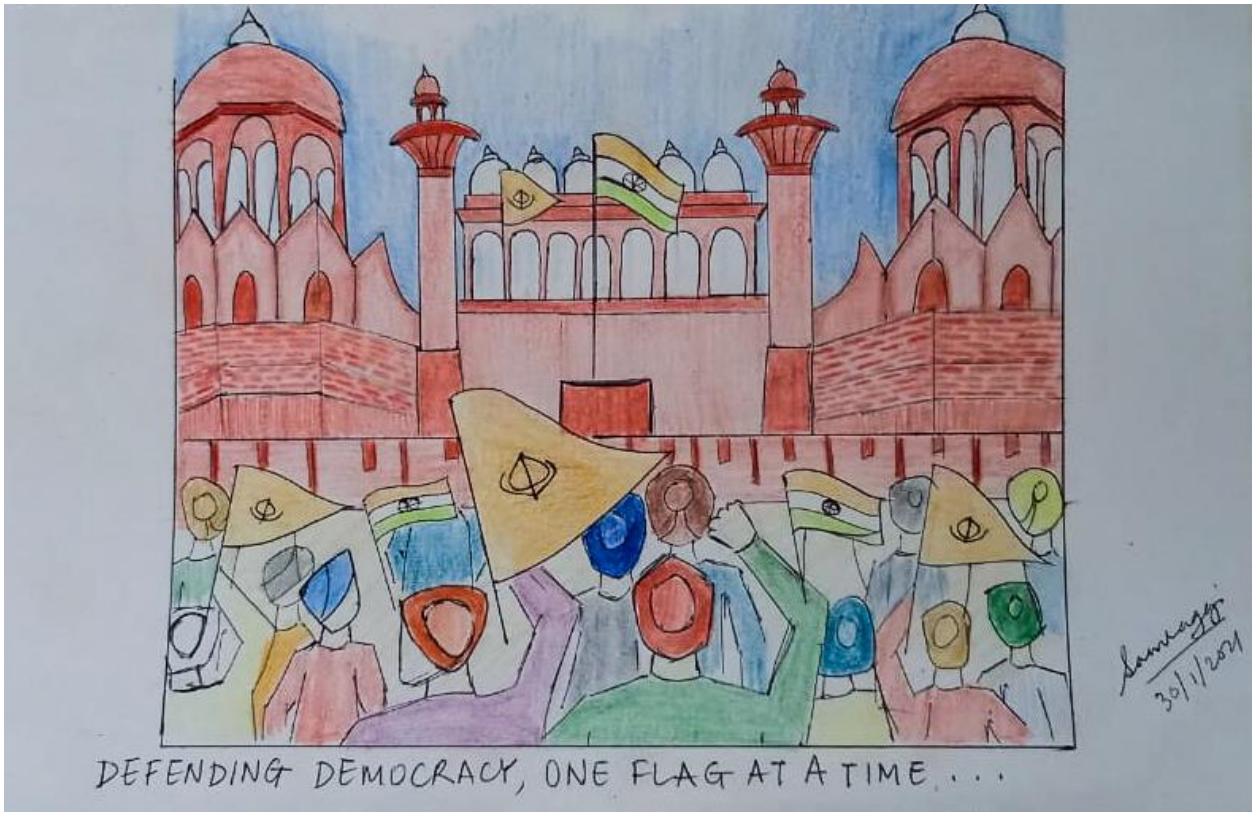
I congratulate the editorial team for bringing out this issue of Public Law Bulletin focusing on protest culture. It has come on an apt occasion i.e. on the occasion of the Republic Day. Let me congratulate the faculty, all the readers and students on the occasion of the Republic Day. As usual kudos to the editorial team for maintaining consistency in the publication of bulletins.

Dr Sanjay Jain

Associate Professor, Additional Charge Principal, ILS Law College

B. CARTOON

-Samraggi Debroy, III BA LL.B



C. VITAL CONSTITUTIONAL QUESTION: HOW 'REASONABLY' ARE PROTESTS REGULATED?

Authored by: Ashok Pandey IV BA LL.B

Legal professionals, academicians and members of the civil society are often found saying "Dissent is the foundation of a democracy". In fact, if we look back, some of the most celebrated referred to and intellectually enriching jurisprudence of the Constitutional law of our country is recorded as dissenting opinions. A dissent is nothing but a protest. A disagreement over the opinion of the majority. And the right to express this disagreement freely has been safeguarded for every citizen of the country under Article 19(1) (a) of our Constitution which guarantees the Right to free speech and expression.

If we reminisce about the days of our freedom struggle, we realise that it was nothing but a protest against the colonial power. Our Constitution is a culmination of this freedom struggle and debates spanning over thousands of pages, which record nothing but disagreements and protests against one clause or the other. Even during the colonial rule, social reform movements led by celebrated missionaries such as Raja Ram Mohan Roy, Dayanand Saraswati, Atmaram Pandurang etc. played an instrumental in curbing orthodoxy practices from the society, if not eliminating them. It would not be wrong to say that these movements and their results deserve significant credit for the rational and progressive generation of these times. In short, protests have played a significant role in the development of the political as well as social landscape of our country.

Fast forwarding to the present times, especially to the last two to three years, we have been noticing a lot of protests throughout the globe for reasons both social and political. Some protests have been impactful enough to bring about significant change in the legal system; others have given food for thought for others to follow and garnered immense support from people belonging to all walks of life. India is no exception to this. Lately, the farmer protests against the three farm bills, the Anti-CAA protests, SC/ST protests against the Supreme Court order on Atrocities Act, demand for Maratha reservations etc. have gathered noticeable attention and led to administrative and judicial intervention.

The Right to Protest has been safeguarded in our Constitution, particularly under Articles 19(1) (a) and 19(1) (b). And just like all other fundamental rights, this too is subject to reasonable restrictions laid down under Articles 19(2) and 19(3). A bare perusal of these Articles makes it clear that the Right to Protest can be regulated, in the interests of the sovereignty and integrity of India and Public Order. Now, it ought to be noted that the inclusion of the phrase *'in the interests of'* significantly broadens the scope of the power available to the government because it empowers them to regulate the right on the mere suspicion of harm to the sovereignty and integrity and public order in the country.

With such wide powers being accorded to public authorities, and with protests being on the rise due to questionable actions by the government, the author finds it appropriate to do a Constitutional analysis of how the reasonable restrictions have been used to regulate the Right to Protest. This shall be done by looking at a number of Supreme Court judgments on the Right to Protest, particularly the more recent ones and those involving scrutiny of the actions of public authorities. The author shall also analyse the efficacy of the actions of these public authorities from the standpoint of the intention of the constitution makers and its relevance in contemporary times.

ANALYSIS OF JUDICIAL PRECEDENTS

In the case of Mazdoor Kisan Shakti Sanghatan v. Union of India, the Supreme Court commented upon the legality of the repetitive orders under Sec 144 CrPC passed by the Assistant Commissioner of Police, Sub-Division Parliament Street, New Delhi and also decided upon the legality of the order passed by the National Green Tribunal in the case of Varun Seth v. Police Commr**.** Terming the repeated imposition of orders under Sec. 144 CrPC as arbitrary and illegal, the Court directed the Delhi Police to formulate guidelines which should be referred to while passing such orders. Now, since the repeated imposition of Sec. 144 CrPC effectively prohibits the Right to Protest in that area, the Delhi Police ought to have considered the propositions laid down by the Supreme Court in the case of State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat on instances where a "restriction" would include "prohibition":

"(i) the standard for judging reasonability of restriction or restriction amounting to total prohibition remains the same, excepting that a total prohibition must also satisfy that a lesser alternative would be inadequate; and

(ii) whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right"

Both these propositions are not satisfied in the present case because the order was imposed as a deterrent when in fact no protests were taking place. And when no protests were taking place, there is no question of delving into the facts and circumstances of the case.

Also, the Civil Appeal which was heard conjointly with the Writ had the following backdrop:

The residents around Jantar Mantar area had approached the NGT seeking relief from the unhygienic practices of the protestors and the resultant pollution in the surrounding areas. In a surprising judgement, the NGT ordered complete prohibition on any protests taking place at Jantar Mantar, which is otherwise a usual spot for protests. The Supreme Court in the *MajdoorKisan* judgement rightfully overturned this judgement and reiterated that the Right to Protest is a fundamental right guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution.

In another landmark case of In Re: Ramlila Maidan incident, the Supreme Court took cognisance of the violence between the protestors, led by Baba Ramdev and the police on the night of 4th June 2011 when the police surrounded the maidan after imposing a Section 144 order late at night when the protestors were peacefully sleeping. They requested Baba Ramdev to leave the ground along with the protestors to which Baba Ramdev objected and refused to cooperate. He asked the protestors to maintain peace but violence did erupt and one female protestor subsequently lost her life, with several others injured. While the police justified this imposition on the pretext of the swelling crowd and the apprehension of danger to human life and disturbance of public tranquillity, the Court held that the orders were unconstitutional, inasmuch as there was no apprehension of a sleeping crowd causing any immediate threat, nor did the police take any pre-emptive measures such as public announcement of promulgation, banner display of prohibitory orders and prior warning before the use of force.

However, the Court also held Baba Ramdev guilty of Contributory negligence because of his refusal to cooperate with the police. It was the Court's opinion that as the organizer of the protest, it was Baba Ramdev's moral obligation to abide by the orders of the police "*even if the order was strictly not in conformity with requirements of Sec. 144*". This, in the opinion of the author is incorrect because it directly goes against the principle of strict interpretation of Criminal law. Baba Ramdev's refusal to cooperate with an arbitrary order was a form of protest itself to which he was entitled. Now, since

it is true that he had booked the ground for conducting yoga camps which he in fact used to protest against corruption and black money, sanctions could have been imposed on him on these grounds. However, terming his refusal to cooperate as the reason for contributory negligence sets a bad precedent for the Right to Protest, which this judgement categorically stated to be a fundamental right.

With reference to the above two judgements, it should be remembered that the Supreme Court has, in a number of judgements cautioned against the arbitrary use of Sec 144 CrPC and has reiterated that the orders ought to be well reasoned and imposed only in situations of extreme urgency where life and public tranquillity is at stake.

In Anita Thakur v. State of J&K the question of manhandling and beating up of Kashmiri migrants on their way to Delhi to Protest was taken up and whether the act of the Respondent authorities amounted to police excesses. Upon examination of the factual matrix, it was concluded that although the crowd did become unruly, the police authorities continued to use excessive force on the protestors even after controlling them. This amounted to a violation of their fundamental rights. Another landmark ruling in this judgement was that the public authorities could not seek immunity from its tortious liability under the garb of the doctrine of sovereign immunity in cases where its acts resulted in violation of fundamental rights. On the question of dispersing an unruly crowd by the use of force, the Court reiterated the guidelines to the Magistrate given in the case of Karam Singh v. Hardayal Singh delivered by the High Court of Punjab and Haryana in 1979 and held that an unruly crowd could only be dispersed by force if they do not disperse upon orders by the Magistrate to do so. In this case, there was no such attempt made and the police continued to use excessive force, even after the crowd was under control.

It should be remembered, that not only has the Supreme Court reiterated in a number of judgements that the Right to Protest is a fundamental right, it has in fact gone a step

further in the case of Himat Lal K. Shah v. Police Commissioner, Ahmedabad and said that it is the duty of the state to aid the peaceful assembly of people to show their dissatisfaction towards the actions of public functionaries.

While debating on Article 19 (draft Article 13), Honourable Constituent Assembly member Shri K. Hanumanthaiya of Mysore said the following:

"…No man who believes in violence and who wants to upset the State and society by violent methods should be allowed to have his way under the colour of these rights. It is for that purpose that the Drafting Committee has thought it fit to limit the operation of these fundamental rights."

Furthermore, while deliberating upon the question of who would have the right to limit these rights using restrictions, the Court or the legislature, Shri K. Hanumanthaiya disagreed with the members of the house who were in favour of vesting this power to the Courts and he said the following:

"Courts can, after all, interpret the law as it is. Law once made may not hold good in its true character for all time to come. ***Society changes; Governments change; the temper and psychology of the people change from decade to decade if not from year to year****. The law must be such as to automatically adjust itself to the changing conditions.* ***Courts cannot, in the very nature of things, do legislative work; they can only interpret.*** *Therefore, in order to see that the law automatically adjusts to the conditions that come into being in times to come, this power of limiting the operation of the fundamental rights is given to the legislature.* ***After all, the legislature does not consist of people who come without the sufferance of the people. The legislature consists of real representatives of the people as laid down in this Constitution.*** *If, at a particular time, the legislature thinks that these rights ought to be regulated in a certain manner and in a particular method, there is nothing wrong in it, nothing despotic about it, nothing derogatory to these fundamental rights. I am indeed glad that this*

right of regulating the exercise of fundamental rights is given to the legislature instead of to the courts."

The intention of the Constitution makers makes it clear that after elaborate deliberation the right to impose restrictions on fundamental rights was given to the legislature because not only was law subject to change with reference to the changing conditions and beliefs of the society, but also because the elected legislators would be from among the people! Here, the Constitution makers are making an assumption that the legislators would use their fine sense of judgement to restrict the fundamental rights only when absolutely necessary because they were not above the law but would be subject to the same restrictions that they imposed. It is indeed disheartening however, to see public authorities using their powers arbitrarily at a number of instances. This not only goes contrary to the intention of the Constitution makers, which as seen above, is of much relevance in our times, but also amounts to an immoral act, when it comes to implementing the principles of the Constitution in its true spirit.

It is time that the public authorities took affirmative action and formulated guidelines to check up on the effective and just implementation of the law which is used to restrict fundamental rights in the name of sovereignty and integrity of India and Public Order. The plethora of judicial precedents as given above could be used as reference points. This will be a major step forward in ensuring that the restrictions are indeed "reasonable". Needless to mention, apart from excesses by public authorities, there have also been a number of instances where the protestors have indulged in actions which harm the security forces trying to control them. Be it the stone pelting in Kashmir on CRPF officers or the recently recorded use of a tractor by the farmer protestors to move the security forces away. The farmers' protests have also brought the industries surrounding the Delhi border to a standstill with the businessmen literally begging to the farmers to give way for the transit of goods and labour.

The Doctrine of Constitutional morality has been used in a number of landmark judgements in the last two to three years to strike down outdated laws and arbitrary state action. The use of excessive force by public authorities to curb protests on one hand, and the use of unreasonable means by the protestors, which disrupt public order and endanger the lives of the security forces on the other, calls for a balance which can be struck by the obedience of the doctrine of Constitutional morality, both by the citizens as well as the state.

Although it is the state which is vested with the responsibility of ensuring reasonable implementation of fundamental rights, the protestors are equally responsible for ensuring that their means of expressing dissent don't infringe upon the rights of other citizens, who are just as entitled to the fundamental rights as they are.

D. INTERSECTION OF PUBLIC LAW WITH CRIMINAL LAW: THE LEGAL REGIME OF DISRUPTING DISSENT

Authored by: Dewangi Sharma III BA LL.B

In 2018, a local journalist in Manipur had uploaded a video on the social media site Facebook to express his dissatisfaction and anger at the State government and the Prime Minister. This journalist was booked under Section 124-A of the Indian Penal Code i.e. Sedition and was jailed for the social media posts. After being granted bail from the High Court, he was detained under the National Security Act (a preventive detention law), effectively overruling the grant of bail. He was detained for a period of almost six months for a non-threatening video post until he was released by the High Court on a habeas corpus petition.

This is a case of arbitrary use of law, denial of justice and blatant suppression of dissent through the use of Criminal law. Authoritarian and non-democratic countries always use legal means to justify and facilitate the muzzling up of voices that challenge or criticize the government. The Independence of India from the colonial British government was a defining moment of our transition from an authoritative, imperial State to a liberal democratic one. And yet we find a number of provisions which were the favourites of the colonial regime to regulate and suppress their 'subjects' retained in the Statute books in some form or the other in the democratic India.

Dissent like Freedom is not a moment; it is a process which finds different mediums and forms of expression. The expression of dissent can never happen in silos, it's different and varied mediums of expression are interlinked and inter-related. Thus, effective measures of curbing acts of dissent target journalists, academics, students,

activists, comedians, artists, opposition leaders and citizens - who together make up the 'Protest Culture'. The State uses Criminal law in various ways to clamp down on the protest culture not only on Streets through use of excessive force and barricades but also by invoking problematic and controversial laws on individual citizens and groups. The author, in this article, argues that the suppression happens through a legal regime that criminalises free speech and conduct and facilitates the disruption of dissent by the State.

SEDITION

Section 124 A of the Indian Penal Code criminalises speech that *inter alia* incites disaffection (**disloyalty** and **feelings of enmity**) against the Government of India. A bare perusal of this section, which is an infamous colonial relic, would indicate that it's vague and broad language can be interpreted to punish persons who criticise the government, express a desire for an alternative vision of India or simply express their dissatisfaction and anger against their government or its policies. And this is exactly how the provision has been historically applied and implemented. After all, the offence of Sedition finds its roots in a tradition of monarchical England where any speech questioning the legitimacy and authority of the King was penalised.

In December 2020, some students from a college in Ayodhya were booked for sedition on a charge by their Principal as they protested against the non-conduct of elections in their college. The Principal cited that the students raised "indecent and anti-national" slogans like '*Le kerahenge Azadi*' (We will take freedom) as a reason for his complaint. Over 50 students were charged with Sedition as they participated in a Queer rally at Azad Maidan in Mumbai and raised slogans in favour of a JNU student Sharjeel Imam who was himself arrested on the charges of Sedition. In a Kerala village almost 9,000 people were charged with Sedition for their 'non-violent and peaceful' protests against a nuclear plant in the vicinity of their village. A single district in Jharkhand finds 10,000

people charged with sedition for protesting against Government laws and policies that could potentially harm their lives and livelihood. A journalist in Gujarat was arrested for the offence of Sedition as he wrote an article stating that Chief Minister Vijay Rupani was likely to be replaced owing to "his failure". The Sedition charge against the journalist was later quashed by the Court only after he tendered an unconditional apology. Furthermore, the Gujarat High Court cautioned him against writing such articles about "constitutional functionaries" in the future.

In all these cases the offence of Sedition has been used arbitrarily to target individuals involved in peaceful, non-violent and non-threatening expression of their opinion, criticism and/or opposition. One would believe that such expression is tolerated in a democracy, nay is central to the functioning of any democratic state. However, Section 124 A continues to serve as an important political tool in the hands of overly-sensitive governments and private individuals to disrupt even legitimate and genuine criticisms and protests. From 2016-2019, though 191 cases for sedition have been filed, trials were concluded only in 43 among them, leading to only four convictions. As NCRB statistics show the conviction rate in cases of Sedition is abysmally low. This is not an indication of Sedition becoming ineffective or irrelevant in our democracy. Even though the Supreme Court and the High courts have narrowed down the scope of the offence - *incitement to violence or causing violence* is an essential requirement, it has not translated in the implementation and invocation of the provision on ground. Everything from a journalist's political opinion on a sitting CM to an author's vocal support for Independence of Kashmir is considered a serious crime against the State.

The author would like to stress two reasons on why arbitrary and illegal invocation of Sedition has become the norm. First, is the unamended language of the provision which continues to be vague, overly broad and unspecific? The first rule of drafting Criminal provisions is certainty and specificity of the penal offence, this is especially important when the offence is as serious as an "Offence against the State". Two Law Commission

Reports and one Consultation paper have recommended changing the language of the provision to reconcile it with the Supreme Court jurisprudence and Constitutional protections of free speech. The second reason is the public perception towards Sedition and the stigma associated with it makes it a powerful weapon to create a "chilling effect" on individuals, groups and communities.

This criminalisation of speech sends shockwaves across the spectrum that anything which may not please the establishment will not be tolerated and this intolerance is facilitated by legal means. It deligitimses and discourages public representation of citizens and makes it difficult for people to be fearless and outspoken in expressing their opinions or raise their voices in dissent- may it be against a hazardous nuclear plant in a Kerala village or against the allegedly illegal arrest of a JNU student.

SECTION 144 CRPC

Section 144 of the Criminal Procedure Code is a regular and oft-used 'public order' provision vesting wide and broad powers to control a potential problem of "nuisance" or "apprehended danger" with the executive (Magistrate) by restraining the freedom of association of citizens. The use of this provision has become so routine, especially during protests and public rallies, that it raises some serious questions over its scope and applicability in a democracy where Freedom of association, Speech and expression are fundamental rights and the provision itself was envisaged as an 'emergency provision'.

A concerning trend was observed when Section 144 was repeatedly imposed across various cities in India during the ongoing anti-CAA protests in 2019-20. In Bengaluru and Mangalore, Section 144 was imposed across the cities for full three days. The police cited the planned protests against the Citizenship Amendment Act, 2019 as a justification for their prohibitory order even when no signs or history of violence or public disorder that would justify declaring curfew in the entire city were apparent

neither were they made clear by the executive officials. All the protests had to be called off as a result. A petition in Gujarat High Court revealed that the Ahmedabad police had been renewing the prohibitory orders under Section 144 (along with Section 37 of the Gujarat Police Act) since 2016 - for a period of more than three years. Resultantly, every gathering of more than five persons in the city was illegal for three years, giving the police ample opportunity to punish people at will without any accountability. Some of these orders were imposed without any public notice and widely used to target the anti-CAA protests held in December 2019 in the city. Section 144 was imposed in the entire Hathras district for a period of one month (its borders were also sealed), following the gangrape and death of a dalit woman by upper-caste men which led to many journalistis and politicians flocking to the place and demanding accountability from the UP government.

Just like the law of Sedition, Section 144 was infamously used by the colonial government to crack down on gatherings, rallies, meetings and protests during the freedom movement in an attempt to muzzle down on all forms of opposition. More than 70 years later, in a democratic state, Section 144 is still serving the same purpose. The absence of a set procedural requirements in the provisions, specifying what conditions the executive needs to satisfy before restricting fundamental rights, it becomes especially easy to target protests or gatherings that the executive has a problem with as under the 'state of suspicion' they can be declared illegal or disrupted on its whims and fancy.

When the Supreme court in *Babulal Parate* and *Madhu Limaye* defended the constitutionality of the provision, it did so by noting that even though the powers therein are wide they are -(i) temporary (up to two months), (ii) can only be used in an emergency, (iii) the orders were open to judicial review and (iv) Magistrate needs to record facts and reasons in writing for passing an order; and therefore the restrictions imposed under the Section were 'reasonable' in the interests of public order.

In *Ram Manohar Lohia* and *Rangarajan* the court formulated the ***proximate cause*** doctrine. This means that any restriction 'in the interest of *public order*' is permissible only when there is close proximity between the restriction and the State interest of maintaining public order. Therefore, prohibitory orders under Section 144 cannot be imposed unless it can be established that there is a close relationship with the association it aims to restrict and public disorder - therefore, the reasoning for prior restraint cannot be illusory or based on apprehensions and there should be active threats to life and property. However the executive seems to be unaware, ignorant and indifferent to the court's interpretation. Most orders passed under Section 144 are without any thought or reason and reiterate the same general phrases copied from the Constitution - '*in the interest of public order*' or '*to maintain public tranquility*' or just use similar or exact language as used in earlier orders. The judicial review of the orders is rendered meaningless as hearings come up days after the order has been passed and the damage is done.

On 13th February, the Karnataka High Court held the three day invocation of Section 144 in Bangalore as unconstitutional on the grounds that procedural reasonableness was not followed and the order did not meet the 'least restrictive standard' (as held in *Anuradha Bhasin*). The judgement tried to correct the culture of impunity and lack of accountability in the usage of Section 144 and restrict its scope in curtailing individual freedom, however, it comes almost two months after the order was passed and many of the protests had been called off - thus fulfilling its purpose. The wide powers under the provision have been used to block internet services (Kashmir was under an internet lockdown for months since 2019) which is a powerful tool to effectively disrupt opposition and dissent in a world where social media has become a determinant platform for expressing opinions and spreading information.

UAPA

A petition was filed by Historian Romial Thapar against the arrest of five activists arrested in the Bhima Koregaon case under the Unlawful Activities and Prevention Act (UAPA). The Supreme Court in a 2-1 majority dismissed the petition, however, it is the dissenting opinion of Justice D Y Chandrachud that sheds some light on the problematic use of stringent laws to suppress dissent and opposition. He raises serious concerns over the loopholes and discrepancies in the investigation procedure and in the allegations being made by the police and points out the need for an impartial investigation. Emphasizing on the importance of dissent in a democracy, he observes: *"A clear-cut distinction has to be made between opposition to government and attempts to overthrow government by rising up in arms."* These activists continue to languish in jails thanks to Section 43-D (5) that makes it almost impossible to get bail under UAPA, if the public prosecutor opposes it. Many Pinjra Tod activists that were arrested following the anti-CAA protests and Delhi-riots were already in police or judicial custody and were later slapped with UAPA as the latter allows the police to detain the accused for longer durations.

The Act allows for searches, seizures and arrests based on the "personal knowledge" of the police officers without a written validation from a superior judicial authority. The overbroad provisions give overwhelming powers to the State, making it easier to put people behind bars and keep them there for a long time even when almost 70% of UAPA cases result in acquittals. The central government can even designate individuals and organisations as 'terrorist' without trial can detain them, seize their funds, property, etc. and the only forum of review is a Committee constituted by the same executive authority. The law can, in effect, inflict punishment without guilt.

Two journalists in Kashmir were booked under UAPA for reporting a lack of Covid-19 test kits in a social media post, claiming that it could 'provoke public to disturb law and order' and 'cause fear or alarm in the minds of the public'. Individuals are often targeted for their ideology and 'reading collection' by the police to justify UAPA charges against them. UAPA is perhaps, the most powerful weapon the government has in muzzling down and bulldozing dissent under the garb of delphic and undefined grounds of "anti-national activities", "disaffection against India", etc. The arrest of a journalist, one research scholar and two others on their way to Hathras under the UAPA for 'conspiring against the State' to cause disturbance in Hathras with the Popular Front of India (which is not a banned organisation) reflects how easily the law can be misused to serve vested interests of those in power.

PREVENTIVE DETENTION

Preventive Detention laws, another vestige of the colonial rule, like the UAPA, give immense power to the executive to exercise prior restraint on its 'subjective' satisfaction, in a parallel criminal system wherein the detainee has no right to legal representation, there is no transparency in the process and the Advisory board that reviews the detention orders in constituted of judges appointed by the executive.

The National Security Act (and other Preventive Detention laws) give the executive overarching powers to detain people (without trial or judicial review) based on pre-emptive suspicion and the apprehension that they might engage in criminal conduct in the future. The grounds for detention are so generic and can be widely defined - "national security", "public order" where there is a colossal scope of subjectivity. Everything from a brawl over a cricket match preventive detention to firing on a police officer can be easily construed as acts prejudicial to public order. There is an extremely low bar of satisfaction and justification required to detain people. There is lack of

judicial overview as courts exercise judicial restraint in granting bail and reviewing orders under Preventive Detention laws.

During the anti-CAA protests more than 5,500 people including journalists, activists and politicians were detained under the Preventive Detention laws in Uttar Pradesh. Dr. Kafeel Khan was detained for six months for making a speech that the court later noted *was promoting communal harmony* and not aimed to disrupt public order. Hundreds of people in Kashmir were detained under Preventive Detention laws after the abrogation of Article 370 in 2019 including three former Chief Ministers of the State . Most of them were detained without any detention orders being passed which made it difficult for their family members to challenge their detention. Former Chief Minister Mehbooba Mufti was detained for a period of 14 months on grounds that she would give speeches that pose threats to public order. Thus, Preventive Detention allowed the executive to completely silence any voice of opposition, criticism or even expression of opinion in Kashmir after effectively changing the nature and Constitutional structure of the State. The way in which the judiciary handled challenges to the detention cases by either dismissing the pleas or not listing them for hearing or inventing innovative solutions like asking the petitioners to go and visit people in Kashmir and report to the court on the status of their family members' or party members' detention show how little power the courts have in upholding the right to dissent in front of these laws.

CONCLUSION

Gautam Bhatia in his book on free speech relentlessly argues and shows how the wordings of various criminal provisions that target free speech are vague, and open to boundless expansion, without any analytical constraints [1] wherein lies the problem. Arguments by legal scholars, lawyers or even judgements by courts for restricting the

[1] Gautam Bhatia ,*Offend, Shock, or Disturb: Free Speech under the Indian Constitution,* Oxford University Press, 2016

scope of these provisions serve no purpose as long as the reality on ground does not change. As long as these provisions (some of which have not been discussed in the article like Contempt of Court) remain on the statute books unamended and continue to be used arbitrarily and are interpreted to suit subjective interests and ideologies, dissent will be disrupted and delegitimised.

The perils of such laws are twofold - firstly, they vest the power of deciding what is acceptable, legitimate and "national" conduct with the State, giving them the power to selectively censor conduct and secondly, it can chill legitimate speech, as people will become more cautious and self-censor to avoid trouble with the law. Under such a legal regime, dissent cannot flourish but can easily be disrupted on the discretion of the State.

E. PROTESTS, MOB CULTURAL AND SOCIAL MORALITY: LESSONS FROM JALLIKATTU AND SABARIMALA INCIDENTS

Authored by: Bhargav Bhamidipati IV BA LL.B

INTRODUCTION

A vibrant democracy provides its constituents, the medium to voice themselves. A democracy is, thus, reliant on the ideals of its people and their moral conscience. In such a context, democracies, along with enabling dissent and protests, foster mob culture which ride on public sentiments and social morality. Mob culture in-turn results in the subversion of the Rule of Law and modernity, which are instrumental in the sustenance of a democracy. Thus, democracies operate in a paradox and its existence is often dependent on the approaches of the legislature and the Courts. The key work of art often is to delineate protests that are harmonious with constitutional norms and morality from protests which are merely organized majoritarian voices of conservative social elements.

India and the World have many such examples where the legislature and Courts have kneeled before these protests which seek to anchor the world and impede change, growth and evolution. From the attempts to reverse *Keshavananda Bharti* in late 1970s to the 'Muslim Women (Protection of Rights on Divorce) Act 1986 which attempted to overturn the landmark *Shah Bano*decision, we have seen all our branches of government concede, especially when such protests have the sanction of institutions of religion, culture or race. The protests in the US Capitol against the mandate of the 2020 Presidential Elections is a perfect example of what may happen when every protest

gains legitimacy in itself without any check on the credibility of its values and conscience.

In such situations, we have seen resilience in some instances and vulnerability in others, both of which have allowed us to learn and grow from those experiences. Two such recent incidents would be the centre of my discussion in this article. First, the Jallikattu incident where the state of Tamil Nadu attempted to overcome the *A. Nagaraj*[2] decision by introducing a state amendment to the Prevention of Cruelty to Animals Act (PCA Act) which received the Presidential assent. This entire effort by the Union and the State was to pay heed to the protests in Tamil Nadu, which rendered the *A Nagaraj* decision obsolete. Second one would be the Sabarimala decision which saw the opposition of the Travancore Devaswom Board and many Hindu religious organizations, which resulted in the constitution of a 9-judge Bench of the Supreme Court which would be discussing broadly on the intersection of rule of law and religion.

JALLIKATTU: WHEN PROTESTS ENABLED THE STATE TO SUBVERT JUDICIAL PRECEDENT

Jallikattu is a traditional/cultural event in Tamil Nadu, as a part of Pongal celebrations, in which a bull is released into a crowd of people and multiple participants attempt to grab the large hump on the bull's back and attempt to control it as the bull attempts to escape. The Ministry of Environment, Forest and Climate Change (MoEF) issued a notice dated 11.07.2011, under section 22 (i) of the Prevention of Cruelty to Animals Act 1960, including bulls as 'performing animals' whose exhibition and training is banned.

A. Nagraj decision

The decision in *A. Nagaraj* landmark as it found the constitutional guarantee to life without pain and suffering for animals under article 21. Thus, its observations paved way for progressive approach cutting though the existing anthropocentric norms. In

[2]*Animal Welfare Board of India v. A. Nagaraj and Others,* (2014) 7 SCC 547.

this regard, the court also observed that pain and suffering in its truest sense are not limited to animals and to cause such suffering would, without any doubt, be contrary to the notion of life. The court's other primary reasoning was based on the fact that the Tamil Nadu Regulation of Jallikattu Act was repugnant to the PCA act.

Post *A Nagaraj* decision controversy

Although the decision received applauds from animal rights activists and the AWBI, it saw mass protests across Tamil Nadu. The unprecedented youth upsurge, support from local movie celebrities and roads halted everywhere by the crowd made it clear that the people stood with the Tamil spirit. The protest undoubtedly created room political opportunism and thus, national political parties backed the protests. The national government with the BJP at its helm decided to seize the opportunity and make inroads in Tamil Nadu viz-a-viz a new route – cultural rights of the people of Tamil Nadu.

PREVENTION OF CRUELTY TO ANIMALS (TAMIL NADU AMENDMENT) ACT 2017 AND AFTERMATH

The Tamil Nadu government in response to the protest, brought a State Amendment to the parent legislation (PCA Act). The legislation required the presidential assent to come into force, which it swiftly received. The consequence was that the State government along with its allies at the Union government were able to supersede the A. Nagaraj decision on the question of repugnancy.

The matter again reached the doors of the Supreme Court, but this time in context of the protests and the political will of the nation. The Supreme Court made no observation or decision to stay the sport, based on the holding of the court in *A. Nagaraj* that causing pain and suffering would be contrary to Article 21. Arguments before the court sourced from the protest – "80% of Tamil Nadu supports the support" and that "cultural right

under Constitution ought to include cultural rights of the majority". The court, consequently, referred the matter to 5-judge bench in early 2018.

Neither has the bench been constituted nor any interim restrictions ordered. Jallikattu today continues to be played under certain regulations of the State government which are often termed as not effective or not implemented by the Animal Welfare Board of India. At the end of the day, people, their voices and their protests won but rule of law became a standing mockery where the governments successfully overruled the court's decision with no opposition whatsoever.

SABARIMALA: JUSTICE DELAYED, JUSTICE DENIED.

The issue revolving around Sabarimala incident is regarding entry of women in the Aiyappa Swami Temple which is prohibited as it is believed that the deity is ordained to the life of celibacy. The Kerala HC in a 1990 verdict had upheld this restriction and directed the government to enforce the decision using police forces.[3] After this in 2006, six women petitioned the SC to lift the ban against women entering the Sabarimala temple. The petition challenged that the practice was a violation of their constitutional rights and questioned the validity of certain provisions Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules act of 1965 which facilitated the ban.

THE 2018 SABARIMALA VERDICT

The SC, in a 4:1 majority, in *Indian Young Lawyer's Association v. State of Kerala* declared the practice unconstitutional. At the outset, the court observed that the practice is contrary to the women's right to worship under Article 25(1) and thus struck down Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules Act 1965. Chandrachud J in his separate opinion dealt with the exclusion of menstruating women and the stigma around the same. He held the practice to be

[3]S. Mahendran v. The Secy. Travancore Devaswom Board (AIR 1993 Ker 42), para 45

contrary to Article 17 of the Constitution as it amounts to a form of untouchability and exclusion based on "impurity" of menstruating women.

CONSEQUENT PROTESTS AND IMPEDIMENTS TO IMPLEMENTATIONS OF THE VERDICT

The Travancore Devaswom Board among other organizations, former HC judges, political parties and leaders warned women about their entry into the temple citing security concerns and backlash from the community. Consequently when 2 women did enter the temple, massive violent protests emerged with 100 injured 1 death and almost 6000 arrests taking place. The Union government showed its dismay towards groups, organizations, parties and governments supporting entry of women into the temple. The issue soon became a national agenda and organizations in support of the Union government filed the review petition.

REVIEW PETITION, REFERRAL AND CONSTITUTION OF 9-JUDGE BENCH

The review petition saw the referral to a 7-Judge Bench of the Supreme Court in a 3:2 majority verdict. The 7-Judge Bench then referred the matter to the CJI who constituted a 9-judge bench with 7 broad questions of law relating to the intersection of law and Religion. It has been 2 years with hearings taking place in segments and the court is yet to hear arguments on all questions raised.

From protests causing impediments in implementations to governments hesitant on taking decisions, protests at Sabarimala achieved the most counterintuitive goal to justice – Delay. Further, the court not providing any interim orders and to embark on a journey to answer all broader questions of law on religion, furthers the delays thus extending the unconstitutional exclusion and stigmatization of menstruating women.

CONCLUSION

Protests undoubtedly are quintessential means of accountability, public participation and voicing of dissent. But the dilemma that we face from a constitutional perspective is

that – if protests are based on social morality and public conscience which often are not compatible with change, progress and liberalism, then are protests legitimate? What ought to be done in such circumstances is more complex than the dilemma itself. But in situations like these, the hopes of people, progress and continued existence of Rule of Law are pinned with the decisions and approaches of the court. The courts are the arbiters of justice and the only actor in such situations to stand against rudimentary social beliefs which may reflect in the democratic voices of the protests. Courts are the only ones we can expect to interrogate as to the legitimacy of the protests and its compatibility of their underlining conscience with constitutional morality. Thus, the most unfortunate instances are in such situations are not the protests themselves or the political will but the subversion of courts and their weakening thereof.

F. OBJECTION YOUR HONOUR! AMIT SAHNI V COMMISSIONER OF POLICE & ORS[4]

Authored by Rashmi Raghavan V BA LL.B

When reasonable restrictions to Article 19 were being debated in Parliament, there was a great worry that the restrictions may dictate, nay overpower the rights themselves. However, Dr. Ambedkar convinced the Constituent Assembly that these rights would ultimately have some restrictions and it was better that the legislature enacted them, rather than leaving it to the judicial wisdom of the Courts.[5] It has been argued that our 'reasonable restrictions' arose out of judicial skepticism; the fear that the Courts might not understand the legitimate aims and purposes that the Assembly had set out to achieve by the medium of such a grand Constitution.[6] It was ultimately left to the Courts to strike a delicate balance between rights and restrictions; without sacrificing one for the other. Our Courts have devised various methods to ensure this balance; the proportionality analysis, the arbitrariness principle and the Wednesbury principle of reasonableness to aid this balance. It is striking to note that despite such mechanisms, the Court failed to strike a balance between the right of protesters and the community at large in the Shaheen Baug case.

Since the passage of the Citizenship Amendment Act (CAA), the women of Shaheen Baug took to the streets to voice their dissent against the dangerously discriminatory laws. This form of street sit-ins came into global spotlight for their unique identity- a peaceful protest by Muslim women who are constantly remarked as victims- either by

[4] (2020) 10 SCC 439

[5]See S Pal: India's Constitution: Origins and Evolution, 1stedn, Vol 2, Articles 19-28, Lexis Nexis.

[6]See See Madhav Khosla, India's Founding Moment :The Constitution of a Most Surprising Democracy, 2020, Harvard University Press

fellow women or the largely western world. The protest saw support pouring in from students, liberals and constitutionalists becoming a premier site for dissent against the new citizenship laws. However, the dark underbelly was that the protest site was not only at a street but a highway. As soon as the sit-in started at one side of GD Birla Marg the Delhi and Uttar Pradesh police barricaded five areas in and around ShaheenBaug, effectively cordoning off daily commuters from Uttar Pradesh, Delhi and Haryana from free and fast passage. This led to petitions being filed against the protesters and authorities in the Delhi High Court. The Court in its February order, remarked that it could not interfere in a matter which was essentially between the police and the protesters, thereby leaving room for the executive authorities to find an amicable solution. Aggrieved by this order and subsequent impasse between the two sides, the petitioners filed a Special Leave Petition before the Supreme Court. Here, the Court tried two rounds of mediation but failed. The relentless protesters who were at sit-ins amidst cold Delhi winters eventually gave in to the coronavirus and cleared the sites. Even then, the Supreme Court went ahead and pronounced a verdict on the substance of the protests, despite there being no more obstructions or impediment to the appellant's access to public ways. It has already been argued that this judgment sets a dangerous precedent to disallow protests and is not a binding verdict, however, I shall assail the judgment on three mistaken assumptions that the Court has taken to delegitimize the dissenters of Shaheen Baug.

ON THE DEMOCRATIC DISSENTER

The three judge bench delivered the verdict on the protests through the voice of Justice S.K. Kaul. He notes a peculiar reason to clear the roads off the protesters. After remarking that dissent is not only necessary but indispensable in a democracy the Court cautions

"What must be kept in mind, however, is that the erstwhile mode and manner of dissent against colonial rule cannot be equated with dissent in a self- ruled democracy. Our Constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties."[7]

The judges note that the manner in which popular protests and satyagrahas were staged by the masses against the Britishers cannot be used against governments we elected through adult franchise. Those who rule us now can be awoken from their deep slumber of apathy towards public causes only by using civilized modes of protest and that too at designated spaces. What the judiciary hints is that modern men protest in idealistic forms; by filing petitions, writing opinion polls, participating in newsroom debates and making colourful posters. If all fails, they vote their leaders out of power. They ought to protest publicly only at grounds hallmarked as sites- an island away from the mainstream populace and away from the hustle-bustle of daily lives of others they seek to engage with. Such an outlook by the Court fails to take many stark realities into account.

Firstly, the Courts **assume** that we live in a perfectly functioning democracy. Particularly, where the Parliament made a citizenship law after taking stakeholders, international humanitarian standards, sufficient debate and discussion and taking constitutional goals of equality and rule of law into account. It assumes that citizens have consented to such policies that primarily aim to divide people on the basis of their religion. That their opposition to such policy cannot be open to dialogue on the streets but through an endless intellectual debate among the internet's echo chambers or a heavily polarized newsroom. That sloganeering in designated spaces is enough to vent anger and dissent against an impending existential threat felt by the minorities against such a communal policy. Wildly so, the Court also assumes that every citizen has access

[7] Supra Sahni, Para 16

to such modes of dissent. That every citizen is privileged to write a column, make legal arguments about reasonable classification and travel hours together to reach the earmarked protest site. That every person has the financial resources to travel and stage day long sit-ins at 'designated' sites. Such assumptions put a protester on a pedestal; standards which a common man; particularly a common woman of ShaheenBaug could never attain. The women of ShaheenBaug; the *dadis* in particular; are not well read and educated; yet they protested against the law with every fabric of their being. They protest for their children and grandchildren from the places they knew best; the space beside their house. Such a protest breaks our idealistic framework of who is qualified to become a protester. One could only contemplate if the Muslim women of India, being the lowest on most literacy and welfare indicators, would ever have a space to effectively dissent against a law that they disagreed with? Does mainstream media, posters, papers or even the Courts have the time or space to record such women's voices? The answer is a resounding NO. Most of these women have taken to the streets as those are the only safe spaces for such women; surrounded by women they know; the security of the men-folk around them and the road free of interlopers who otherwise make women insecure on any other day.

Such women are making an important point. That they may not be able to vote on policy or write and speak eloquently, but they can show their revocation of consent to such law. They took to the streets to bring the lawmakers to have a direct dialogue with them, not to speak through spokespeople on elite platforms using evasive and confusing debating strategies. The peaceful protest at Shaheen baug saw women leading the charge- free from patriarchy, violent rhetoric and the clergy. Such occupying of public spaces is indeed disobedience, it is dangerous yet of vital importance against a government which has labelled most dissenters as jihadis, terrorists, Naxalities and unruly. Such a counter narrative is vital to shift the monochromatic narrative of the dissenter as usually being criminal, seditious and prone

to violent outbursts. Ultimately the Shaheen Bagh women have given the template of a sustainable protest to a subdued community and its allies — a template that is confident, peaceful, politically independent, constitutional, and Gandhian.

The second part of the statement says that the right to dissent is placed alongside fundamental duties every citizen is owed to their fellow citizens. If we take a closer look at these fundamental duties under Article 51A, it is hard to miss the striking resemblance between the call for dissent and the fundamental duties laid bare. Isn't civil disobedience against communal law a means to promote common brotherhood transcending religious lines as demanded of all citizens as a duty?[8] When the Constitution is invoked, flags are flown and patriotic songs sung at anti-CAA protests time and again, doesn't it cherish the Constitution and its nobel ideals of secularism?[9] Finally, when the protests are peaceful, take the form of sit-ins and satyagrahas; doesn't it amount to cherishing the noble ideas the inspired our freedom struggle? [10] In sum, such protesters have undoubtedly acted in furtherance of their fundamental duties, that of preserving our rich heritage and composite culture while promoting the ideal of humanism.[11] The Court steps into dangerous territory when it asks protesters to prove their legitimacy in terms of their unenforceable fundamental duties. Having however placed this high burden, the ShaheenBaug protests are undeniably in furtherance of Article 51A. They have shown this by their actions and sometimes even through silence, something that the Court seems to have missed from its ivory tower.

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[8] Article 51(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women

[9] Article 51(*a*) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem

[10] Article 51(*b*) to cherish and follow the noble ideals which inspired our national struggle for freedom

[11]Article 51(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

ON THE PROPORTIONALITY OF PROTEST

The Court invokes two significant judgments, that of *Himat Lal Shah v Commr. Of Police, Ahmedabad*[12]and *Mazdoor Kisan Shakti Sanghatan v Union of India*[13] to drive home the point that protesters '*cannot block a public pathway and that too, indefinitely*'. The Court passingly holds the local authorities as well as the Delhi High Court accountable for not stepping in and finding a middle ground. However, the Court goes so far as to say that protesters cannot block a public pathway in order to cause inconvenience to commuters and that the administration must take action to '*keep the areas clear of encroachments and obstructions.*' [14]

Here, the Court makes passing reference to two points- that other commuters have a right of free and safe passage as a part of their right under Article 19(1)(d) and that would reasonably only mean that protesters could not be on the street. However, the Court fails to go into an entirety of the factual matrix even after having ample time to get official reports and counter factuals. The protest site was a mere 150 metre site on GD Birla Marg and was not meant to be barricaded. The police and other local authorities placed three layer barricades almost around a 3km radius from the actual sites of protest- on the outskirts of the Kalindi Kunj Bridge and another near Jamia. It was clear that there were effectively 5 areas of barricades that were placed by the police of the different states and not hijacked by the protesters as was popularly circulated. Moreover, it was these outer blockades that continued the traffic congestion to outsiders travelling inter and intra state. The orders placing these barricades were not even placed under Section 144 CrPC as is the custom for public meetings ad processions. Finally, the authorities did not impose Section 144 CrPC or take recourse to any peaceful or conciliatory methods to steer the road clear of protesters or remove the

[12](1973) 1 SCC 227

[13](2018) 17 SCC 324

[14]Supra Sahni, para 19

installations that they placed on the other side of the road. Such administrative inaction and underperformance did not come under the radars of the Court and promotes the wrong narrative that it was the protesters who clogged the entire area and caused inconveniences to their fellow citizens. Being a court of fact and law on constitutional questions, such orders cast doubt on the Court's efficacy of dealing with facts which are submitted before the court versus those actually happening on the ground. Moreover, the Court introduces a dangerous concept of protesting at 'designated places alone' which has so far no constitutional precedent. This has enabled lawyers to file a review against the order on such judicial legislation.

Secondly, the Court while placing two important fundamental rights on the balance, failed to conduct a proportionality analysis. The proportionality analysis would ensure that the least cumbersome restriction be placed on rights holders for the enjoyment of competing rights.[15] One must only wonder whether the removal of the public protest sight is the least invasive method to secure the right to protest. It lopsidedly gives in to the community's right of passage; sacrificing the right to protest. The Court invokes Justice Mathew's reasoning in Himat Lal Shah but fails to get to the core of his reasoning in that case; which was the abject rejection of the UK doctrine that public highways were not sites of protest. In that judgment, 4 judges disagree with the British jurisprudence of disallowing protests on public ways by invoking our independence struggle and the unique development of processions and protest culture on the streets and thoroughfares of India.[16] Justice Mathew also remarks

[15] State of Madras v V.G.Row, 1952 AIR 196

[16]Supra note Himat Lal Shah, paras 21-29, para 71.

" *Public meeting in open spaces and public streets forms a tradition of our national life. This happened in pre-independence times. People cannot be arbitrarily excluded from public places but only regulated.*"[17]

What the Court aims to do by 'removing encumbrances' is exactly what Justice Mathew feared; an incorporation of British doctrine despite having a body of case law unique to our Constitution and the arbitrary and disproportionate exclusion of the masses from their own streets. Effective regulation which is permissible would have meant removing the excessive police barricades and allowing protesters to not go beyond their 150 metres on one side of the road since public sit-ins are not *de facto* illegal. That would have been the least invasive means to ensure that both rights are effectively protected. Instead, the smaller group had to give way to the larger community interest; and the Court only amplified this majoritarian interest. This itself is arguably against the central tenet of our Constitution- that of making the individual the centre of our democratic polity.

ON THE POWER OF PROTESTERS

The final assumption the Court makes ever so casually is on the agency of the women protesters. The Bench states

"*the Shaheen Bagh protest perhaps no longer remained the sole and empowering voice of women, who also appeared to no longer have the ability to call off the protest themselves.*"[18]

There is however no proof to such a statement. The Court assumes that when men, students and children are involved as allies to a women-centric protest, that women automatically lose their agency and will to continue or even call off the protest. Their resilience to continue despite the pandemic is seen through the lens of male instigation

[17] Ibid, para 70

[18] Supra Sahni, para 10.

and non co-operation which essentially patronize women. The Court here has made a casually sexist remark about how women run protests do not seem to have the power to revoke their will; a remark rooted in stereotype against womenfolk; especially muslim women. The Court ought to have been more careful in its words, considering that most of the women did call off the protests and eventually co-operated with the police; something that other civil rights activists across the world continually defied in the face of the pandemic.

It is only hoped that the Court steps away from such problematic assumptions about the state of political democracy in our country. It would bode well to remember Dr. Ambedkar's words that cautioned that despite our political democracy, society would continue to deny the individual social and economic democracy. Failing to protect a life of such contradictions would ultimately put our political democracy at peril.[19] This was the entire tenet of the ShaheenBaug protest, a struggle to assert, re-assert and reclaim political citizenship when economic and social equality were at a far distance for the minority. Finally, it is only hoped that the Supreme Court revisits the ShaheenBaug judgment and irons out its creases or constructs it a grave from which it cannot be resurrected.

[19] See Ramchandra Guha, India after Gandhi: *The History of the World's Largest Democracy*, p 121.

G. THE BIG CHILL: SURVEILLANCE OF PROTESTS AND ITS CHILLING EFFECT

Authored By Huzan Bhumgara and Shobhit Trehan[20]

INTRODUCTION

2020 has been a year of protests - or perhaps yet another year of protests. From the United States of America, Nigeria, Hong Kong to Poland and India, people have ignored a pandemic to step onto the streets to voice their dissatisfaction and dissent against their governments.

It would not be wrong to say that all protests invariably are monitored and its participants are surveilled. To any government of any hue or colour, a peaceful protest is a Schrödinger's mob - it may or may not erupt into disorder or violence. And so it has to be monitored.

Recent protests in India have marked the use of mass surveillance by law enforcement authorities. The Delhi Police used facial recognition software during the protests against the Citizenship Amendment Act in order to identify "law and order suspects."[21]During the same period, the Uttar Pradesh police had security drones circling public sites in an attempt to hinder any protestors from gathering.[22] Further, a number of farmers from Gujarat have reported their mobile phones and vehicles being monitored by the Gujarat

[20] Both authors graduated from the LLB program at ILS Law College in 2020.

[21] The Wire Staff, The Delhi Police is now Using Facial Recognition Software to Identify Habitual Protestors, The Wire, 29/12/2019

[22] Manish Sahu ,Asad Rehman , Avaneesh Mishra , Krishn Kaushik, Indian Express, Drones to bandobast to peace meetings: UP has a quiet Friday, 28/12/2019

government in an attempt to prevent them from mobilising.[23] This results in the formation of a panoptic society where individuals are forced to discipline and censor themselves based on State policy.

THE CHILLING EFFECT

There are a number of ways the use of surveillance can adversely affect the rights of protestors.[24] In this article we focus on how surveillance is capable of undermining protest organisation and mobilization by assuming criminal intent. Amory Starr et al. found that surveillance attached labels of criminality and extremism which were likely to reduce the legitimacy of a protest.[25] The use of surveillance sullies the reputation of peaceful gatherings, serving to alienate its interests from that of law-abiding citizens. Without any prosecution or evidence, supporters and participants of a cause are treated as criminals.[26]

While surveillance does not, of course, prohibit involvement in assemblies. However, it weakens the key building blocks of effective protests: i) it changes the context in which such protests occur and ii) the access to resources. [27]

I. CHANGING THE CONTEXT OF THE ASSOCIATIONS

Overt surveillance of protests would have a direct impact on its perceived legitimacy and positive impact.[28] The effect of surveillance is that the political and social message

[23] Pawanjot Kaur, Kept Under House Arrest, Gujarat Farmers' Leaders Disguise Themselves to Join Delhi Protests, The Wire, 15/12/2020

[24] Ullrich and Wollinger, Interface - Journal about Social Movements, Volume 3 (1), May 2011

[25] Starr A et al (2008) 'The impacts of state surveillance on political assembly and association: a socio-legal analysis' Qualitative Sociology 251

[26] Ibid

[27] Aston, V., "State surveillance of protest and the rights to privacy and freedom of assembly: a comparison of judicial and protester perspectives", in European Journal of Law and Technology, Vol 8, No 1, 2017.

of the protest is likely to be ignored as the debate often shifts to analysing the framework and individuals of the protesting group. The opinion of the general public shifts away from the purpose of the protest to a debate on whether the protest itself is criminal or not. As a result, movements are less likely to be taken seriously, and were often drawn into expending increased time and resources in attempts to 're-frame themselves' in a more positive light.[29]

This perceived criminality also affects the members creating a divisive fracture between those willing to sustain surveillance and those who do not. Surveillance has a destabilising impact on internal dynamics of a movement as members increasingly treat one another with suspicion.[30] Interviews from a number of people actively involved in protests point to the fact that people become less enthused and noticeably quieter under the scrutiny of law enforcement authorities.[31] Thus organisations are often forced to invest resources in ensuring the safety and well-being of members, often letting the political and social context of the protest itself take a backseat.[32]

II. RESOURCES FOR MOBILISATION

Assemblies and protests do not simply exist without social movements and organisations. Strategic campaigns often require coordination, logistics and interdependence among members of the group.[33] Even spontaneous insurrections

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[28] Snow D et al (1986) 'Frame Alignment Processes, Micromobilization and Movement Participation', American Sociological Review 464

[29] Supra note 4

[30] Passy F (2003) 'Social networks matter. But how?' in Diani M, McAdam D (eds) Social movements and Networks: Relational Approaches to Collective Action (Oxford, Oxford University Press)

[31] Ibid

[32] Supra note 4

[33] Nan Lin (1999), 'Building a network theory of social capital' Connections 28

depend on a culture of resistance and the development of a common 'frame'.[34] Surveillance by State authorities effectively hinders the forming of these social movements that underlie protests.

Lin defines social capital of a protest as these as 'resources embedded in a social structure which are accessed and/or mobilized in purposive actions'.[35] Surveillance activities deter individuals from taking an active part in protests often out of the fear that they would needlessly become suspects and can be profiled. A number of protestors have to employ additional measures to protect their privacy.[36] These include wearing masks, not using public transport, switching of all electronic devices, etc.[37] If participation is reduced by surveillance activities, so too is social capital, as the pool of available resources will shrink.[38] Further, individuals shy away from taking a more active and organisational role in the protest as taking on facilitative and prominent roles would make individuals more likely to receive police attention.[39]

The implied criminalisation also makes access to external resources more difficult. Venues or grounds used to protest may stop being available due to concerns of being associated with criminal acts.[40] Vendors and logistical support would also not extend their products to protests if they believe they would also be perceived as disruptive and

[34] Thomas Carothers and Richard Youngs, The Complexities of Social Protests, Carnegie Endowment for International Peace, 8th October, 2015.

[35] Supra note 10

[36]Shibani Mahtani, Masks, cash and apps: How Hong Kong Protestors find Ways to Outwit the Surveillance State, The Washington Post, 29 June, 2019.

[37] Ibid

[38] Supra note 10

[39] Supra note 7

[40] Supra note 4

disorderly. The resources and capital necessary to successfully plan a protest are effectively cut off due to such overt surveillance.

The effect of such surveillance is unlike other police measures used to maintain public order. It is capable of having a long-lasting effect on the ability of a protest to mobilise support and resources as well as effectively undermines the perception of a protest. This would impact not only associations today but also have a "chilling effect" on future protests. The fact that surveillance occurs without any regulation or reasonable necessity makes it one the most sinister form of police excesses in a modern society.

CONCLUSION

The chilling effect is a doctrine applying to cases where government laws and regulations are of such a nature that they do not directly take away one's rights but have the impact of self-censorship.[41] In the landmark case of NAACP vs Alabama[42] the United States Supreme Court recognised the chilling effect of surveillance on protests holding that if the State is allowed access to various records of an organisation it may induce members to withdraw from the organisation and serve as a deterrent for others to join due to fear of exposure of beliefs.

The psychological effects of widespread government surveillance have shown citizens to be self conscious and fearful.[43] Such fear often manifests itself into a culture of self-

[41] Gautam Bhatia, The Chilling Effect in India, Indian Constitutional Law and Philosophy, 5th December 2013

[42] 357 U.S. 449 (1958)

[43] Jillian C. York, The Chilling Effects of Surveillance, ALJAZEERA (June 25, 2013), http://www.aljazeera.com/indepth/opinion/2013/06/201362574347243214.html (observing the social toll of government surveillance in the Soviet Union or East Germany, referring to Marcus Jacob & Marcel Tyrell, The Legacy of Surveillance: An Explanation for Social Capital Erosion and the Persistent Economic Disparity Between East and West Germany (July 26, 2010)).

censorship where individuals do not actively show political or social beliefs.[44] This impact the right of persons to freely join associations based on their beliefs. Surveillance has an adverse impact on citizens making them tailor their behaviour to fit what the observer wants.[45] This would effectively dilute the right to form associations as guaranteed by the Constitution of India.

[44] John Boreland, Maybe Surveillance is Bad, After All, WIRED (Aug. 8, 2007),

[45] Ibid

H. SOCIAL MEDIA AS A MEDIUM OF PROTEST

Authored by Ashlin Joseph & Aditi Mishra (Both III BA LL.B)

"The only way you beat a machine is with a movement"

– Alexandria Ocasio-Cortez

Protesting has always been fundamental to human civilizations and societies. Karl Marx, one of the greatest philosophers of all time has aptly defined this human nature to create disorder to bring about order in his 'Conflict Theory.' Patterns of class conflict theory occur when one class of people is systemically empowered over another. This leads to change in the fabric of the society.

INTERNET AND SOCIAL MEDIA: TOWN SQUARE FOR THE GLOBAL VILLAGE OF TOMORROW

With the advent of Internet and related technologies, social media has become an inseparable part of people and therefore, protests and social revolutions have a newfound platform. The fundamental question that arises is, why are people resorting to social media to protest? The answer is quite simple. Facebook, Instagram, Twitter etc. provide people with improved communication and increased public awareness; quicker and larger-scale mobilization of people; effective coordination and efficient resource mobilization. The earliest online social movements began right after the Internet revolution. In 1990, software company Lotus and credit bureau Equifax gained access to names, addresses and purchasing behavior of 120 million Americans in CD-ROM format. In response, nearly 30,000 consumers organized through emails and message boards in protest, halting the release of the database by 1991[46]

46Gurak, Laura J. (1999). Persuasion and privacy in cyberspace : the online protests over Lotus Marketplace and the Clipper Chip. Yale University Press. ISBN 0-300-07864-1. OCLC 40927039

In 2014, a national online protest called 'The day we fight back' was held with tens of thousands of people participating in the protest against NSA's mass surveillance and the legalisation of it through the Fisa Improvements Act. A petition against the mass surveillance was signed by 100,000, 18,000 calls were placed and 50,000 emails were sent to US congressmen and women for the same.

In summer 2020, various civil rights groups organized a widespread boycott advertised by Facebook to try to pressure social media companies to act against hate speech on their platforms. Facebook banned hate speech involving harmful stereotypes, including anti-Semitic content. But Holocaust denial had not been banned. However, the protest resulted in Facebook banning the content that denies or distorts the Holocaust. In the light of the same, Mark Zuckerberg stated - "Drawing the right lines between what is and isn't acceptable speech isn't straightforward, but with the current state of the world, I believe this is the right balance."

Different Arenas of Online Protest

Digital platforms have been of much importance for conducting online protest not only worldwide but also country wise. Religious, racial and gender discrimination, environment issues and people's dissent with the government are some of the few causes of protests.

Racial discrimination and the hashtag that made history -

#Blacklivesmatter, which escalated with George Floyd's death on Memorial Day, set in motion a national and international reckoning of the systemic inequity that Black Americans have been subjected to in America since many centuries.

Sexual Harassment and Social Media -

Me too, a hashtag that started with American Activist Tarana Burke in 2007 to raise awareness and stand with victims of sexual abuse, is now a global movement and has

gained urgency online amidst the pandemic. In 2018, Indian women joined the movement by taking to social media and sharing their experiences of sexual abuse with Metoo hashtag. It provided a platform for many women to have a discussion regarding the formation of the Internal Complaints Committee, the difficulties that they faced to file a complaint against the harasser etc.

DISSENT THROUGH SOCIAL MEDIA -

Social media has become the medium through which people make sense of most aspects of the state and its Activities and in turn, hold it accountable. This can be seen through the protests that were held against the CAA legislation in Delhi, which gained much momentum due to the many social media posts of police brutality and violent protests. The protests that recently unfolded in Egypt , indicate not only how social media can be used to instigate protests but also how platforms can be de-legitimized and manipulated by authorities to suppress the viewpoints of protesters by shutting the internet down.

SOCIAL MEDIA PROTESTS AND MOVEMENTS: THE LEGAL ASPECT

FREEDOM OF SPEECH AND EXPRESSION

Supreme Court in a landmark judgment of Shreya Singhal v Union of India[47], struck down section 66A of the InformationTechnology Act, 2000 which provided provisions for the arrest of those who posted allegedly offensive content on the internet upholding freedom of expression under Article 19(1)(a) of the constitution. This landmark Judgment has only developed the free speech jurisprudence further by taking into account the importance of social media to disseminate ideas, views, information etc.

[47] WRIT PETITION (CRIMINAL) NO.167 OF 2012

However, online social revolutions and protests face another problem – Section 124 A of IPC. The law of sedition has become a political tool to suppress the voice of the people. This section penalizes disaffection towards the government. Comments expressing disapprobation of the measures of the Government is an exception to the section. However, the lines often get blurred.

DEFAMATION AND THE 'DRACONIAN' UNLAWFUL ACTIVITIES (PREVENTION) ACT

In 2018, At the peak of #Metoo movement, Priya Ramani - an Indian journalist, through social media accused Former Union Minister, MJ Akbar of sexual harassment, to which the latter filed a defamation case against Ramani. During a hearing of the case, MJ Akbar stated to the court " Priya Ramani should have taken legal recourse instead of alleging on social media". While online protests have its perks, the risk of such defamation suits could deter women from posting about their experiences.

However, there have been instances where social media posts have been treated as complaints in sexual harassment cases. When a law intern blogged about being sexually harassed by former Supreme Court judge AK Ganguly, her post was treated with her consent as an official complaint. Ganguly was eventually asked to step down as the chairman of the West Bengal Human Rights Commission.

Another ghost that hounds online protests is the stringent Unlawful Activities Prevention Act, under which, an individual can be designated as terrorist and sentenced to jail for upto 7 years. In 2020, a photojournalist - Masrat Zahra was booked by J&K police under UAPA for allegedly glorifying "anti-national Activities" on social media. Nearly 450 gender rights Activists, scholars, professionals and organisations signed a statement condemning the same.

TRUMP VS TWITTER AND #CAA

After the US Capitol Attack in 2021, Twitter suspended Trump's account which has more than 88 million followers. Company stated two tweets that Mr. Trump posted - one calling his supporters 'patriots' and another saying he would not go to the presidential inauguration - violated its rules against glorifying violence. Other digital platforms like youtube, reddit etc. also limited Trump's Activity on their service. The suspension of the account throws light on the fact that a single tweet/post is enough to stir public disorder.

On the other hand, when the press is not able to expose the brutalities of the establishment, it is grassroots protests recorded by the public that brings truth to the global community watching on the Internet. What social media did in the protest against CAA and NRC is to combine the people of India. Various social media handles updated daily information about protests happening in every corner of the country. Poetry, music, songs, videos of protests went viral. We had artworks and posters of protests happening all over the country. In times of despair, videos of thousands coming to support and help those in need sending a message that, "WE ARE TOGETHER!" Acted as moments of solace.

SECTION 79 A OF IT ACT AND SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF THE US

Aforementioned sections deal with liabilities of Intermediary. Under S. 79 of Information Technology Act, intermediaries are provided a comprehensive protection to any liability arising from publications or information made available by it. The purpose to provide exemption of liability helps the intermediary to operate without any intervention.

Similarly, Section 230 of the Communications Decency Act of the US was passed in 1996 and provides legal immunity to internet companies for content that is shared on their websites. Section 230 is an amendment to the Act, which holds users responsible for their comments and posts online. This means that online companies, including social media platforms, are not liable for the content shared on their website by its users

CONCLUSION - EFFECTS OF SOCIAL MEDIA PROTESTS ON SOCIETY

As Newton's first Law of Motions states, "an object will not change its motion unless a force Acts on it." Same is the case with society. Friction and unrest are important to bring about a significant change in the redundant systems and beliefs prevailing in society. Therefore, online protests in the 21st Century impact society by building a world community and creating awareness about burning issues around the globe. In fact, this pandemic has reiterated the importance of social media and the internet. Online protests are proof enough that one post can translate into a court case.

Nonetheless, such protests are often vulnerable to government's counter- protest tactics, for example, the Act of shutting down the internet. As a result, ingenuity and leadership becomes more important than social media. The internet shutdown in Kashmir, when Article 370 was abolished is an apt example of such government tactics. Even without blocking the internet, social media platforms can still be manipulated through censorship and government removal requests.

Despite all this, digital platforms remain the favoured option of the masses to express their opinions and disseminate information. Hence, it is safe to say that today, the necessities include *roti, kapda, makaanaur Internet!*

I. EXPLAINED: "PROTESTS IN POLAND"

Authored by: Shraddha Girish Bide. II BA LL.B

ABSTRACT:

Protest is not at all new thing for Poland and polish people. But 2020 made itself a year of protests for Poland. Protests like abortion ban, or LGBTQ+ community rights are happening in full swing in Poland. But if we take a closer look on these protests then it can be seen that these protests are just reason for gathering of huge crowd or rather there are so many more or less focused reasons behind all these protests.[48]Some protests have just started and some have history back in time but the way they reflected during this year was definitely awful. This article aims to give basic idea about those protests and ideology and reasons behind those protests.

> "The only way we stop the global reactionist wave is together, in streets everywhere, demanding what is ours: our bodies, our lives, our country, the world," -ZofiaMalisz

PROTEST AND POLAND – AN OVERVIEW

Poland always proved this quote true. Poland and protest is not remained a new relationship, starting with 1956s Poznan protests against communismto 2020s human right protests polish people are protesting for some or other reasons. Being catholic country Poland has history for minority protests. But this year was very special for

[48]https://jacobinmag.com/2020/11/abortion-poland-law-international-womens-strike-labor

Poland in terms of protest as lot of protests happened this year. Reasons for protests were different but always there was common thread among all those reasons. Let's consider them one by one….

ABORTION RIGHTS PROTESTS

This is not a new born protest in Poland. This has been there for past four years. But the energy and unity shown by the protesters during this year was unbeatable and incomparable.

By taking advantage of pandemic and lockdown situation right wing and conservative party government of Poland tried to introduce new proposition to strict the abortion laws in Poland (which are already strict as compared to other EU countries). [49]This proposition restricts abortion even if foetus has severe congenital defects. 98% legal abortions in Poland happens due to foetus abnormality. [50]This same government tried doing the same thing back in 2016.At that time polish public or more specifically women responded in huge numbers. Lot of rallies and protests happened at that time. That time women went on strike to protect their rights. This time proposition was almost the same or rather aim i.e., to curb women reproductive rights was almost the Same. But the situation was altogether different due to spread of corona virus and lockdown.

[49]https://www.economist.com/europe/2020/10/31/polands-abortion-rules-are-now-among-the-strictest-in-any-rich-country

[50]https://indianexpress.com/article/explained/explained-why-polish-women-are-protesting-a-recent-court-ruling-on-abortions-6883121/

At the current scenario present law of Poland gives permission to legal abortion when mothers' life is at risk, foetus has severe defects and when pregnancy is result of rape. [51]

On 22 oct 2020 Polish Constitutional Tribunal (CT) held unconstitutional a statutory legal provision, which had previously allowed women to access abortion on the grounds of fatal foetal abnormality. [52]After that result many people shown their opposition through various platforms like twitter or other social media as there were limitations on gathering of crowd and. But when these options didn't affect much, huge protests were held. In spite of lockdown these protests got huge response from all polish citizens out there. Several women and men taken to the streets and shown their opposition through rallies and banners.

KlementynaSuchanow, one protester says," organising protests was slightly crazy thing to do" as they even not allowed to gather. At that time protesters used some creative ways for protesting. They tried queuing protests like, standing two meters apart in the que outside the shop close to the parliament building while holding signs and umbrellas or interrupting traffic and blocking Warsaw's main square about an hour as car protest and many more. [53] Protests happened in several cities in Poland including capital Warsaw. In spite of pandemic and lockdown and other health risks ;energy and enthusiasm shown by protestors in Poland definitely deserve a round of applause.

[51] https://www.nytimes.com/2020/10/27/world/europe/poland-abortion-ruling-protests.html

[52] https://ukconstitutionallaw.org/2020/11/12/atina-krajewska-the-judgment-of-the-polish-constitutional-tribunal-on-abortion-a-dark-day-for-poland-for-europe-and-for-democracy/

[53] https://www.civicus.org/index.php/media-resources/news/interviews/4590-poland-we-invented-new-forms-of-protest-because-we-had-to

Speciality of this protests was the huge response from the youth. Most of the people in that crowd were early 20s demanding their rights for their better future. [54]One survey after the election decisions showed generational divide among polish population in votes.2/3 percentage of 18-29-year-old people voted for the liberal rival of current ruling party [55]Participation of youth in such overwhelming numbers in that protest is nothing but depiction of their vigilance towards their better future which brought new and positive vibe into that protest. Youth protesters are now organising bike and bicycle rallies as new form to protest [56]Slogans like "THIS IS WAR", "I WISH I COULD ABORT MY GOVERNMENT" are on trending**. "Red lightning bolt**" (sign of strength) has become symbol of protest. [57]

LGBTQ+ RIGHTS PROTESTS

In the wave of protests for abortion rights of the women, LGBTQ+ community rights protest also got some new heat after the arrest of activist Margot for flag dropping. she was arrested with other 48 people for insulting religious feelings and disrespecting Warsaw's monuments. But this arrest was just trigger point which called for protest. [58]Main problem and root cause were actually in the ideology of ruling **"Law and Justice"**party.

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[54][11]https://www.opendemocracy.net/en/can-europe-make-it/theyre-uncompromising-how-the-young-transformed-polands-abortion-protests/

[56]https://www.gmfus.org/commentary/nationwide-protests-reveal-awakening-polands-youth

[57]http://www.theartnewspaper.com/news/what-s-behind-the-red-lightning-bolt-the-main-symbol-of-poland-s-pro-choice-marches

[58]https://in.reuters.com/article/poland-church/polish-lgbt-activists-protest-at-warsaw-church-against-catholic-archbishop-idUSL5N2AQ3PG

Since the fall of communism Poland seeing LGBTQ+ community issues. But false attitude and statements about queer community by ruling party members deteriorated the situation. In 2019 some cities in Poland declared themselves as LGBT-free zones in order to ban equality marches and other LGBT events. And in 2020 polish presidential election saw President Andrzej Duda using anti-LGBT rhetoric, He focused heavily on LGBT issues, stating "LGBT is not people, it's an ideology, which is worse than Communism" led to protest from LGBT rights activists, who adopted direct action tactics.

After all that chaos; various pride march, equality march was organised to oppose this ideology. Some were peaceful while some involved violence. Many people showed up banners mentioning "we are here; we are queer, get used to it". Some groups like '**Stop Bzdurom'** (Stop the Nonsense) also tried hanging flags and anarchist symbols on Warsaw statues, including one of Jesus, infuriating the conservative government. [59]

Situation of LGBTQ+ community's rights have becoming worse over the period. Poland is 2nd worse country when it comes to LGBTQ+ community rights. [60] President of Poland calls LGBTQ+ community as "ideology". At the present situation gay couples are not allowed to get married or adopt any children. The charter also includes ban on propagation of LGBTQ+ community ideology in schools. President of Poland himself calls LGBTQ+ community values as threat to family values. And not only that; LGBTQ+ community attacks are not considered as a hate crime by law in Poland. [61] The arrest is boiling point of protests; real heat is in ideology of rulers. And on the other side According to many protesters, behaviour shown by police during protest was

[59] https://www.barrons.com/news/two-charged-with-desecrating-statues-with-lgbt-flags-in-poland-01596640204

[60] https://rainbow-europe.org/country-ranking

[61] https://www.equaldex.com/region/poland

unacceptable. Police started moving people violently from site. In all that hustle some were pushed against wall and thrown on the ground by police. [[62]]

More people are brave enough to go on the streets and demand equal rights" says Biedron an activist, and this is the hope for Poland.

DIMENSIONS TO THESE PROTESTS

If we consider Abortion rights protests or LGBTQ+ community rights protests'; common link between them is human rights. Basically, Poland is right now demanding their fundamental human rights. As conservative party being ruling party it is curbing freedom of polish people. It has already limited freedom of press, media and TV. Government is also now being criticized of managing constitutional tribunal [[63]]Ruling party also has put forth the proposition to withdraw itself from Istanbul convention which is being considered as important when it comes to women's rights. Ruling law and justice party's chairman jarslaw said in one interview that, "In the cases of very difficult pregnancies when the child is certain to die, very deformed" the mother will be still forced to give birth "so that the child can be baptized, buried and have a name" [[64]] this statement is nothing but wrong ideology towards women rights and if this mentality is going to run the country then protests are obvious and spontaneous thing to do. This mentality and ideology are reason for such huge protest.

[62]https://www.euronews.com/2020/11/24/police-using-excessive-violence-against-peaceful-protesters-in-poland

[63]https://freedomhouse.org/report/analytical-brief/2018/hostile-takeover-how-law-and-justice-captured-polands-courts

[64]https://in.reuters.com/article/poland-abortion/polish-women-protest-again-as-ruling-party-heats-up-abortion-row-idINKCN12O23K

In Poland, Huge crowd gathered for any particular protests is not just asking for any particular demand for which the protest is organized but it is demanding basic human fundamental rights which everyone need to get.

CONCLUSION

Thomas Jefferson, an American diplomat once said

"When injustice becomes law, resistance becomes duty".

This is exactly what happening with Poland. resistance paving its way towards justice. Poland protests shows exactly how revolutionary protests looks like and Afterall it is just a start. It has long way to go. Poland has set an example that protest are best way to revolt if they are built in right direction and way. For any protest to build up requires clear aim, sufficient number of supporters and right direction and polish protest have all three. These protests definitely will be ray of hope for all over the world.

miećnadziejęnanajlepsze … (hope for the best):)

J. THE PROTEST, A CONTEMPORARY DEMOCRATIC TOOL: THE SURVEY STUDY

Authored by: Aarzoo Guglani, III BA LL.B

INTRODUCTION

No doubt, India, in its recent years has been a burning ground for various protests. Though the ongoing farmer's protests end the list for this decade, through the years India has experienced some paramount protests, some like the Nirbhaya protest of 2012 which reached a justifiable end with government firming the rape laws, while some like that of CAA NRC protest which failed to clinch its desired outcome. Nevertheless, our ever-dynamic protest culture has been a major part of India's democracy with young adults making a large population of such protests. The present article is therefore an analysis of the survey conducted by the ILS Centre for Public Law across students of various fields for understanding their stance on different aspects of Protest Culture in India.

THE SURVEY

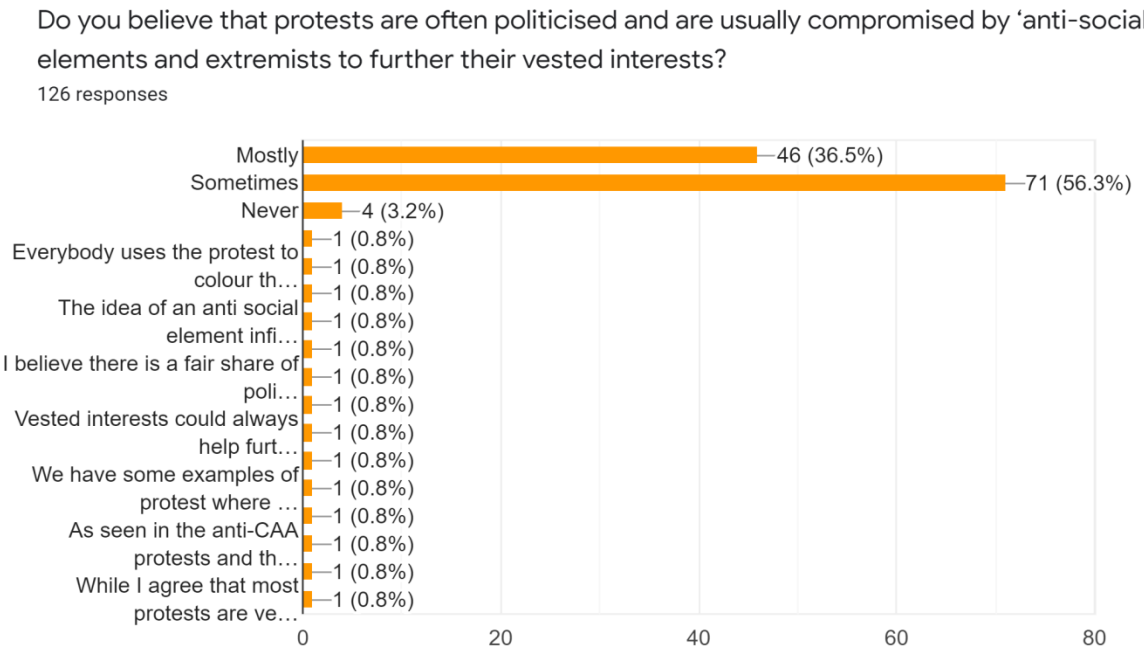
An Orb Media survey across 128 countries found more students rejecting formal political engagement for street activism. It was also concluded that it is 14% more likely for students to engage in a protest for change than people who are of 40 years and above. Since only 2% of the world's parliamentarians are below the age of 30 years, youngsters, therefore, find protests to be a viable means for their representation in a country's politics. The question is therefore not only of the participation of the students in protests but also as to at what level these young minds believe in the institution of such activism and what alternatives they look forward to when dealing with any socio-political issue.

On similar lines, the survey conducted by the Centre, which had more than a hundred responses showed dynamic opinions of people on the subjects of participation, involvement and nature of protests. 55% of the people who took the survey had participated in a protest in India, although out of which, a few stated that protests don't usually reach the desired end. However, 54% of them still claim to witness a successful protest in India. While every participant managed to mention a different protest which they witnessed to be successful, it is also fascinating to note that there were answers of not only national or regional protest but also there were mentions of ILS's student protest including the one which helped to phase out fees for students who needed help during the pandemic. This sufficiently proves that students are taking up the path of activism in the form of protest to go against as low as a college administration.

THE CONTEMPORARY DYNAMICS

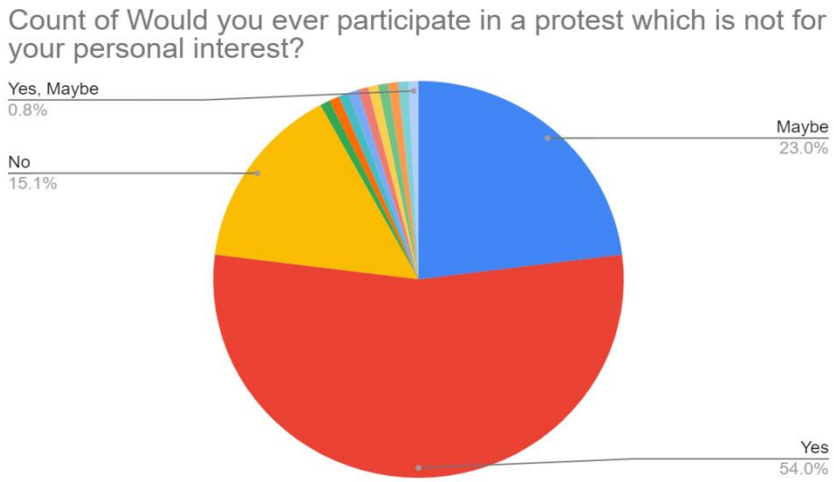
The notion for protest as a viable medium for bringing change has been encrypted in the minds of Indians since independence; even the survey shows that 61% of the youth still believes in the fact that protests are a significant way for a revolution at least in the Indian context. What has changed with the due course is that people have started questioning the legitimacy of protests now, they have started claiming that protests are often politicised and are usually compromised by 'anti-social' elements and extremists to further their vested interests. 37 % of the participants think that protests have lost their effectiveness because "the primary objective of the protest gets pushed in the background after some anti-social elements try to further their agendas/ideologies under the banner of the protest. It does not mean that the motive of the genuine protestors is mala fide. "**But the sad reality is that the primary objective of protests in our country usually gets overshadowed by such elements"**, one of the responses mentioned. One of the major reasons for such contamination, which a lot of students believed, is media. One of the respondents states, "*The idea of an anti-social element infiltrating protests is a very clever way for the media to, on one hand, act like it values*

democracy and democratic protest, but on the other hand allows themselves to discredit the entire protest because of some unnecessary 'anti-social' element".



Colouring one's discourse through such protests has become common practice now and that the mere act of protesting doesn't validate or invalidate any issue. However, when we reversed the question to ask whether people choose to participate in a protest which is not of their interest? The answers were quite dynamic. As while statistics suggest that more than half of the people (58%) choose to participate in a protest which is not of their interest, still 15% of the participants simply don't agree with the idea of standing up for affairs which don't concern to them. Interestingly, around 25% of the students put themselves in a criterion where they evaluate their participation in any protest based on whether or not they believe in the issue of the protest, that is the involvement of personal interest is not necessary unless the subject of the protest matter to them. This significantly concludes that in the past where the ideologies behind the protests were never questioned and were just seemed like a community movement, today,

people have actually started choosing their battles and have also started believing in stepping out of their personal and local interests to support different protests. The concept of following a particular ideology or a leader to participate in a protest is no longer prevalent.



THE DEMOCRATIC TOOL

Article 19(1) (b) of the Indian Constitution, assures its citizens the right to assemble and protest peacefully and though the Republic of India was built on the foundation of peaceful protests, the visuals of contemporary India tells a different story. Even when in the survey it was asked to define the general nature of protest in India, 41.3% termed it as violent. And one of the common answers to justify it was, "unwarranted interference of political agendas". As discussed above, we are aware that how people's vested interest can turn a protest ugly and how selective media coverage becomes a major source for people to interpret a protest as violent or peaceful. Protests are a necessity for a democratic nation, peaceful defends and critics make a country a true democracy. Having said that, many participants of the survey, around 55% of them admitted to the fact that the protestors do face unreasonable interventions from law and order officials during protests. Many pointed out that, though law guiding a protest is essential, often

interventions in the form of 'lathi charge', water firing and unwarranted detentions etc. can lead to irreversible damages for the protesters. "**The law and regulations need a thorough review, the intervention becomes unnecessary when it is denied on frivolous grounds, or when the legal system is used in a manner contrary to its original intention, to curve the protest**", one of the participants stated. Hence, the protest culture in India not only limits the pattern and nature of protests but also the freedom a protestor enjoys in our democratic set-up.

CONCLUSION

The numbers of the survey said a lot, from the institution of the idea of protest to its limitations in the country. Apart from the fact that protest had been the first choice for students to mark their representation in the politics of the country, 50.8% of the participants think that protests in some ways cause a public nuisance in various instances, one of the survey answers mentioned: ***"Right to peaceful protests does not include disturbing the rights of the public at large or causing nuisance of any sort. Regulations are extremely necessary***". Hence, about 90% of the people who took the survey have come up with an alternative for protests, including the establishment of online portals for re-election, filing public interest litigations, forming pressure groups, improving the state of media and consequently the accountability of the government, influencing through social media etc. While some of the suggestions are rarely new, others already existed. Protests in every way have given the passion and the sense of unity to the people of India. Hence, even the survey was not only to know what exists but what people expect for, protest culture in India has been dynamically elevating and with such brilliant young minds we at the Centre, don't see it diminishing any soon.

K. PUBLIC LAW IN THE NEWS

Complied by: Nihar Chitre, V BA LL.B

SUPREME COURT IN THE NEWS

1. *Project Director, Project Implementation Unit v. P.V. Krishnamoorthy*[65]

In Project Director, Project Implementation Unit v. P.V. Krishnamoorthy, a three judge bench of the Supreme Court held that Parliament has exclusive legislative competence to make a law in respect of national highways and all matters connected therewith, which includes declaring any stretch/section within the State (not being existing roads/highways) as a national highway, it must follow that the Central Government alone has the executive powers to construct/build a new national highway in any State and to issue directions to the Government of any State for carrying out the purposes of the 1956 Act.

2. *Madras Bar Association v. Union of India*[66]

In Madras Bar Association v. Union of India, the three judge bench of the Supreme Court held the validity of Tribunal Rules 2020 but directed 19 modifications to the rules, including constitution of National Tribunals Commission, a change in composition of Search-cum-Selection Committee etc.

3. Saurav Yadav v. State of Uttar Pradesh[67]

A full bench of the Supreme Court directed that all candidates coming from 'OBC Female Category' who had secured more marks than 274.8928, i.e. the marks secured by the last candidate appointed in 'General Category–Female' must be offered employment as Constables in Uttar Pradesh Police. The petition had challenged the

[65] 2020 SCC OnLine SC 1005

[66] 2020 SCC OnLine SC 962

[67] 2020 SCC OnLine SC 1034

appointment of General category female candidates, who had secured lower marks, as Constables in Uttar Pradesh Police.

4. *Rajiv Suri v. Delhi Development Authority*[68]

A three judge bench of the Supreme Court in a 2:1 verdict gave a go ahead to the Central Vista Project. The Project, which plans to build a New Parliament building, is necessary for the creation of a larger working space for efficient functioning of the Parliament and for integrated administrative block for Ministries/Departments presently spread out at different locations including on rental basis.

5. *Rakesh Vaishanv v. Union of India*[69]

The 3-Judge Bench of S.A. Bobde, CJ and A.S. Bopanna and V. Ramasubramanian, JJ., stayed the implementation of farms laws until further orders.

The first category of petitions challenges the constitutional validity of the farm laws. A petition under Article 32 challenging the validity of the Constitution (Third Amendment) Act, 1954 enabling the Central Government also to legislate on a subject which was otherwise in the State List has also been included within this category of petitions.

Another Category of petitions included the ones which support the farm laws on the ground that they are constitutionally valid and beneficial to the farmers.

The third category included the ones filed by individuals who are residents of the National Capital Territory of Delhi as well as the neighbouring States, claiming that the agitation by farmers in the peripheries of Delhi and the consequent blockade of roads/highway leading to Delhi, infringes the fundamental rights of other citizens to move freely throughout the territories of India and their right to carry on trade and business.

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[68] 2021 SCC OnLine SC 7

[69] 2021 SCC OnLine SC 18

HIGH COURT IN THE NEWS

1. *Mumtaz Ali v. UT of J&K*[70]

A single judge bench of High Court of J&K dismissed a petition while holding the right to issue no confidence motion against the chairman of the Panchayat on the ground of misconduct or neglect of duty by the members of Panchayat.

2. *Satish v. State of Maharashtra*[71]

In a controversial judgment by the Nagpur Bench of Bombay High Court, the appellant was acquitted under Section 8 of the Protection of Children from Sexual Offences Act, 2012 but was convicted under S. 354 of IPC. The judge held that since there was no skin to skin contact, the accused cannot be convicted under S.8 of POSCO Act but is guilty under S. 354 of IPC.

3. *State of Jharkhand v. Subhadra Jha*[72]

The single judge bench of the Jharkhand High Court set aside the order of the writ court which directed the respondent to consider the permanent absorption on vacant and sanctioned post of Sanskrit Teacher. The Court held that Right to establish linguistic and religious institutions under art 29& 30 includes the Right of appointing teachers.

4. *Nilesh Navalakha v. Union of India*[73]

The division bench of Bombay High Court laid down the guidelines to be followed by the media houses while reporting news and avoid travesty of justice or any act which may harm the trail of the court.

5. *Masuna Satheesh Kumar v. State of Telangana*[74]

[70] WP(C) No. 1063 of 2020

[71] Criminal Appeal No. 161 of 2020

[72] 2021 SCC OnLine Jhar 64

[73] 2021 SCC OnLine Bom 56

[74] 2021 SCC OnLine TS 40

The Telangana High Court while dismissing the petition reiterated that the scope of interference under Article 226 is restricted and cannot be put to action where an alternate remedy is available under the concerned statute.

L. CASES ACROSS THE POND

Compiled by: Bhargav Bhamidipati, IV BA LL.B & Samraggi Debroy, III BA LL.B

DATE	NAME OF THE CASE AND COURT	JUDGEMENT
08/01/2021	*Bae Chun - Hee v. The Government of Japan* (Seoul Central District Court, South Korea)	The court ruled that the Japanese Government must pay 91,100 dollars or 100 million won each to 12 women victims, who were made sex slaves by the erstwhile Imperial Japanese Army during the Second World War. Japan had refused to take part in the Court proceedings by employing the principle of state immunity by which the Court cannot exercise its jurisdiction over the state without its consent. However, the Judge observed that state immunity cannot be applied to cases involving inhumane actions. It held Japan responsible for committing "premeditated and organized acts against humanity in violation of the international

		standard and norms". In August 2013, the victims had submitted a petition to the Seoul Court for compensation from the Japanese government. After the Tokyo government refused to acknowledge the court's attempts to start the mediation process, the victims applied for a formal trial. The court had accepted their request in January 2016.
04/01/2021	*Sadaf Aziz v. Federation of Pakistan* (Lahore High Court, Pakistan)	While dealing with a writ petition, the Court held that virginity tests such as "two fingers test" and "hymen examination" are invasive, offensive and discriminatory, and blatantly violate the dignity of women. Therefore, the test were held against the right to life and right to dignity enshrined in Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973. The court also factored in the treaties to which Pakistan is a

		signatory to and placed reliance on several Indian precedents, most notable the SC decision in Lillu v. State of Haryana.
04/01/2021	*Advisory Opinion on compatibility of 'Vagrancy Laws' with the African Charter of Human and People's Rights and other Human Rights instruments applicable in Africa* (African Court of Human Rights)	The Court found that Laws which criminalise "being a vagabond or homeless" are contrary to the African Charter of Human and People's Rights. It noted that such laws are violative of articles 2, 3, 5-7, 12 and 18 of the Charter. The Court also placed reliance on Art. 1 of the Children's Rights Charter and Article 1 of the Women's right protocol to hold that any such law must be repealed by member-States.
21/12/2020	*Cairn Energy Plc and Cairn UK Holdings Limited v. The Republic of India* (International Arbitral Tribunal constituted under India-UK BIT)	The Tribunal held that held that India had failed to uphold its obligations under the 1994 India - UK BIT and under international law. The Tribunal ordered India to compensate the Claimants for the total harm suffered by Cairn as a

		result of India's breaches. The measures in concern were India's retrospective tax legislation of 2012 under which the claimants' 2006 transaction of INR 102 billion was taxed with an applicable interest and penalties. As the decision is not, in its entirety, available in the public domain, detailed observations are unknown.
16/12/2020	*R v. Heathrow Airport Ltd.* (Supreme Court of United Kingdom)	While deciding a case concerning a third runway at Heathrow Airport, the Bench cleared the way for the construction of the new runway. But, the observations of the Bench were largely focused on clarifying the *"minimum must haves"* in a Government Policy. The Bench noted that the ANPS must give reasons for the policies and these must include an explanation of how that policy takes account of existing "Government policy". The epitome of "Government policy" is a formal

		written statement of established policy.
01/12/2020	*Halliburton Company v. Chubb Bermuda Insurance Ltd.* (Supreme Court of the United Kingdom)	In the case, the Supreme court of UK clarified on the arbitrator's duties on impartiality and party autonomy. The court highlighted the importance of impartiality in arbitration by stating that impartiality had always been a "cardinal duty" for arbitrators. The decision established that the correct legal test was "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased." Another critical comment of the Court was on the arbitrator's duty of disclosure. It confirmed that an arbitrator is "under the duty to disclose facts and circumstances which would or might reasonably give rise to the appearance of bias".

27/11/2020	*Roman Catholic Diocese of Brooklyn v. Andrew M. Cuomo* (Supreme Court of the United States)	While deliberating upon the applications seeking relief from an order imposing very severe restrictions on attendance at religious services in certain COVID zones; the Full Bench of the Court, with a ratio of 5:4, barred the restrictions on religious services in New York that Governor Andrew M. Cuomo had imposed to combat the coronavirus. The Majority did give heed to the health expert's opinions, but held that even in a pandemic, the Constitutional guarantee of the First Amendment cannot be put away. The court found that the regulations strike at the heart of the first Amendment rights. On the other hand, the dissenting opinions found that the pandemic has cost over a quarter of million lives and that the Constitution does not restrict governments from treating religious institutions equally with secular institutions for

		saving lives.

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