

## DISSENT IN DEMOCRACY SHOULD GET APPROBATION OR REPROBATION

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### **ABSTRACT**

In the words of Justice Deepak Gupta - “**Right to Dissent is a hallmark of democracy.**” In the words of Abraham Lincoln – “Democracy is the government of the People, for the people and by the people”. Irrefutably India is a democratic country where each and every Individual are embellished with fundamental rights which provide one of the Paramount right that is enshrined in our Indian Constitution “**Article -19 Freedom of speech and expression**”. This contemporary era is well acquainted with the word “**Anti- Nationalist**”. In India this term is so ubiquitous or Vogue that it is often assimilated with article 19. The particular term has been **recent and decent synonymous word to the voice of dissent**. Apart from this term the act like UAPA, laws like sedition have become the identification of dissent in our democratic country. This particular article exhibits the limpidity behind the opacity of rights of dissent. Dissent opinion can be defying to the political party or ruling or opponent government but it can not be termed as terroristic. Dissents are the preserver and defender of the very essence of sovereignty and Chastity of democracy. This article elucidates the broader picture of dissent in democracy. The Preconceived notion that the law is innately complex and can only be understood or benefitted by people belong to the legal fraternity only is becoming the weapon to suppress the voice of dissent even in democracy.

**Keywords:** Hallmark, Dissent, Anti-Nationalist, Irrefutably, limpidity, opacity, Paramount, Article 19, Sedition

### **INTRODUCTION**

Dissent can be defined as the disagreement, dissatisfaction or opposition. Dissent can be a reluctance to cooperate with an established organization or source of authority, which can be social, cultural, political or governmental.<sup>1</sup> Dissenting opinion can be of judges in the courtroom, of common person behind the closed corridor, of an activist in an open ground, of

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<sup>1</sup> Mark Redhead, Dissent

<https://www.britannica.com/topic/dissent-political> retrieved on: - 16-07-21

a helpless man/woman behind the café curtains or of youth in social media accounts. Dissent opinion is inevitable, even in a small family of 5 to 6 members there can be 2-3 acceptance but two refusal at any point. So, at mass level in a country of huge population it is stupidity to expect no dissenting opinion.

Our liberation from British colonization is the result of voice of dissent, our own the longest Constitution is the upshot of efforts done by dissent. Our preamble the mirror of our constitution of India affirms liberty of thought, expression, belief, faith and worship. Even it is one of our fundamental rights. So we have immense right and way to express our disagreements in democracy. Recently Supreme Court Judge Justice **DY Chandrachud** said – **“The destruction of spaces for questioning and dissent destroys the basis of all growth – Political, economic, cultural and social. In this sense, dissent is a safety valve of democracy”**.<sup>2</sup> He is very much correct in every aspect whether in judiciary or in political or cultural rights dissents are the most valuable coin. While at initial stage the dissent opinion or voice is ignored or suppressed but at later stage it becomes the evolution of something unique. In legal point of view many landmark judgements are based on dissent opinion on previous case overruling the majority opinion. So, we can definitely say dissenting opinion of many cases proved to be majority opinion and created a leading light. In *A.K. Gopalan v. State of Madras*<sup>3</sup> the dissenting opinion of justice Fazal Ali on the broader aspect of the term ‘personal liberty’ where he emphasized that procedure must be reasonable and fair became the widest possible interpretation and landmark judgement in *R.C. Cooper V. Union of India*<sup>4</sup> also known as *Bank Nationalization case Maneka Gandhi V. Union of India*<sup>5</sup>. But this era is vanquishing the expression of dissent and stigmatizing them as offenders instead of welcoming them whole heartedly in almost every field. We need to decode the noteworthiness of dissent.

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<sup>2</sup> Sohini Ghosh, Dissent is ‘safety valve’ of democracy: Justice Chandrachud, The Indian Express, 15 February, 2020, 9:12:08 pm  
<https://indianexpress.com/article/india/justice-d-y-chandrachud-cao-protest-democracy-anti-national-6269831/>  
retrieved on: – 16-07-21

<sup>3</sup> A. K. Gopalan v. State of Madras, AIR 1950 SC 27.

<sup>4</sup> R.C. Cooper V. Union of India, AIR 1970 SC 564.

<sup>5</sup> Maneka Gandhi V. Union of India, AIR 1978 SC 597.

**ISSUES**

1. Whether dissents are being stigmatized in democracy?
2. Whether dissents are having proximity to Unlawful Activities (Prevention) Act?
3. Whether dissents are always ardent or violent?

**ISSUES AND ARGUMENTS****1. WHETHER DISSENTS ARE BEING STIGMATIZED IN DEMOCRACY?**

Dissents are the one who are the essential element of democracy. Political dissents keep on reminding the ruling government to perform their duty and exercise their power being in the ambit of legality as well as humanity. They oppose to particular decision or guidelines set by the ruling party, that does not mean they are exceeding their right to freedom of speech and expression. It is time of techno world so dissents take help of Social media mostly to express their dismissal through their twitter account, Facebook or Instagram i.e., a kind of digital activism or Cyberactivism. Although the hon'ble Supreme Court in the landmark case of *Shreya Singhal V. Union of India*<sup>6</sup> nullified Section 66A of the Information Technology ACT claiming it as an arbitrary and excessive of power which is not under the umbrella of reasonable restrictions enshrined under article 19(4) of Indian Constitution. Though the arbitrariness to reprimand dissent opinion is continuing. Recently the arrest of a 22-year-old climate activist Disha Ravi on sharing a document to help farmers protest against new agricultural law seems to be attack on free speech.<sup>7</sup> Many of the activists including present Delhi Chief minister are describing it as an “**Unprecedented attack on democracy**”. This is a classic example of how frivolously our democracy is being attacked and how superficially the attackers are justifying everything. Victimization over the people who raise their voice often scare the rest people who realize their rights but choose to be silent just to save their well and bright image from being tarnished or oxidized. When an activist or a common man from our own country tweet against any undesirable steps these news are sensationalized by some media persons and deliberately the dissents are made accused in the eyes of common

<sup>6</sup> Shreya Singhal V. Union of India AIR 2015 SC 1523.

<sup>7</sup> Hannah Ellis- Pestern in Delhi, The Guardian, Wed 17 Feb 2021 18.23 EST

<https://www.theguardian.com/world/2021/feb/18/disha-ravi-the-climate-activist-who-became-the-face-of-indias-crackdown-on-dissent> retrieved on: 17-7-21

people by some falsely exaggerated facts. These things must be taken into consideration and dissents must not be stigmatized rather they deserve panegyric.

## 2. WHETHER DISSENTS ARE HAVING PROXIMITY TO UNLAWFUL ACTIVITIES (PREVENTION) ACT?

The Unlawful Activities (Prevention) act can be defined as an act for effective prevention of unlawful or terroristic activities in India. However, it came into existence in 1967, as Unlawful Activities (Prevention) Act, but the amendment made in 2019 made it more stringent. In democracy we always aspire for civil liberties to be more expanded. But this act is said to be against civil liberties. Though the main objective of Unlawful Activities (Prevention) Act is to tag individuals as terrorists if finds any kind of involvement or participation in terrorist act or terrorism.<sup>8</sup> But the act is being misused and showing arbitrariness by arresting and criminalizing dissent just to settle political score. There has been a rapid growth of over 72% in number arrested person under Unlawful Activities (Prevention) Act in 2019 as compared to 2015 as per Ministry of Home Affairs in Lok Sabha while only 2% were convicted by the court.<sup>9</sup> In a liberal democracy power should not become the base of law but the **status quo** of our nation is that the dissents are being encroached and delegitimizing them has become the most unexacting thing. Our Supreme court has always taken a broader aspect when it comes illegal arrest or false imprisonment. In the case of *Bhim Singh V State Of J&K*<sup>10</sup> it was said that mischief or malice invasion may not be washed away by just being set free of the accused, the state need to compensate the victim by awarding suitable monetary compensation.<sup>11</sup> The fanciful charges of stringent UAPA and sedition law are resulting in destroying the social and physical lives of many activists or innocent dissent. The death of **social activist Stan Swamy** in jail custody, whose bail petition was denied several times was called as a forever stain on India's human rights record by an UN human rights expert said.<sup>12</sup> Recently **Mohammad Irfan Gaus and Ilyas Mohammad Akbar**

<sup>8</sup> UAPA Bill 2019: All You Need To Know About Anti- Terror Bill ,NDTV, Aug 02, 2019 <https://www.ndtv.com/india-news/uapa-bill-2019-all-you-need-to-know-about-anti-terror-bill-2079395> retrieved on 18-07-21

<sup>9</sup> Bilal Kuchay, With 2% convictions, India's terror law more a 'Political Weapon', ALJAZEERA, 2 July 2021 <https://www.aljazeera.com/news/2021/7/2/india-terror-law-uapa-muslims-activists> retrieved on: - 18-07-21

<sup>10</sup> *Bhim Singh V. State Of J.K* (1985) 4 SCC 677.

<sup>11</sup>Dr. J. N. Pandey, Constitutional Law of India; 336(Central Law Agency, 55<sup>th</sup> Ed.2018)

<sup>12</sup> The Wire staff, 'Stan Swamy's Death will forever remain a stain on India's Human Rights Record': UN Expert, 15 July, 2021 <https://thewire.in/rights/stan-swamys-death-india-human-rights-record-un-expert> retrieved on 18-07-21

**Charged under UAPA** terror were acquitted by NIA court in Mumbai On 13<sup>th</sup> June, 2021 finding lack of evidence, after spending their 9 precious years behind the bar whose bail petitions were rejected several times. Setting free after 9 years living in prison without conviction is a consequence of black law. **Ex parte** rule is being imposed to dissent while they deserve **Audi alteram partem**.

### 3. WHETHER DISSENTS ARE ALWAYS ARDENT OR VIOLENT?

Right to protest peacefully is one of the greatest essence of fundamental right given to the citizen of India. Prior to independence our freedom fighters, social activists and great nationalist have always protested against the Britishers in power to save the unity, integrity and sovereignty of our country. Civil disobedience movement under the stewardship of our National Father Mahatma Gandhi, peaceful protest against infamous Rowlatt Act in Jallianwala Bagh in Amritsar in retaliation of which the British General Dyer committed a heinous massacre of innocent people protesting there, The salt march under the leadership of Mahatma Gandhi and many more protests and movements contributed to our independence. So dissent or dissenting opinion has been the **sine qua non** for the effective growth of our country. Now, there is a paradigm shift where raising voice against the government in power is understood as voice against our own nation and labelled or designated as Anti- nationalist. Even peaceful protests are fabricated by the authority in power and without justifying the reason they are being falsely arrested and detained. Recently many activists alleged Delhi Police for falsely implicating people, who had been the part of protest against the Citizenship Amendment Act (CAA) and National Register of Citizens (NRC). The dissent alleged that in place of investigating the violence the Delhi police are arresting the Anti-CAA or NRC. Ms. Krishnan an activist said a 20- year e-rickshaw driver got shot while he was returning to his home was falsely named as mastermind in CAA protest. Approximately 1000 lawyers dissociated themselves from the Statement made by Bar Council of India and protested against Citizenship Amendment Act (CAA).<sup>13</sup> The question is if threats of arrest and incarceration cement the voice of dissent vigorously who will lit a fire under against the government.

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<sup>13</sup>Special correspondent, Anti- CAA Protests: Distance themselves from BCI stand , The Hindu, Dec 26 2019 11:13 IST  
<https://www.thehindu.com/news/national/anti-caa-protests-1000-lawyers-distance-themselves-from-bci-stand/article30400485.ece> retrieved on 19-07-21

At this hard time also where our country is grappling with such worst condition of facing COVID19 the agitation of dissent over The Indian Agriculture acts of 2020 commonly known as Farm Laws are weighing on the government It does not means the dissents or protestors are anti-nationalist. It is just that electoral fundamentalism is not the end accountability, answerability, transparency or rule of law in democracy. Dissents are invoking for the complete package of democracy, 1-2 means only should not be acceptable. It is just not only in democracy but ethically also it is believed that a society which allows dissent is actually acting ethically. Though there are reasonable restrictions provided under Article 19 (4) of Indian Constitution barely should be applicable when any kind of reasonable situation literally arises.

### CONCLUSION

Dissents are the one who assist in maintaining the constitutional spirit in a democratic country. They are that safety valve who protect the line to be blurred between the Rule of Law and Rule by Law. It is really bizarre that at this moment their false criminalization are being done. They have right to ask for righteousness, fairness, equitability and to protest against unfairness, Unjustness and most importantly to invoke their fundamental rights of speech and expression reasonably. They are the foremost reminisciential weapon against the whimsy and fancy willfulness of authority in power. Dissents are the one who add to effective citizen participation which nurture the quintessence and momentousness of democracy. They preserve our Constitutionality, we need to preserve their invaluable voice. Doubtlessly they are not always right but they are also not always wrong. We have so far judiciary to decide what is wrong or rights but noone can snatch our right to put forth our views or opinion. Dissent are not meant to be defamed and to be the victim of conspiracy theory of dirty politics game set by politicians to straighten their owl of vote Bank. The way the glory of the Sky is from stars, the embellishment of Zoo is from animals, The luster of democracy is from dissent or dissenting opinion. In the words of Supreme court judge **justice D Y Chandrachud- “Criminal law, including anti-terror legislation must not be misused for quelling quelling dissent or for the harassment of citizens”**. Therefore, counter-majoritarian’s presence need to be greeted and secured.