



**RIGHT TO DISSENT AND PROTEST ONE OF THE PARADIGMS TO  
FREEDOM OF SPEECH AND EXPRESSION**

**Edited By:**

**1) Saumya Tripathi**

(Editor)

[Saumya.judicateme@gmail.com](mailto:Saumya.judicateme@gmail.com)

+91 9044382618

**2) Ritika Sharma**

(Student Editor)

**Publisher Details:**

**1) Saumya Tripathi**

+91 9044382618

Address: Vikas Nagar, Lucknow

Email Address: [Saumya.judicateme@gmail.com](mailto:Saumya.judicateme@gmail.com)

---

---

**RIGHT TO DISSENT AND  
PROTEST ONE OF THE  
PARADIGMS TO FREEDOM  
OF SPEECH AND EXPRESSION**

---

*By, Jasbir Singh Malik, Advocate  
Supreme Court of India (Former  
Additional Advocate General, State of  
Rajasthan)*

**1. RIGHT TO FREEDOM OF  
SPEECH AND EXPRESSION  
WHILST THE RIGHT TO  
DISSENT: A BRIEF  
BACKGROUND**

*"... At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom...." – Jawaharlal Nehru*

India attained its independence at midnight on the 15th of August 1947, thus beginning with the largest democracy in the world. This new era changed the lives of the Indian citizens, in the manner which our freedom

fighters dreamt of and fought for. Thus, Giving birth to the Indian Constitution Act, 1950 one of the longest written constitutions of the world ever. Hence making it the heart and soul of our democracy.

With the enforcement of the constitution, citizens came to have the right to live in a dignified and free manner that they longed for. Thus, the fundamental rights became the essence of our Indian Constitution Act. Freedom of speech and expression is one of the essential fundamental features enshrined in Part III of the Indian Constitution Act specifically laid under Article 19(1)(a) in addition to other rights granted under the same article. However, these rights are not absolute and are subject to reasonable restrictions under Article 19(2) thus, making them the only ones, subject to restriction in the entire Act.

However, taking note of the present situation the scope of the above-stated fundamental right is being curbed by the authorities in power, in the name of anti-nationalism and sedition. The slow abrasion of one of our most crucial constitutionally guaranteed rights i.e., the

sacrosanct right to freedom of speech and expression is paving the way to imperceptible distortion and destruction of our basic Human Right to dissent and hold protests. Article 19(2) which empowers the state to put reasonable barriers over freedom of speech and expression originally stated:

"Nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow the state...."

Since such provisions were already present in the Indian Penal Code of 1860, hence it wasn't amended much to give effect to new enactment, i.e., The Indian Constitution Act and the rights granted hereunder, to preserve the essence of the rights so granted. Soon the amendment was brought and, the purview was broadened in comparison to what it stood earlier. Therefore, now it came to be read as:

Article 19(2): "interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

The judiciary time and again played a vital role in preserving the rights of the individuals through its pronouncements, and often warning the state against its arbitrary and unreasonable decision making, this was witnessed in the case of *Romesh Thappar v. the State of Madras* who was a Bombay-based journalist and his journal was banned from sale under Madras Public Maintenance Order Act, 1949 and he was also being refrained from entering the state of Madras by the ruling government. While striking down the ban imposed by the Madras Govt. the Apex Court stated "....That Public order consideration cannot be justified under the security of state under article 19(2) further stating that the law was drafted broadly and allowed for action to be taken even when there was no imminent threat of public danger..." because of this, then the Prime Minister of Independent India Pt. Jawaharlal Nehru felt a desperate requirement to amend article 19(2) as a result of which the First Constitutional Amendment Act came into existence adding the word 'public order' and 'in the interest of the state' thus empowering the state to impose reasonable restrictions upon the rights granted under Article 19(1)(a).

## **2. DISSENT – A SECURITY FAUCET FOR DEMOCRACY**

The point of the character of any democracy is the scope and room put forward for

legitimate and justifiable dissent, which cannot be abridged by any executive action. Which the Indian courts have very well recognized, often observing that every human irrespective of position, caste, race religion, etc. has a right to dissent against the government for its policies, working system, or on any point to improve the situations and challenges prevailing.

History is a key witness that how a dissenting view can bring a revolution, if once its cause for welfare is affirmed. Had dissent not taken place India would have never achieved its independence, hence even today dissenting opinions are a must to keep the democracy safe and the ruling government and its powers in check. This indicates that the citizens of a state are interested to take part in government dealings and working, if they aren't questioned time again it might make them arbitrary.

However, the growing norm of imposing UAPA and sedition on people for their dissenting opinion is becoming an escape for the government from being held accountable, the scenario has become so grave that now people fear before speaking their minds out or questioning the actions of the government. A very recent example for the same can be seen in the case of Disha Ravi a 22-year-old climate activist who had a different perspective regarding the farms'

laws introduced by the legislature, and soon she was arrested on the charges of defaming India by voicing out her opinion on a social media platform and editing a toolkit of farmers protest which somehow gained international attention afterward. While the prosecution was claiming that it created the unrest that was seen on 26th January 2021, in New Delhi during the tractor rally by the farmers even though they failed to establish any sort of relationship between her and the perpetrators of the violence that took place. Instead, the Delhi Police claimed that she collaborated with foreign nationals to create unrest in the state, now since there is no law forbidding an Indian national corresponding with foreign nationals or Indian nationals abroad to discuss a social or political issue on a social media platform henceforth her detention was not justified. The prosecution further claimed that she was cooperating with the 'Poetic Justice Foundation' an organization responsible for creating the toolkit which Disha Ravi edited and posted online. The question to be considered here is, is gathering international support to promote and bring the attention of the people towards a churning issue a crime? Secondly, the contention of the prosecution that the activist edited the toolkit, gives rise to another question was it an offence? There is no law forbidding the citizens from getting international opinions or from editing any

piece of document and nowhere it is written that before voicing out or talking about such problems on social media platforms or editing a document they need to seek the permission of the government. Even the allegations of her working with the Poetic Justice Foundation does not make her liable for the unrest so created as the organization is nowhere blacklisted or banned by the Indian government, so how does it make her anti-nationalist? Several other aspects need to be considered, but sadly this points out how the freedom of speech is being slowly tormented by the government to keep the citizens from asking questions and creating fear in their minds.

During the British rule when Mahatma Gandhi and Bal Gangadhar Tilak were charged with sedition for agitating against their oppressive rule, they would have wished and ensured that free India won't be facing such charges for voicing out their opinions when necessary, but sadly the resemblance can be very well seen and how we have to bow our heads in shame. In one of the celebrated judgments in the case of Priya Parameshwar Pillai versus UOI & Ors (2015) the Delhi High Court held "that espousing the cause of a particular section of people cannot be considered anti-national nor does it amount to creating disaffection amongst people at large. Further pointing out that article 19(1)(a)

nowhere contains the words 'anti-national' or 'national-interest'

### **3. APPLICATION OF TYRANNICAL LAWS AND RISING NUMBER OF CHARGES**

It's worthless to say that since few decades the country has witnessed tremendous change. There has been several social and political transmute in of the largest democratic country in the world. These transmute have gone through various dissenting opinion at different stages. Having a strong believe in the notion of non-violence and civil disobedience respect for dissenting opinion at several instance become very much pivotal.

In furtherance to that country have recognized various rights enshrined under the law of the land. If we go through the present scenario of the country than it could be easily found that the country is witnessing strong protest against the farm acts which was passed by the parliament on 20<sup>th</sup> Sep. 2020. In fact, it was not for the first time such protests were done against the government.

One such major protest was witness earlier in the month of January, 2020. The country witnesses a nationwide protest against Citizenship Amendment ACT (hereinafter referred to as CAA) and National Register of Citizens (hereinafter referred to as NRC). Initially this protest was confined to the

northern-eastern states which ultimately unfold the connection of CAA and NRC. The ruling party BJP passed a statement that it's a general hurdle between the people of north-eastern state which would be down with the passage of time. But the story shifted to other side when the bill amending the Citizenship Act, 1955 was passing in parliament. This act simply legalizes and neutralizes the citizenship of illegal migrants from Hindu, Christian, Jain, Parsi, Sikh and Buddhist communities who, as religious minorities, had fled persecution from three countries, namely, Pakistan, Afghanistan and Bangladesh. Since then, the month-long protest brought the student of Jawaharlal Nehru University (hereinafter referred to as JNU), Delhi on street when the parliament session was on. In respect to that students were lathi-charged and few of them were detained.

Like that at several instances lathi-charged was very common against such protest throughout the country. In spite of that there were no stopping of such protest by public at large. Their message was loud and clear: "discrimination would not be tolerated and the right to protest peacefully in democratic India was sacrosanct". The attempts by the government to portray the protests as being politically motivated and led by "upadravi" (a term for "nuisance makers" employed by sections of the Hindi television media) elements did not find any takers.

Not only this all such protest unless and until that does not involve violence posses' constitutional protection. The hon'ble Supreme Court (hereinafter referred to as SC) in the case of Maneka Gandhi v. Union of India had clearly stated that every citizen has the right to take part in the democratic process, that amount to exercising one's own rights, as well as free and general discussion on public issue which are absolutely essential. This discussion on public issue sometime might lead to peaceful protest. As in the case of Ramlila Maidan Incident vs. Home Secretary, Union of India & Others the apex court clearly stated that the citizen has fundamental right to assembly and protest for the common good subject to such assembly and protest is not violent in nature.

#### **4. CONCLUSION**

In the case of Kedar Nath Singh versus the state of Bihar, the constitutional bench of the apex court analyzed the history of the law of sedition in India. The law of sedition was introduced by the Macaulay's Penal Draft Code of 137- 1839 but later was remove from the IPC of 1860. It was year 1870 when it was again incorporated in the code via section 124A and since then has been there, though various changes were made time to time, but the landmark amendment was made in the year 1898, the

single definition was replaced by three separate explanation which stands even today, still few more amendments were brought later on. The petitioner in this case challenged the constitutional validity of the law of sedition stating it was violative of the right to freedom of speech and expression enshrined in the Indian constitution. The court while rejecting the contention stated that it complements the reasonable restrictions as quoted under Article 19(2) and hence did not violated any fundamental right so granted. The bench held that “the provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in

our opinion, strikes the correct balance between individual fundamental rights and the interest of public order.” Further observing “interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress...Viewed in that light, we [Court] have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence .

Furthermore, the Apex Court stated “the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition

of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.”

This judgment gave a crystal view of what is a dissent and what is sedition, not every criticism can be seen as sedition unless certain other essential are fulfilled, freedom of speech and expression is quite important for the growth of nation and also falls within the purview of, Right to life and liberty, if people aren't free to express, show their distress or criticism then the country can no more be considered as a democracy. The moto behind the making of constitution would fall apart and as a consequence the country and government may suffer in long run. But it has to be kept in mind that excess of anything hampers, therefore freedom of speech and expression are only to the point where it doesn't affect the law and order or disturbs the internal peace of a nation, certain restrictions are always going to be necessary for preventing grave circumstances. Every citizen of India is entitled to the Golden Triangle enshrined in the Indian Constitution, which grants them right to equality before law (Article 14), Right to freedom of speech and expression (Article 19) and Right to life and liberty (Article 21) in addition to this they

are also entitled to Right to protest peacefully and without arms, there is no doubt that the above stated rights form the core of a democratic nation and a civilized society,

## 5. BIBLIOGRAPHY

- Stuart Roberts, A Tryst with Destiny – Freedom and Fragmentation: Images of independence, Decolonization and Partition at Cambridge University, [https://www.cam.ac.uk/tryst\\_with\\_destiny#group-at-the-stroke-of-midnight-wkG9fziMJ0](https://www.cam.ac.uk/tryst_with_destiny#group-at-the-stroke-of-midnight-wkG9fziMJ0) (accessed on 2<sup>nd</sup> March, 2021)
- Frontline, T.K. RAJALAKSHMI, Countrywide CAA & NRC protests: Secular unity <https://frontline.thehindu.com/cove-r-story/article30431601.ece> (accessed on 2nd March, 2021)
- Kedar Nath Singh vs State Of Bihar, 1962 AIR 955, 1962 SCR Supl. (2) 769
- Section 113 of Macaulay's Draft Penal Code of 1837-39
- The Indian Constitution Act, 1950
- Romesh Thappar versus State of Madras AIR 1950 124 SC
- AIR 1978
- AIR 2012