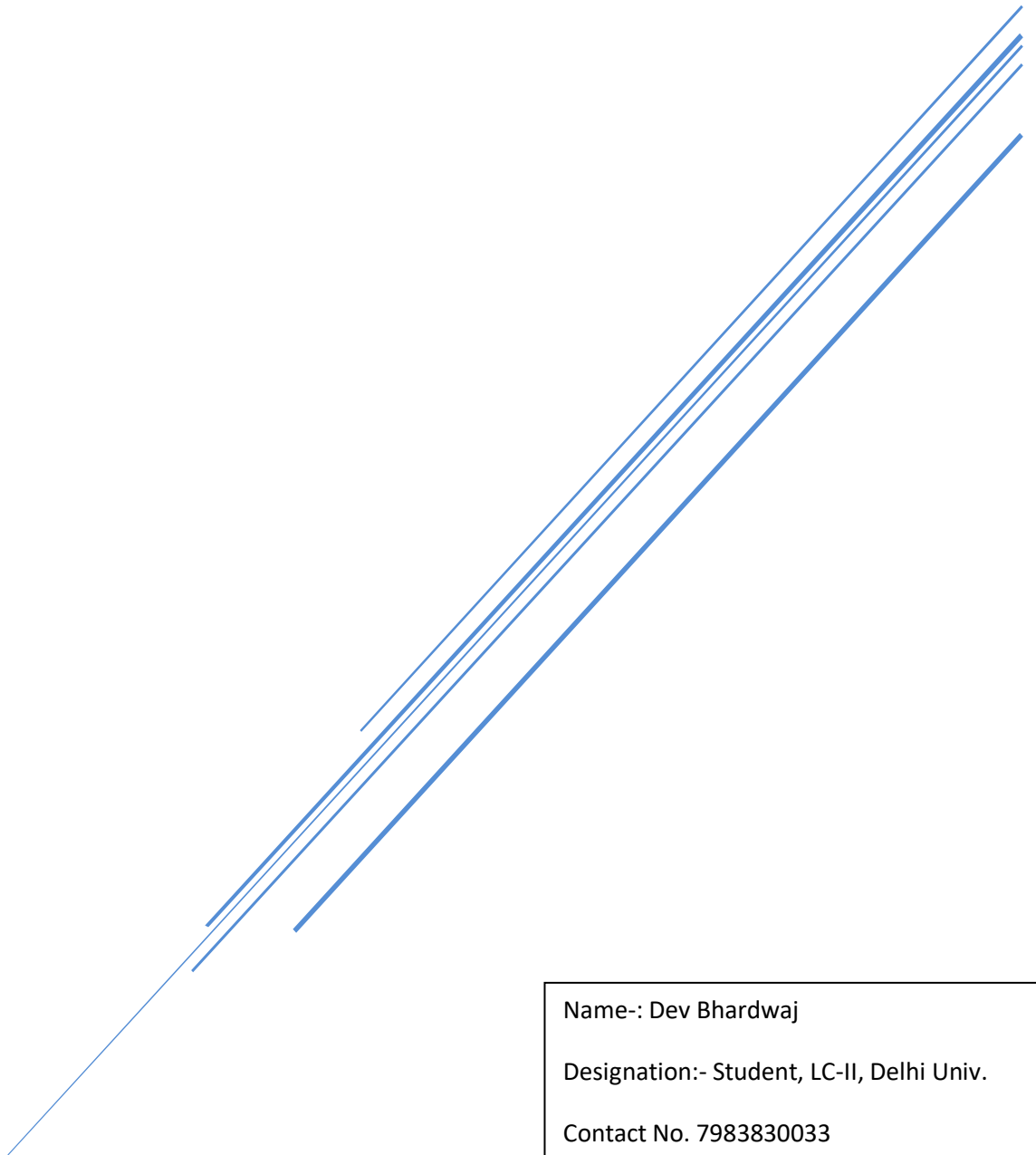


RIGHT TO PROTEST



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ABSTRACT

Our constitution is pinned with the philosophy of showing free expression, dissent when something is shared by a considerable amount of people, protest is one best way to get in notice and to make the government re-think and change the decision. Even though the word itself is not used in the constitution but it is very well imbibed in it, driving its spirit from our cultural history. Our citizens participate in the election twice, once in forming the government and second when acting as a watchdog of the government action. The right given to us gives the power not to just sit back and be mere spectator but to be the highest of monitoring the governance of the country. Thus, making the Right to protest one of the most essential elements of democracy to be exercised from time to time.

As the constitution provides us with this right it also puts the lashes to set its boundaries in which it must be exercised, if one critically looks these boundaries have been breached at times, such event raises a crucial question how to protect these rights. As more and more of technology is getting involved with our lives and the fact government and other stakeholders are learning new ways how to use technologies, fundamental right protection and their proper usage is getting diminished.

With the on-going farmer protest, have gained controversy of it being under constitution or not due to its disproportionate support while some view it the right to dissent and others as an attack on civilised society by blocking roads and highways for prolonged periods. Another which needs to be seen during the farmer protest is that people who have joined the cause with farmers via online media have provided a new path to demonstrate. This leads to rising questions to protect the right to protest not only rounds but also on the internet. As we all know, digital space is not neutral, and it is getting more and more segregated into different ideologies. This makes it a platform for everyone to share their views and opinions. A practice of government to monitor and take down/ block pages, support groups, articles & publications which are not assertive to them is a repression of Art 19 in this digital era, even those who control information technology service manipulating and coursing algorithms of the internet for their benefit are lethal to a democratic structure. We must recognise the opportunity that the internet provides us to exercise our right, but we also need to know that these platforms can be manipulated and hijacked.

Also, what about the right of those who are in support, it is not only that our Constitution provides the right to those who want to dissent. There can be scenarios where there are people who support the government but do not take to public places, launching an anti-protest against the protesters. They are also the people of India just that they are not showing their support. An indefinite protest at a public place becomes troublesome to commuters, economic losses are to be faced due to blockage of roads.

RIGHT TO PROTEST

After the discovery of fire and wheel, one can easily say that protests played the equivalent part in the revolution and development of mankind. Going through history one can see how much empowerment and changes were brought with the protest. All over the world there are hundreds of examples where citizens have protested, giving power to their voices and have brought the greatest authorities / rulers/ government to their knees. In India we get to introduce this power of protest during the British rule when we struggled against the anti-colonial rule and within which the seeds of political public sphere and democratic constitution were shown.

The citizens of India fought every battle against the colonial rule to show their dissent and form their public opinion. One cannot forget the establishment of power of peaceful protest from the chamaparan stayagrah by Mahatma Gandhi and the rest where all addition to that non-cooperation movement, civil disobedience movement, quit India movement etc. All showed that the peaceful protest is the most prominent way of showing dissent. But the Indian history got evidence of its first protest long ago when the Lord Krishna collectively with the people of Vrindhavan voices their opinion and showed their dissent against the Indra of his tyrannical rule to worship him. This incidence showed us how mere normal people of a village stood against the deity, they struggle his might who flooded the village, destroyed their home. But they showed dissent peaceful and in the end Indira came to bow the Lord Krishna. A great change brought through peaceful protest by normal people.

LOCATING RIGHT TO PROTEST

Fundamental right from the most essential part of our constitution. These are the fruits which we have earned after prolonged struggle for independence. The colonial rule was the time, when Indians were deprived of any such civil liberties and rights, there was suppression of the

voices of people. After the independence the people of India were awarded these rights to practice their decision and demands.

Although every right is important but among them Article 19 holds special value as it empowers the people with the power to show dissent, it gives the platform to voice their opinion, to act as a watchdog. However, the fact word Protest has not been used anywhere in the constitution is implicitly derived from the in-depth reading of Article 19. The right to protest is presumed to be there in Article 19 as this constitutes our political freedom to show our expression against the government.

¹Article 19(1)(a) of the Constitution elucidates that right to free speech and expression. It includes that every person has the right to express their personal opinions but subjected to reasonable restrictions.

²Article 19(1)(b) states about the right to assemble peaceably and without arms. Thereby, the right to peaceful protest is bestowed to Indian citizens by our Constitution.

³Article 19(1)(c) to form association or unions/ cooperative societies.

These three articles constitute the right of protest on the basis that a protester can exercise his right to hold a protest against any issue of national or social interest.

- The right to freedom of expression and expression means that each person has the right to freely express his or her opinions through a means such as gesture or mouth, etc.
- The right to peaceful assembly without weapons, which is to hold public meetings or to close a procession.
- The right to create associations or trade unions meant the right to form self-regulatory clubs, professional associations or companies in the field of common interest. To become the part of collective bargaining.

Although these three articles is where we can find the right to protest, article 19 (1)(d) is a supportive part which provide free movement throughout the territory of India

The constitution of a country not only gets its substance what goes in the word but also in its history of its development, referred to as its spirit. It was those peaceful protests and struggles

¹ INDIA CONST. art. 19, § 1, cl. a.

² INDIA CONST. art. 19, § 1, cl. b.

³ INDIA CONST. art. 19, § 1, cl. c.

that our people had against the British rule which finally led to our independence. This has taught us to publicly demonstrate, to form and express public opinion, to get heard and show dissent to the policies of the government, to yield. None of the dharnas, movements found in the article of constitution but are supposedly derived from it as it is imbibed in the spirit of our constitution.

We have and are witnessing public dissents in India. Recently attributed to anti CAA protest and farmer protest. Such public protests are symbolic representation of showing dissent, voicing public opinion, collective struggle in a free, democratic society. This shows how our culture is assimilated with the active participation of people in developing and shaping the nation. This also shows our culture of hearing the opinions of even the last man of the society, to involve every view point and have productive dialogue in developing strategies for nations. For this, the right to freedom of expression, association and peaceful assembly are necessary.

CONTOUR OF RIGHT TO PROTEST

Our idea of protest flows from the peaceful struggles and not of aggression whether it is Lord Krishna against Indra or Mahatma Gandhi Satyagraha. This adaption itself gives us both the power and restriction to show our public dissent. The idea of any democratic setup is that decisions are taken by those who are in majority but that does not leave the minorities to simply abide by it, their opinion must be registered. A democratic free society is completed when those who disagreed have been heard and addressed. But the final decision stands to the elected government thus the disagreement with the government ideally culminates to have dialogues on the issues which led to protest. For this to happen the dissent should be under some parameters.

If our constitution provides us with the rights, it also imposes some duties and restrictions on these rights. As it says with power comes responsibilities, as in the nature of most right none of them are absolute. Similarly, if Article 19 Part III of constitution provides for freedom of speech and expression, it also imposes reasonable restriction to which this right extends.

The rationale behind including reasonable restriction has been laid down in the ⁴A.K. Gopalan V. State of Madras Das, J., had opined that reasonable restrictions are imposed on the enjoyment of fundamental rights due to the fact that in certain circumstances, individual liberty

⁴ A.k. Gopalan v. State of Madras, AIR 1950 SC 27 .

has to be subordinated to certain other larger interests of the society. Shastri, J., had observed that in civil society, man's actions, arising out of his exertion of the fundamental rights conferred upon him, have to be controlled and regulated so as to reconcile the conflicting exercise of the civil rights by other people.

Therefore Article 19 (2)&(3) provide for the reasonable restriction on art. 19(1) (a) and (b) which can be imposed by the law. These restrictions should qualify the Double Test which is of reasonability and purpose of the restriction. A restriction of an excessive nature cannot be reasonable as in ⁵Chintmanrao V. State of M.P.

The reasonable restrictions are imposed for India-:

- in the interests of the sovereignty & integrity,
- 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.

This form the circumference of the right in which it can be exercised. Also, the constitution impart the duty upon the citizen through ⁶Article 51A making it a fundamental duty for every person to safeguard public property and to avoid violence during the protests and resorting to violence during public protests results in infringement of key fundamental duty of citizens.

Both these found the fundamental determining boundaries within which one can practice his right to protest.

Another important part is played by our Judicial system in defining the contour of article time to time, many precedents have followed on the protest which have taken place in our nation. Our democracy provides a mechanism where a majority elected government can infringe the fundamental right of a single person. The protection is available at the most minute level, but for this to work people should have credence in the judicial organ.

Our Apex court has played a crucial role in defining the right conferred by the constitution and duties which follows with them. There must be balance between one exercise of his right and another getting his right infringed duty such exercise.

⁵ Chintamanrao v. State of Madras, AIR 1951 SC 118.

⁶ INDIA CONST. art. 51A, amended by The Constitution (Forty-Second Amendment) Act, 1976, sec. 11 (w.e.f 3-1-1977).

As in the case of 2011 case of ⁷Re-Ramlila Maidan Incident Dt vs Home Secretary - relating to the arrest of yoga guru Ramdev's anti-black money agitation, the Supreme Court held the right to freedom of speech and expression as the essence of a democratic system.

The Supreme Court said, "There could be no expression without these rights. Liberty of thought enables liberty of expression. Attainment of the preamble liberties [of thought, expression, belief, faith, and worship] is eternally connected to the liberty of expression."

In the case of ⁸Amit Sahani V Comm. Of police, SC observed while Dismissing a review petition on the anti-Citizenship law protests, the Supreme Court said that "the right to protest cannot be anytime and everywhere". The right to protest cannot be any time and everywhere. There may be some spontaneous protests but in case of prolonged dissent or protest, there cannot be continued occupation of public place affecting rights of others."

Reference given of ⁹Mazdoor Kisan Shakti Sangathan V UOI Anr. 2018 (Jantar Mantar Case) were also free movement of locals was hindered due to ongoing protest at the Jantar Mantar. In both the cases SC maintained the balance between exercising protest and right to commute and ordered that Administrative authority using a proper mechanism for providing a designated place to the protestors and formulate guidelines for the same.

The courts and government refer to Article 51A (i) of the Indian Constitution on fundamental duties "to safeguard public property and to abjure violence" which is even on the protest, resorting to violence will be a clear violation of the fundamental duty. Article 51A is a reasonable restriction on Article 19 by the purview of law. This put lashes on the fundamental right providing it the lawful and peaceful usage, thus by maintaining balance between the excess of a right and protection of tranquillity of the state by capping

DIGITAL AGE

Technology has advance by leap and bounds in last decade it has almost had entered in every sphere of human life including our fundamental rights. It has both the face of developing, improving as well as posing new threat to our exercise of rights. In the contest of article 19 while this has also given us many ways to show our dissent, not only coming out in the public but one can now use online platforms to stage their protest. In 21st century adoption of internet

⁷ Ramlila Maidan Incident Dt v. Home Secretary, (2012) 2 MLJ 32 (SC).

⁸ Amit Sahani V Comm. Of police, AIR 2020 SC 4704.

⁹ Mazdoor Kisan Shakti Sangathan V UOI Anr, AIR 2018 SC 3476.

technologies has become an indispensable tool by the people to exercise their rights. No doubt this has played a great role around the world providing more perspective about as recently seen in the anti CAA and farmer protest, how people have come in support from different parts of the world who feel the same as those of local public protesters yet we see contemporary examples how technologies usage is undermining the human rights around the world.

From here a crucial role is played by the social media service provider on whose expressions of dissent is carried out. Social media platforms have become a new digital public square. Private sector service providers of internet technologies play a significant role in promoting, respecting and defending freedom of expression in the digital age. In the event of pandemic their acquisition of civic space over the internet have grown more even covering public services, judicial organ and education sector, an acceleration to push towards mass digitalisation. As they are the medium via which information is flowing, which can be easily tracked, monitored and altered as per the agendas of the stakeholder. This can seriously hamper the privacy of the user, which is integral for establishment of trust for the individuals and societies when they come online, particularly to exercise their right. Developing an environment with strong privacy protection over internet communication technologies is pivotal when talking for the marginalised communities so that they can access it to exercise their fundamental rights.

Surveillance: With the advancing technology monitoring and tracking one individual has become more viable. Nonetheless, online communications can be easily intercepted by third parties from corporations, states, and non-state actors. Government can easily track the sources of communication and identify the activist. By doing this the government can impose a ban on the sources of information like taking down the social page or handle of the people. And the very famous shutdown internet which directly attacks the free flow of information, hampers the reporting via journalists. Recent studies show that most internet shutdowns are due to protest. This can be a barometer of how well the government is able to take dissent.

FRT: facial recognition technology to identify the people who were involved in the protest and later can be traced. In India recently FRTs technologies have been used for identifying protestors, however this technology is still to catch up. Also a legitimate point is made using FRT is that it helps to cut unnecessary arrest & detention of people only those who were involved in the violent are to be tracked just like what happened in Uttar Pradesh Facial

recognition helped police home to 220 million people, detain a “handful” of the more than 1,100 people arrested for alleged links to violence during protests,

However, this FRT was circumvented by the protestors by wearing masks and hoodies while participating like recently seen in Hong Kong.

Data collection- Data is the new nuke of this world. One that controls the data holds the power in his hand. Data is algorithm driven which can be tracked, altered and manipulated in sense which can be in interest of. They can collect and store data of associations, individual assemblies online and offline. Social media platforms may sell or share this information to other third parties, including police authorities, government and private stakeholder.

These 3 main challenges need to be addressed so as to protect the right of protest in this digital age which calls for urgent need in formulation of strong guidelines for protection, regulation and collection of data. Unchecked mass surveillance, including the erosion of fundamental freedoms of expression, assembly and association.

- An international call for collective response for protection of the rights and generating support UN, governments, big business organizations, social media companies should come together and make a way out of these violations of rights because of technologies, etc.
- Setup of a multi stakeholder control over the internet governance must be strengthened. The Internet is not a product of only governments only but also by many non govt. entities, therefore they cannot be best to make decisions regarding regulation of the internet.
- Most importantly the fact most of the used social communication platforms come from western world which creates an asymmetrical graph of control over internet information. In response internet sovereignty must be there so that the government of a country have control on aspects of the internet within their borders.
- On the human rights policy front, civil society organizations dedicated to protection and promotion of human rights are best placed, and must have a seat at the table alongside governments, technologists, the private sector and others, in creating Internet governance mechanisms that prioritize global human rights in the digital realm.
- Here judicial comes at the crucial role of watchdog to take the substance of instances where the government breached such right by unchecked surveillance, forming collaboration service providers for gathering of data. They should ensure that these technologies must be used legitimately and for the welfare and development of states. Also, the ruling government should watch for all these private internet players who clandestinely use their artificial intelligence for

gathering data which can be used in a very exploitive manner and seriously infringes privacy of the users.

Government uses these blatant tools of shutdown, takedown and surveillance over the internet platform for suppressing the rights. Also states need to put a watchful eye over the regulation of technology companies, as it is not only the government which hampers the right but also the private sector. They are the holders of wealth of information, having the key to access, restrict users' accounts or take control of a series of events to disrupt state and societies interests. Recent notice can be taken when the WhatsApp policy update of sharing the data with its parent company Facebook. The Chinese apps which were banned for alleged threat to the security of the nation. Facebook – and its algorithmically driven news feed – had helped spread hate speech and incitement to violence. Are such examples which show how technology can be used to manipulate people and spread hatred which can result in serious damage to the country.

USE OF ANTI-TERROR LAW

Countries like us have steadfastly developed anti-terror laws in response to various threats posed by the terrorist groups and the tragic event that had happened. Terrorism has immensely affected India. Anti-terror laws in India have been a subject of many controversies. One of the main reasons lies that they infringe the right mentioned under part III of the constitution. These laws were made to implement still the situation improves, but recent times have shown that these laws have become a tool for the states to oppress opposition, restraining journalism, activists, and people from defending political and legal rights. In India anti-terror laws broadly covers Unlawful Activities Act, Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and Prevention of terrorist Act (POTA).

While these acts are important for us looking at what our country has suffered, a point to be made is that implementation does not stop terrorist activities. But they have been used more to usurp the dissent against governments. A study on TADA and POTA would disclose how states and police misused its power in prevention and detention of people. The serious breach due to use of these law under the fundamental right provision of constitution and international right rest on-:

- A broad and enigmatic definition of terrorism which fails to properly work on legal framework.

- Pre-trial investigation and detention process which is deleterious to personal liberty and limit on length of detention.
- Presence of presumption of guilt over innocence in provision related to special laws
- Insufficient functioning of the police, use of abusive behaviour towards the protesters
- Unguided, discriminatory and variable application of law.

Application of these laws in cases of protest and dissents can infringes upon freedom from arbitrary arrest and detention, freedom from torture or cruel, inhuman, or degrading treatment, freedom of religion, freedom of speech and association, and the right to a fair criminal trial which seriously hampers human right protection.

At first these laws were implemented to protect Indian citizens. The currently available anti-terror law of India UAPA application can hinder with the provisional safeguard provided under the constitution and ¹⁰Cr.P.C for arrest, detention and bail provision, like the sec.49(2) of UAPA thorough which pre-trial time period is extended as compared to what in Cr. P.C. has been used in an exploitative way, parallel to it in sec.¹¹**43D(2) of UAPA an accused shall be detained in custody so long as they do not furnish bail. Thus, if the accused is poor or unable to meet the terms of the bail bond for which sureties are prerequisite”, there is no safeguard in the UAPA for them to be released on bail.**

When any protests are booked under anti-terror laws it sends a stereotypical message of them equating to the terrorist. Well, any act violence can be dealt under Cr.P.C doing it under UPA grants extra power to courts and police in their trial. The basic concept is about making presumption of innocence in the Indian Jurisprudence but in these anti-terror laws there is a departure from this concept. ¹²Sections 22 of MCOCA, 43(E) of UAPA and formerly ¹³Section 27(2) of POTA, do require the trial court to draw an inference of presumption of guilt against the accused unless the contrary is proved. Hence, such adverse inference in the form of presumption of guilt based on definitive evidences gives UAPA a stringent character. In case of normal citizen dissent such a situation can be a very crucial factor in deciding the outcome of the trial.

¹⁰ THE CODE OF CRIMINAL PROCEDURE, 1973, NO. 2, Acts of Parliament, 1974(India)

¹¹ THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967, § 43D, cl. 2, No. 97, Acts of Parliament, 1967 (India).

¹² MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999, § 22, No. 30, Acts of Maharashtra State Legislature,1999(India).

¹³ THE PREVENTION OF TERRORISM ACT, 2002, § 27, cl. 2, No.15, Acts of Parliament, 2002 (India).

Recent instance has occurred where: -

Sudha Bhardwaj and other booked under chapter IV to V of UAPA Act which deals in terrorism. They Were not terrorists, they were just exercising their right to dissent via writings and speech, against the state policies, a right well protected under art.19(a) of the constitution.

Incidents like the Delhi Riots and Bhima Koregaon, where protests turned violent and disrupted law and order, the rightful law to be applied is the Indian Penal Code, because these offences are localized in nature and do not pose a threat to the unity and integrity of India as a whole

More than 300 teachers, journalists and students were booked under the UAPA during the anti CAA protest in Delhi. Also, in the fast farm protest Delhi police invoke anti- terror laws, even if violence during any protest the police and administration bodies should not be in haste to apply them, violence and aggression can be dealt with the existing penal laws, such hasty implication result in poor investigations and unnecessary torment of the people.

A study most of the cases booked under terror laws fall short of the conviction, prosecution fails to build up charges thus like in the recent case of environment advocacy group Fridays for Future' UAPA was wrongfully invoked. Thus, an environment is made where bail is stringent and conviction is too weak, which shows how these laws have become a tool to oppress dissent. However, all cannot be said to weigh one side, India as a country has always felt threatened from terror activities, internal furore. Our past is evident of many such tragic incidences where economic and life losses have given heavy blows to country spirits.

Developing such stringent laws defines our subconscious defence mechanism, a precautionary setup before even happening of any events. When a real act of terror occurs, it can evade due to incapacitated legal framework.

Since the age world is facing terrorism, defining terrorism will be the crucial step for developing a mechanism which does not align an act of terror with a protest. These counter terror mechanisms have been codified in our constitution in multiple entries which result in creating analogous legislation of Union and at state level, which is more used as a tool by the state when faced with a dissent for suppression. Acts like UAPA which is a union legislation but is more applied by states. Also, multiple implications involve multiple agencies in the matter which create havoc, lengthening the procedural aspect of the case instead an end to the

trial of the individual. In such cases innocent protesters get deprived of their personal liberty in this entanglement of procedures, not getting a fast and fair trial.

In Indian context, terrorism must be defined parallel to concept of national security and not in the expression of dissent by people.

Violence is another problem which is seen with protest. Sometimes some section within the protest becomes aggressive which utterly disturbs the main objective of the protest. When a protest turns violent it hampers the essence, the message it was meant to send. All seems to go in vain when a protest plumate to violence, the very purpose of it gets polluted. When protests descend to violence, societies develop a bird eye view against it, and people who are part of the protest also get weighted on the same scale. A pre-judicious stigma spurts against the people's part of it, and sees them as a threat to society connoting it with terror-like activities. This is the reason why more and more usage of anti-terror law in cases of violence during protest is seen, increasing brutality and misconduct by the police. Any act of violence is perceived as a terror activity, like a comorbidity in our system resulting from the violence our society has faced. Which resulted in a exploitive precautionary setup rather than accurate define conviction system providing fair trial and justice

Well in the end it can be rightly adduced, a peaceful protest is a power which cannot be measured yet. The struggle which people put into dissent, is enormous and gorgeous. Whatever the system of land is, a protest gives the supreme authority lies with the people. Sitting at the top of the hierarchy acting as a watchdog of the machinery. As it is rightly said: -

“When injustice becomes law, resistance becomes legislation”