

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.



Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

A TRYST WITH DISSENT

Understanding Dissent in India as an Integral Part of the Right to Freedom of Speech and Expression, the implications of it and challenges it faces in a robust democracy.

AUTHORED BY - JOSEPH JUDE JACOB¹

The spirit of the Indian Constitution is well-captured in its Preamble. The Preamble is a reflection of the core constitutional values that embody the Constitution.² While the Preamble does not grant any substantive rights to the people and is not a legally enforceable instrument, it contains the general aspirations of our founding fathers, particularly with regard to the things they wanted their future 'free' generations, citizens governed by their own will, to enjoy without any restrictions. One such aspiration of our founding fathers was to secure for all citizens the virtue of Liberty, so that they can be free in their thought, expression, belief, faith and worship. The ideal of liberty, *inter alia*, is a product of the French Revolution. From then until now, centuries after the revolution, liberty along with the other values that the Revolution fought for, has come about to occupy the eminent position of being cornerstones of democracy. A democracy can have liberty either as a pre-condition or as a consequence of it. As a precondition, certain basic civil and political liberties are considered by many scholars to be essential elements, apart from participation and contestation, that are crucial to defining and understanding democracy. The concept of liberty as a consequence of democratic rule emerges from the general belief that a democratic government will certainly work towards protecting certain basic human rights of its people.³

One of the distinctive features of a democracy is that the leadership is elected by diverse people with diverse opinions, who all have a right to represent their opinions and pursue their interests.⁴ It is imperative that the leadership elected by the people represent the true will of the people and take decisions which are beneficial for them, rather than arbitrarily exercising the

¹ First Year B.A. LL.B. (Hons) student at School of Law, CHRIST (Deemed to be University), Bangalore.

² https://www.indiaculture.gov.in/sites/default/files/events/Preamble_the_Soul_of_the_Constitution_26.11.2020.pdf

³ Russel Bova, 'Democracy and Liberty: The Cultural Connection' [1997] Journal of Democracy John Hopkins University Press 112

⁴ EPW Engage, 'Dissent in a Democracy: Political Imprisonment under the UAPA in India' [2022] Economic and Political Weekly (Engage) <<https://www.epw.in/engage/article/dissent-democracy-political-imprisonment-under>> accessed 24 February 2025

power vested in them. From a practicality standpoint, it would be nearly impossible due to the large populations we have today in most countries of the world; to have an absolutely accommodative fashion of decision-making wherein each and every individual opinion is taken into consideration before reaching a finality on the course of action. Therefore, it is only natural that opposing opinions or dissent will emerge, from the side of those citizens, who feel that their opinion on a particular issue has not been taken into consideration or those who feel that a certain state action is arbitrary and detrimental to them as a whole. In an ideal situation, being a guarantor of liberty, a legitimate democracy is not supposed to hush dissent. Rather, a legitimate democracy must take efforts to acknowledge and promote such dissent, check whether there's any legitimate basis for the dissenting claims and take into consideration such claims, if any. This is as long as the dissent is non-violent and does not result in causing harm to any individual or group of individuals or is an imminent threat to national security. Thus, the right to dissent is a distinctive individual liberty granted to the citizens in a democracy. Looking at the evolution of India as a nation through the lens of constitutional provisions, court rulings and other statutes – from being a colony of the Crown to becoming a crown jewel with regard to democratic governance, occupying the enviable spot of being the world's largest democracy, would be a suitable exercise to figure out whether the Right to Dissent is, in effect, available to the citizens of the nation.

Article 19 of the Constitution stands tall as a dolmen protecting crucial individual rights such as the rights to freedom and expression. Sub-clauses (a) to (c) of Article 19(1) promise citizens rights such as the right to be free and express themselves, freedom to assemble peacefully without the use of arms and the freedom to form associations or unions in furtherance of any of their lawful interests.⁵ These rights are channels through which citizens can express their dissent to state actions or anything happening in the society that is a cause of concern for them. However, no right is absolute and it is liable to be restricted on reasonable grounds. Clause (2) of Article 19 specifies the grounds on which the freedom of speech and expression may be restricted. It enables the legislature to impose reasonable restrictions on the right to free speech “in the interests of” or “in relation to” the following: sovereignty and integrity of India; security of the State; friendly relations with foreign States; public order; decency or morality; contempt of court; defamation; and incitement to an offence.⁶ The reasonable restrictions under these

⁵ Constitution of India, Article 19

⁶ Mahendra Pal Singh, *V.N. Shukla's Constitution of India*,

heads can be imposed only by a duly enacted law and not by executive action.⁷

Article 25(1) of the Constitution guarantees that subject to public order, morality and health and to the other provisions mentioned in that Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.⁸ As Justice Deepak Gupta, former Supreme Court Judge, rightly remarked in a conference – “The right of freedom of opinion and the right of freedom of conscience by themselves include the extremely important right to disagree”.⁹

The right to dissent can thus be deduced as an integral component of both Article 19(1) which guarantees right to freedom of speech and expression as well as the right to conscience which has been guaranteed by means of Article 25(1).

In the case of *Bijoe Emmanuel and Others v State of Kerala and Others*¹⁰, three students had refrained from singing the national anthem while it was sung during the school assembly due to them being members of a particular sect within the Christian religion which forbade them from engaging in any rituals apart from those which were part of their religious practice. Due to a series of events arising from a patriotic gentleman who was also a Member of Legislative Assembly taking note of this action from the side of the children, the Deputy Inspector of Schools instructed the Headmistress to expel the children from the school. The father of the children made numerous representations pleading that the children be allowed to attend school. However, in the absence of any positive response, they moved the Hon’ble High Court of Kerala wherein a Single Judge and then a Division Bench rejected their prayer. Having approached the Hon’ble Supreme Court of India by way of special leave as their last resort, the Court held in their favor that their Fundamental Rights under Article 19(1)(a) and Article 25(1) had been infringed and setting aside the judgment of the High Court, directed the respondents to re-admit the children in the school and allow them to pursue their studies without any hindrance.

⁷ *Express Newspapers (P) Ltd v Union of India* [1986] 1 SCC 133;
Bijoe Emmanuel v State of Kerala [1986] 3 SCC 615

⁸ Constitution of India, Article 25

⁹ Murali Krishnan, ‘Criticism of government not sedition, Majoritarianism cannot be the law: Justice Deepak Gupta’ (*Bar and Bench*, 7 September 2019) <<https://www.barandbench.com/news/criticism-of-government-not-sedition-majoritarianism-cannot-be-the-law-justice-deepak-gupta>> accessed 24 February 2025

¹⁰ 1986 SCC OnLine SC 213

Through this decision, the Hon'ble Supreme Court has made it clear that a person or group of people deviating from any norm, social rule or practice is a manifestation of their Right to Conscience guaranteed under Article 25(1) and such dissent, as long as within legal boundaries, must not be met with oppression.

Similarly, in the case of *S. Rangarajan v. P. Jagjivan Ram*¹¹, too the importance of dissent can be figured out from the decision of the Hon'ble Supreme Court of India. This case arose from a decision of the Madras High Court revoking a 'U' certificate of exhibition granted to a film *Ore Oru Gramathile*, which critiqued the reservation policy of the Government and pushed the demand for reservation based on economic backwardness over the existing system based on caste. There was no element in the film that was explicitly violative of any Constitutional provision or any incitement for secession or impairment to the integrity of the Nation that was being pushed. While ruling in favor of appellants, the Court held that the fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned under Article 19(2) and the restriction must be justified on the anvil of necessity and not on the quicksand of convenience or expediency.

In Para 35 of the above-mentioned judgment, the Court has implicitly made a cogent statement on dissent and its role in a democracy. The statement that 'In a democracy it is not necessary that everyone should sing the same song' is a powerful reminder that legitimate dissent is an essential component of a legitimate democracy. People can have differing opinions and stances on the differing issues and questions that arise, but the beauty of democracy lies in the fact that it accommodates all such differences and tries to find a common ground to unite people. In the successive paragraph, the need for open debates in a democracy is stressed upon. The Court acknowledged the fact that a democracy can neither work nor prosper unless people go out to share their views.

In the landmark case of *Maneka Gandhi v Union of India*¹², Justice P.N Bhagwati observed that democracy is essentially based on free debate and open discussion, for that is the only corrective of Government action in a democratic setup. This means that, in order to truly realize the idea of democracy being government of the people by the people, it is requisite that every citizen must be entitled to participate in the democratic process and in order to enable him make

¹¹ (1989) 2 SCC 574

¹² (1978) 1 SCC 248

a meaningful choice therein, free and general discussion of public matters is necessary.

In the case of *Naraindas Indurkha v State of Madhya Pradesh*¹³, the Hon'ble Supreme Court observed that in a free society wedded to a Constitution like ours, there must not only be freedom for the thought that we cherish but also for the thought that we hate. The Court also upheld the observation made by Mr. Justice Holmes in the case of *Abrams v United States*¹⁴, that the ultimate good desired, is reached by a free trade in ideas.

Despite all these rulings establishing the right to dissent as an integral component of Articles 19(1)(a) and 25(1) along with being fundamental to the functioning of any democracy, India has had an ambivalent approach towards dissent in general. However, the pro-active approach of the judiciary in ensuring that the state does not overstep its limits has resulted in such an ambivalent approach being corrected to a great extent.

A notable instance of this was the 2015 incident of environmental activist Priya Pillai, who worked with Greenpeace India being offloaded from a flight bound to London, in order to prevent her from testifying before the British All-Party Parliamentary Group for Tribal Peoples on the activity of Essar Power, a UK-registered firm in India. The Government had an interest in the Mahan Coal Limited project, a joint venture of the UK-registered Essar company with Hindalco, to mine coal in an old Sal forest area of Madhya Pradesh. Pillai had been active in campaigns against the same in Mahan for several years. While Pillai wrote to the Secretary, Ministry of Home Affairs, in order to understand the cause of such an offloading being initiated against her, she was met with no reply. In an Intelligence Bureau report addressed to the Prime Ministers Office, it was stated that Greenpeace's activities in India were a threat to national economic security and development.¹⁵ In the absence of a formal reply from the Secretary, Ministry of Home Affairs, Pillai approached the Delhi High Court.

In her case, *Priya Parameshwaran Pillai v Union of India and Others*¹⁶, the court observed in its judgment, ruling in favor of the petitioner, that, among the varied freedoms conferred on an

¹³ 1974 SCC OnLine SC 104

¹⁴ 250 US 616 (1919)

¹⁵ Ritu Sarin, 'IB report to PMO: Greenpeace is a threat to national economic security' (The Indian Express, 11 June 2014) <https://indianexpress.com/article/india/india-others/ib-report-to-pmo-greenpeace-is-a-threat-to-national-economic-security/> accessed 14 March 2025.

¹⁶ 2015 SCC OnLine Del 7987

individual, there is the right of free speech and expression, which necessarily includes the right to criticize and dissent. The Court acknowledged the fact that while criticism by an individual may not be palatable, it definitely cannot be muzzled. This re-affirms the democratic value that the State cannot exert undue influence on citizens thoughts and expressions by interfering arbitrarily in the same.

In the year 2020 came the shocking arrest of student activist Umar Khalid who was active in peaceful protests against the controversial Citizenship Amendment Act (CAA). He was awarded with a garland of charges ranging from offenses as laid down in provisions of the 1967 Arms Act to sedition in the IPC and last, but not the least, provisions of the Unlawful Activities (Prevention) Act, indicting him for unlawful activities, terrorist acts, raising funds for such acts and conspiracy.¹⁷ He has spent more than four years in the Tihar Jail awaiting trial.¹⁸ His application for bail was rejected three times in the lower courts, bail hearing in the Supreme Court had been postponed at least a dozen times and on at least two occasions, he was taken to Court only to come back to his cell after the judge concerned recused himself from the case.¹⁹ This example clearly shows how the inherent design of our legal system has most often been effective in ensuring that the process of trying to fight for individual rights and legally escaping the deadlock of punishment is more excruciating than the punishment itself. This makes one genuinely wonder whether the price of dissent in a democracy is something which is affordable.

A look at India's legislative history shows that over the years there have been legislations which implicitly attempt at curbing an individual's right to dissent. A notable example was Section 124-A IPC, more commonly referred to as the 'sedition law'. This sedition law, drafted by Thomas Babington Macaulay in the year 1833 aimed to keep an eye on the subjects of India so that they do not express disloyalty towards the Crown. The law which was used in the colonial era to keep the freedom fighters, our forefathers, in check, was widely used to shut reasonable criticisms of the government.²⁰ It is quite ironical, that the sedition law was abolished in the

¹⁷ United States Commission on International Religious Freedom, 'Umar Khalid' (USCIRF, 12 March 2024) <https://www.uscifr.gov/religious-prisoners-conscience/forb-victims-database/umar-khalid> accessed 14 March 2025.

¹⁸ Ishita Mishra, 'Four years and counting, Umar Khalid languishes in jail without bail or trial' (The Hindu, 14 September 2024) <https://www.thehindu.com/news/national/four-years-and-counting-umar-khalid-languishes-in-jail-without-bail-or-trial/article68640212.ece> accessed 14 March 2025.

¹⁹ Suhasini Raj, 'Four Years in Jail Without Trial: The Price of Dissent in Modi's India' (The New York Times, 22 October 2024) <https://www.nytimes.com/2024/10/22/world/asia/india-muslim-dissent.html> accessed 14 March 2025.

²⁰ Shariq Us Sabah, 'Sedition Law: Crushing Dissent in India since 1833' (Citizens for Justice and Peace, 7 September 2018) <https://cjp.org.in/sedition-law-crushing-dissent-in-india-since-1833/> accessed 14 March 2025.

United Kingdom as far back as in 2009²¹ while it was only in the year 2022 that the Hon'ble Supreme Court of India ordered authorities to temporarily refrain from using the sedition law and keeping all pending trials, appeals and proceedings on hold.²²

While the legal provision with the verbatim 'sedition' has been done away with in the new Bharatiya Nyaya Sanhita (BNS)²³, the Indian alternative for the colonial IPC, it is quite interesting to note that the cardinal essence of the draconian 124-A IPC has been retained in Section 152 of the BNS. Section 152 criminalizes any acts that endangered sovereignty, unity and integrity of India. There have been genuine concerns ever since the introduction of the new criminal laws as to whether Section 152 can indeed become a sedition law that is not on the face of it.

Addressing this concern, the Rajasthan High Court quashing an FIR wherein offences under Section 152 and Section 197 of the BNS were charged against a Sikh preacher for posting a Facebook video expressing sympathy for the pro-Khalistani leader Amritpal Singh, in the case of *Tejender Pal Singh v State of Rajasthan and Another*²⁴, observed that there must be cautious application of Section 152 BNS in consonance with the right to freedom of speech and expression. It opined that to invoke such provisions, an imminent connection was necessary between the speech and the likelihood of rebellion. The Court further noted that this provision was not supposed to be seen as a sword against dissent but as a shield required for national security. Whether this observation of the Hon'ble High Court will be adhered to is something which only time can tell.

Despite the disposal of the infamous sedition law, albeit, only to be replaced by the same spirit in a different body, there remain other contemporary legislations such as certain provisions of the Unlawful Activities (Prevention) Act 1967 [UAPA] that can be potentially manipulated to doubt dissent and uphold vested interests of those in power.

²¹ Prasun Sonwalkar, 'Sedition law in UK abolished in 2009, continues in India' (Hindustan Times, 16 February 2016) <https://www.hindustantimes.com/world/sedition-law-in-uk-abolished-in-2009-continues-in-india/story-Pkrvylv6J0T3ddY8uqvKsO.html> accessed 14 March 2025.

²² Amnesty International, 'India: Supreme Court's Temporary Suspension of Sedition Law a Welcome Step' (Amnesty International, 11 May 2022) <https://www.amnesty.org/en/latest/news/2022/05/india-supreme-courts-temporary-suspension-of-sedition-law-a-welcome-step/> accessed 14 March 2025.

²³ Apurva Vishwanath, 'Sedition law repealed or strengthened in a new form? What the new IPC Bill says' (The Indian Express, 13 August 2023) <https://indianexpress.com/article/explained/explained-law/sedition-law-repealed-or-strengthened-in-a-new-form-ipc-bill-8887864/> accessed 14 March 2025.

²⁴ 2024 LiveLaw (Raj) 413

The UAPA has been criticized severely for, *inter alia*, the wide and vague definitions of certain key terms and offences that are crucial for the understanding and interpretation of the statute.²⁵ Take for instance, the definition of an unlawful activity, as laid down under Section 2(o) of the Act. The section defines an unlawful activity as any activity

- (i) *which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or*
- (ii) *which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or*
- (iii) *which causes or is intended to cause disaffection against India.*

While the definition intended to be put across by the lawmakers seems to be directed towards bringing activities that promote secessionist tendencies under the ambit of unlawful activities for the purpose of the Act, it is quite surprising that even acts such as disclaiming or questioning have been put under the bracket of unlawful activities. While there exists a possibility that these words may have been used in the absence of a better terminology to effectively capture the legislative intent in the instant situation, as long as this remains the rule, it is bound to be obeyed. By this rationale, a mere questioning of any sovereign function, thereby, becomes a questioning of the sovereignty of the State and hence constitutes an ‘unlawful activity’, punishable under the relevant provisions of the UAPA.

There also exists such an anomaly in the case of the definition of a terrorist act as well. Section 15(1) of the UAPA states that

“Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security⁴ [, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.....commits a terrorist act”.

The point of ambiguity here is the fact that the likelihood of the outcome as a result of the act is placed at the same level as the actual act and its outcome.²⁶ Apart from these textual concerns in the legislation, the substantive contents are also a cause to worry. For example, with regards

²⁵ Abdul Haseeb and Kimi Pandey, ‘Breaking Down the Fallacies in UAPA’ (LiveLaw, 13 June 2023) https://www.livelaw.in/articles/uapa-breaking-down-the-fallacies-unlawful-activities-230540#_ftnref8 accessed 14 March 2025.

²⁶ Vivan Eyben, ‘UAPA: Vague Definitions and Sweeping Powers’ (NewsClick, 29 August 2018) <https://www.newsclick.in/uapa-vague-definitions-and-sweeping-powers> accessed 14 March 2025.

to detention, the executive has been given wider powers, while judicial oversight has been significantly been limited.²⁷

This, therefore, clearly provides an entrée for arbitrary use of power by authorities, empowering them to bring any form of dissent or deviation from expected standard of behaviour and subservience, under the ambit of an act likely to cause threats to national security.

The Constitution has guaranteed the right to freedom of speech and expression to all citizens of the nation. The right to speak freely, to express diverse opinions on various events are all tools that allow humans to live in dignity rather than as mere animals. It has been said that without access to free and unfettered speech and expression, democracy is meaningless.²⁸ The reasonable restrictions placed on this right, those “in the interests of” or “in relation to” the following: sovereignty and integrity of India; security of the State; friendly relations with foreign States; public order; decency or morality; contempt of court; defamation; and incitement to an offence, often act as hindrances in the absolute enjoyment of these rights. The decision of the Hon’ble Court in the case of *Rangarajan*²⁹, highlights that the restrictions placed on the right to freedom of speech and expression must be justified on the anvil of necessity and not on the quicksand of convenience or expediency.

However, the ambiguous nature of the provisions laid down in legislations such as the UAPA often becomes a quicksand of convenience or expediency to place restrictions on the right to freedom of speech and expression of an individual, mostly on the freedom to dissent. Here, there seems to be an apparent conflict between the language contained in the legislative texts and the rule laid down in the Constitution as upheld by the various Courts in our country from time to time. This places an onus on the State to seek recourse to either of the two paths – clarify the ambiguities in the contemporary legislations that can potentially hamper the right to free speech and dissent, or, in case the ambiguities are not intentional but part-and-parcel of the letter of the law, then ensure that the robust judicial system places the effective role of a shield, protecting the right to speak and register dissent in our democracy.

²⁷ Ibid.

²⁸ Manupatra, ‘A Bird’s Eye View of the Right to Freedom of Speech and Expression in India’ (Manupatra) <https://articles.manupatra.com/article-details/A-Bird-s-Eye-View-of-the-Right-to-Freedom-of-Speech-and-Expression-in-India> accessed 14 March 2025.

²⁹ (1989) 2 SCC 574

It is imperative that people should have the agency to react freely to any development in the social or political sphere in a nation. 'Free speech' is a right which every individual desires for in the absence of such a right the echoes of their voice may not even be heard by the rest of the world. Free speech can only be best served when it invites discussions and disputes to seek the acceptance of a new idea, for which dissent is the way forward.³⁰ In any group communication, dissent has a very important role to play. It is a hedge against groupthink and a lynch pin of functional decision making.³¹

Dissent must be understood not just as registering protest or upholding a different opinion, dissent is an art, an art which attempts to challenge perils such as conformism, blind obedience to authority and adherence to majority opinion in a democracy. But our failure to so view dissent from such a perspective arises from the possibilities of certain acts that constitute dissent being a threat to national security, sovereignty and other legitimate state interests. While our Constitution has laid down the reasonable restrictions that can be placed on freedom of speech and expression, of which dissent is a part, it in no way must be used as a blanket to hide or hush dissent. The courts must play a pro-active role in ensuring that free speech including dissent must not be suppressed under the guise of threats to national sovereignty and security. Dissenters and activists must also ensure that a fine *lakshman-rekha* is drawn between dissent and arbitrary hate against the State so that they do not unnecessarily become prey to penal actions by the State.

As Justice D.Y. Chandrachud rightly observed in the case of *Romila Thapar & Others v Union of India & Others*³² - "Dissent is the safety valve of democracy. If you don't allow dissent, the pressure valve of democracy will burst".

It is very clear through an evaluation of democratic principles and analysis of the various legislations and court rulings that guarantee freedom of speech and expression and the freedom of conscience that dissent is the bedrock upon which vibrant democracies are built.³³ While the acts of dissent committed by some may be unsettling to some, these acts perfectly capture the

³⁰ *Terminiello v City of Chicago* 337 US 1 (1949)

³¹ J T Garner and J P Ragland, 'Tabling, Discussing, and Giving In: Dissent in Workgroups' (2019) 23(1) *Group Dynamics: Theory, Research, and Practice* 57 <http://dx.doi.org/10.1037/gdn0000098> accessed 14 March 2025.

³² 2018 (10) SCC

³³ Ojudubabafemi, 'Dissent in Democracy: The Crucial Role of Free Expression' (Medium, 7 June 2024) <https://medium.com/@ojudubabafemi/dissent-in-democracy-the-crucial-role-of-free-expression-57f8983340bb> accessed 14 March 2025.

essence of democratic freedom and are necessary for the progress of mankind. And it is in the act of tolerance, of accepting each other's view points and opinions, that lies the beauty of a democratic society.

To conclude the reflection on India's tryst with dissent, it would be in order to think and base the future actions of our glorious democracy on this particular observation made by the Honorable Supreme Court in Para 27 of the Supreme Court judgment in the case of *Bijoe Emmanuel and Others v State of Kerala and Others*³⁴ -

“Our tradition teaches tolerance; our philosophy preaches tolerance our Constitution practices tolerance; let us not dilute it.”



³⁴ 1986 SCC OnLine SC 213