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**A COMPARATIVE ANALYSIS OF EXPRESSIVE CONDUCT:
THE RIGHT TO NOT STAND FOR THE NATIONAL
ANTHEM IN INDIA AND THE UNITED STATES**

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ABSTRACT

Remaining seated during the national anthem has turned into a contentious matter in India, raising fundamental questions about the boundaries of freedom of expression, the role of national symbols, and the protection of individual conscience. The research issue is how silent non-participation in Jana Gana Mana may be considered a legitimate expression of behavior under the Indian Constitution, and how such right is to be balanced against the interest of the state in furthering national integrity and unity. The objective of this study is to analyze the legal, historical, and constitutional dimensions of the issue, examine judicial comprehension within India, and draw comparative inferences from the United States, where symbolic speech doctrine is well established.

The research methodology adopted is mainly comparative and doctrinal. It involves a careful examination of provisions of the constitution, statutes such as the Prevention of Insults to National Honour Act, 1971, and landmark Supreme Court and High Court decisions such as Bijoe Emmanuel v. State of Kerala and Shyam Narayan Chouksey v. Union of India. Comparative analysis focuses on U.S. cases such as West Virginia State Board of Education v. Barnette and Texas v. Johnson to explore the protection of dissent and symbolic speech. The research also uses theoretical perspectives from Rawlsian liberalism, Dworkin's rights as trumps, and constitutional morality to examine the normative implications of coerced patriotism.

The interim conclusion is that silent non-standing is expressive behavior that warrants constitutional protection. Inasmuch as central to the symbolic function of nurturing national identity, the anthem cannot be coerced since coercion would destroy the voluntariness required for genuine patriotism. Proportionate regulation distinguishing between disorderly conduct and silent protest can preserve personal freedom as well as the moral power of national symbols, maintaining pluralism and democratic strength in India.

KEYWORDS

National Anthem, Expressive Conduct, Freedom of Speech, Symbolic Speech, Constitutional Morality, Compelled Patriotism

I. INTRODUCTION

The national anthem, as a symbol of the nation, has long been a site of legal, political, and philosophical controversy. Its playing and celebration is not merely a ceremonial ceremony but also a ritual in which a state reasserts its unity, sovereignty, and historicity. But as constitutional democracies mature, so do such rituals have to contend with countervailing appeals to individual freedom, freedom of conscience, and the freedom to dissent. The refusal to stand for the national anthem is a prime case in point. Although the anthem is a symbol of a country's aspirations and challenges, exclusion from its celebration is a form of expressive behavior—a silent but effective demonstration of dissent, identification, or autonomy.

In India, this debate goes hand in hand with the constitutional guarantee of freedom of speech and expression under Article 19(1)(a) and reasonable restrictions under Article 19(2). It includes statutory laws such as the Prevention of Insults to National Honour Act, 1971, and judicial precedents of the Supreme Court and High Courts. Problems regarding not standing up during the anthem have been more widespread following such milestone cases as *Bijoe Emmanuel v. State of Kerala*¹, in which Jehovah's Witness pupils were suspended from school for refusing to sing the anthem on religious grounds, and *Shyam Narayan Chouksey v. Union of India*², which mandated (albeit provisionally) the anthemic music being played within cinema halls. The issue still remains as regards balancing individual liberty with common obligation.

A comparative analysis serves to sharpen this argument. The robust First Amendment doctrine in the United States has long recognized symbolic speech and expressive conduct, perhaps most notoriously in *West Virginia State Board of Education v. Barnette*³ and *Texas v. Johnson*⁴. These holdings reiterate that the rule is that there cannot be coercive patriotism and that dissent itself is a necessary democratic practice. In contrast, Indian courts have generally been inclined

¹ *Bijoe Emmanuel v. State of Kerala* AIR1987 SC 748

² *Shyam Narayan Chouksey v. Union of India*, (2018) 12 SCC 1

³ *West Virginia State Board of Education v. Barnette* 319 U.S. 624 (1943).

⁴ *Texas v. Johnson* 491 U.S. 397 (1989)

towards national integration and communal harmony, with slight qualifications. The style of difference warrants some basic questions regarding the philosophical basis of each constitutional framework and how much dissent is allowed.

This paper considers the act of sitting out the national anthem through the twin prisms of Indian and American constitutional law. It traces the historical genesis of the Indian national anthem, reviews the regulation of expression and national pride, weighs pros and cons for and against considering abstention communicative action, and then makes comparative observations about India and the United States. The study argues that there must be a democratic balance between protecting national integrity and defending the right to freedom of conscience and expression of one person.

II. BACKGROUND

THE GENESIS OF 'JANA GANA MANA'

India's national anthem, Jana Gana Mana, was composed by Rabindranath Tagore in 1911 in Bengali in a highly Sanskritized form. It was first sung publicly at the Calcutta Session of the Indian National Congress on December 27, 1911. Although there were controversies about the song having been composed as an ode to King George V's visit, Tagore himself clarified that the composition had been done as a tribute to the divine force of destiny that guides India's destiny and not for any king⁵. This clarification is especially significant in that it locates the anthem not within colonial sycophancy but within a broader framework of national longing and religious awareness.

It was adopted in a Hindustani form by Subhas Chandra Bose in 1941 as the anthem of the Indian National Army. This was the first link of the song with an actual movement towards Indian independence. Post-independence, the national anthem was adopted by the Constituent Assembly on January 24, 1950, just before the enforcement of the Constitution.⁶

The decision to adopt Jana Gana Mana as against its closest competitors, and above all Vande Mataram, was a conscious effort to promote unity in diversity. Vande Mataram, though, was immensely popular at the time of the independence movement, its strongly Hindu imagery was

⁵ Rabindranath Tagore, *Letter to Pulin Behari Sen* (1939), reprinted in *The English Writings of Rabindranath Tagore: Volume Two* (Visva-Bharati, 2000).

⁶ Constituent Assembly Debates, Vol. XII, 24 Jan. 1950.

viewed as exclusionary in a multi-religious nation. Jana Gana Mana, in its reference to India's different regions and people, was considered more representative and suitable for a plural nation.⁷ This context highlights that the anthem was chosen not as a product of literary or musical excellence, but as an instrument of national integration.

THE ROLE OF THE NATIONAL ANTHEM IN NATIONAL INTEGRITY

National symbols play a vital role in the formation of collective consciousness. The anthem, as a performance symbol, is in the liminal space between law, culture, and identity. It generates emotional cohesion, gives expression to a shared ritual of belonging, and symbolizes constitutional values. They have argued that nations are "imagined communities" bonded together by rituals, symbols, and narrative structures connecting men and women across vast distances.⁸ Here, the national anthem is a ritual practice whereby citizens imagine themselves as members of a unified political community.

In India, a nation of extreme linguistic, religious, and regional diversity, the anthem is a particularly important institution. Its rendering in schools, public gatherings, and ceremonies is intended to create a shared sense of belonging. The Supreme Court in *Shyam Narayan Chouksey* emphasized the anthem as a vehicle of instilling constitutional patriotism beyond the divides of caste, creed, and religion⁹. However, this functional utilization also transforms the anthem into a very sensitive symbol. Any perceived offense is not so much an individual act but a challenge to national cohesion.

But history also informs us that forced participation has never been popular. To minority factions or to individuals whose conscience forbids them from participating in such ceremonies, forced observance makes the anthem a symbol of division rather than unification. The tension results from the bimodality of the anthem: although it symbolizes the emblem of inclusiveness at the symbolic level, legal compliance may have the potential to result in coercion, which acts against the very constitutional principles it is supposed to depict.

The anthem then stands at the intersection of collective identity and individual freedom. Its birth in the fight for freedom lends it deep symbolic importance, yet within a constitutional

⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 183–85 (Oxford Univ. Press 1966)

⁸ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* 6–7 (Verso 1983)

⁹ *Shyam Narayan Chouksey v. Union of India*, (2018) 12 SCC 1

democracy, its celebration must be balanced against citizens' rights to protest. This idea and historical environment gives meaning to an examination of the body of law safeguarding freedom of expression and national pride in India.

III. LEGAL FRAMEWORK

FREEDOM OF SPEECH AND EXPRESSION UNDER ARTICLE 19(1)(A)

Article 19(1)(a) of the Indian Constitution guarantees to all citizens the right of freedom of speech and expression¹⁰. The provision in question is widely interpreted to cover not just spoken words or written words, but symbolic conduct, silence, and communicative gestures as well. The Supreme Court itself has all along accepted that the ambit of Article 19(1)(a) includes non-conventional means of expression, as long as they communicate meaning and are not private action¹¹. Expression in the above sense includes refusal to speak or participate in an official ritual, wherein the refusal itself constitutes a statement.

The recognition of absence of participation or silence as forms of protected expression under the Constitution was arrived at in *Bijoe Emmanuel v. State of Kerala*. There, three school-going Jehovah's Witness children were suspended from school for refusing to sing the national anthem on grounds that their religious beliefs prohibited them from so doing. The Court ruled in their favor, holding that their silent protest during the anthem could not be read as a display of disrespect¹². The ruling reaffirmed that the freedom of expression encompasses the freedom not to express, and that coercive expressions of patriotism undermine the ethos of liberty offered by the Constitution. Simultaneously, though, Article 19(1)(a) is not inflexible, as Article 19(2) authorizes reasonable limitations in the interests of sovereignty, integrity, security, public order, decency, and morality¹³. In anthem cases, the state usually cites sovereignty and public order as justifications for restriction, thus pitting individual liberty against collective identity.

THE PREVENTION OF INSULTS TO NATIONAL HONOR ACT, 1971

The legislative framework weighs into this argument too. The Prevention of Insults to National Honor Act, 1971, was enacted to protect national symbols' honor. Section 3 of the Act makes

¹⁰ INDIA CONST. art. 19(1)(a)

¹¹ *K.A. Abbas v. Union of India*, (1970) 2 SCC 780

¹² *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

¹³ INDIA CONST. art. 19(2)

willful prevention of singing of the anthem or causing a disturbance to an assembly that is singing the anthem an offence¹⁴. Remarkably, the Act does not expressly criminalize refusal to sing, nor does it mandate standing or singing. Its emphasis lies in expressing acts of insult or disturbance.

Its scope has always been judicially interpreted. In *Bijoe Emmanuel*, the Court emphasized that the 1971 Act did not extend to students who simply refused to sing, since they did not break up the assembly or prevent others from joining in.¹⁵ Likewise, several High Court rulings held that passive non-participation is not an offence under the Act¹⁶. Despite the clarification, there are still public misconceptions, and individuals who refuse to stand or sing are often harassed or prosecuted by enthusiastic authorities. The discrepancy between legislative intention and public perception brings to light the risks of equating voluntary respect with compelled conformity.

JUDICIAL APPROACHES IN INDIA

Judicial reactions to the national anthem locate the tensions between India's multicultural constitutional commitments and the state's desire for cohesion. In *Bijoe Emmanuel*, the Supreme Court firmly upheld minority rights, holding that compelling the singing of the anthem was contraindicated by both Article 19(1)(a) and Article 25.⁸ It has been celebrated as a milestone in Indian constitutionalism for establishing that true patriotism cannot be manufactured under compulsion.

The function had also undergone some change in *Shyam Narayan Chouksey v. Union of India*. In 2016, the Supreme Court directed the playing of the national anthem prior to cinema screenings at all the theatres and that the spectators must stand as a mark of respect¹⁷. Although technically classified as an interim order, the directive had widespread implications, practically forcing patriotic performance in an entertainment setting. The critics contended that the order blended respect with coercion and that it deformed the voluntary nature of constitutional allegiance. In 2018, the Court had modified its earlier order, leaving it to the discretion of the government whether or not to make the playing of the anthem obligatory in cinemas¹⁸. But it

¹⁴ Prevention of Insults to National Honour Act, No. 69 of 1971, § 3 (India)

¹⁵ *Bijoe Emmanuel*, (1986) 3 SCC at 623

¹⁶ *Vikram v. Union of India*, 1997 SCC OnLine Ker 200

¹⁷ *Bijoe Emmanuel*, (1986) 3 SCC at 625–26

¹⁸ *Shyam Narayan Chouksey v. Union of India*, (2017) 3 SCC 146

preserved requirements in regard to decent decorum while the anthem plays, reflecting judicial anxiety about national symbols.

The see-saw between Bijoe Emmanuel and Chouksey demonstrates the ambivalence of the judiciary. On the one hand, there is a recognition that liberty can destroy constitutional values if it is coerced; on the other, fear that untrammelled liberty will devastate solidarity in a weak and plural polity. This ambivalence is to be found in High Court rulings, where some benches have been of the opinion that disciplinary action can be initiated against those who do not stand up, and others have been of the opinion that mere non-participation cannot constitute disrespect¹⁹.

IV. NOT STANDING AS EXPRESSIVE CONDUCT UNDERSTANDING EXPRESSIVE CONDUCT

The meaning of expressive conduct is central to the inquiry. Expressive conduct involves conduct or omission directed at expressing a message and likely to be interpreted by observers. In the US, the Supreme Court decision in *Spence v. Washington* articulated this test, requiring both intent to convey a message and a high likelihood of that message being received²⁰. Despite not explicitly taking up this doctrinal test in Indian case law, Bijoe Emmanuel's rationale espouses an implicit acceptance of such principles. Silence, body position, or non-conformity at a public ritual can all be communicating meaning and thus falling within Article 19(1)(a).

Refusal to stand during the national anthem, when done in a public setting, is particularly charged with meaning. It turns a passive activity into a seeming declaration of disagreement, grounded on political philosophy, religious belief, or individual liberty. The action derives its meaning because it occurs against the context of a mass ritual when concurrence is the norm and deviance is conspicuous. Non-standing is then expressive behavior deserving of constitutional inquiry.

THE DEBATE: SUPPORT AND CRITIQUE

Recognition of non-standing as expressive conduct enjoys strong support in constitutional theory. On grounds of constitutional morality, coercive uniform displays of patriotism

¹⁹ *Faisal Khan v. State of Maharashtra*, 2003 SCC OnLine Bom 28

²⁰ *Spence v. Washington*, 418 U.S. 405, 410–11 (1974)

undermine the voluntariness of allegiance. Dr. B.R. Ambedkar's speeches in the Constituent Assembly stressed that constitutional morality requires respect for diversity of mind on the part of citizens and the ironing out of differences within the limits of freedom²¹. Unless a feeling of respect for the anthem really emanates out of belief and not force, it does not gain practical meaning.

Besides, freedom of conscience under Article 25 lends substance to the claim. For religious minorities, upon whose religion some rituals are prohibited, compulsory standing imposes a direct expense on religion. This is shown in the case of *Bijoe Emmanuel*, where the Court went out of its way to equate the right of silence of the children with their religious freedom. Protecting such conscience-based dissent in a plural society reinforces the pluralistic character of the constitutional order.

Democratic theory also applauds this stance. As Ronald Dworkin has famously argued, rights are trumps against majoritarian want, restraining unpopular minorities from being intimidated into submission²². Mutual toleration of dissent by not-standing preserves democratic tolerance and resists the spoliation of freedom under the coercion of majority opinion. Comparative precedent adds vigor to this thesis, as other liberal democracies, with the exception of the United Kingdom, consider failure to participate in national rituals to be constitutionally protected symbolic speech.

Opponents, on the other hand, believe that standing down sabotages the symbolic unity of the nation. The anthem is seen to represent sovereignty and territorial integrity; standing down is seen as an implicit rejection of the nation-building endeavor. In a country with secessionist histories and communal cracks, brazen acts of disobedience in national ceremonies are seen to be disruptive in broad perception. Public order concerns also apply. Non-standing can start encounters or violence, and therefore, state intervention to restore peace is necessary.

Cultural values underlie this critique. Public respect for national symbols in India is a part of civil society life, and non-conformity is readily equated with disrespect. Although the law is not likely to approve of non-standing, social custom places enormous pressure on citizens to abide by it. Courts, at times, reflect this attitude by speculating compulsory standing as

²¹ Constituent Assembly Debates, Vol. VII, 4 Nov. 1948

²² Ronald Dworkin, *Taking Rights Seriously* 198–99 (Harvard Univ. Press 1977)

necessary to ensure constitutional patriotism. Finally, critics pose a slippery slope threat: if standing refusal is constitutionally protected, it may give rise to conduct of willful disrespect of other national symbols, thereby weakening their normative power.

Resolving this conflict involves invoking the doctrine of proportionality, which Indian courts have increasingly been using to examine the constitutionality of restraint on fundamental rights²³. While maintaining national integrity is an undeniably legitimate state interest, imposing strict compliance with anthem rituals appears disproportionate when non-standing stays silent and non-obstructive. Such conduct does not compromise sovereignty, nor does it cause violence or hostility. Its criminalization or punishment has the potential to undermine democratic freedom without achieving much in the form of real solidarity. A more just resolution would make a distinction between active disruption, which can rightfully demand penalties, and passive non-membership, which needs to be constitutionally guaranteed.

V. COMPARATIVE PERSPECTIVE: INDIA AND THE UNITED STATES

The question of non-standing for the national anthem gains additional complexity when viewed comparatively. The United States, with its strong First Amendment doctrine, offers a different doctrinal model for resolving expressive conduct and symbolic speech. In *West Virginia State Board of Education v. Barnette*, the Supreme Court determined that forcing public school children to salute the flag was unconstitutional under the First Amendment²⁴. The Court held that patriotism had to be voluntary and that the state could not force citizens to perform symbolically expressive acts of allegiance. So too, in *Texas v. Johnson*, the Court sustained flag burning as expressive conduct in protest, reciting that expression of this symbolic sort is, in fact, speech protected even when offensive to the majority²⁵. These holdings enshrine a principle in the very lifeblood of U.S. constitutional thinking: the health of a democratic society lies in safeguarding expressive conduct, such as dissent, from compelled conformity.

In India, the legal form is less doctrinally unstructured but involves a similar tension. As in *Bijoe Emmanuel*, the Supreme Court acknowledged that non-sound participation in the national anthem is an expression that is driven by conscience or religion²⁶. Later cases, though,

²³ *Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353

²⁴ *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943)

²⁵ *Texas v. Johnson*, 491 U.S. 397 (1989)

²⁶ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

such as *Shyam Narayan Chouksey v. Union of India*, demonstrate the judiciary's willingness to accommodate national harmony and sometimes permit collective symbols to dominate individual liberty²⁷. Indian courts have not established an express "symbolic speech doctrine" akin to the United States, but their rationale comes close to the underlying justifications: maintaining the right to protest while balancing state interests in harmony with public order.

India and America differ mostly in tone. American courts prioritize more personal freedom, though dissenting behavior is unpopular or incendiary to the culture. The principle of self-restraint is essential for instances of symbolic speech because of liberal constitutionalism based on individual freedom. Indian jurisprudence has to operate within a plural society of linguistic, religious, and regional pluralism and with continued national integration problems. Indian courts thus sometimes balance community interests—national integrity and civic ritual, for example—over U.S. courts. Both legal systems see communicative significance in symbolic acts, but the Indian approach is context-conditioned and reality-oriented to a greater degree.

THEORETICAL FOUNDATIONS: LIBERALISM, RIGHTS, AND CONSTITUTIONAL MORALITY

The theoretical discussion makes understanding non-standing as expressive conduct easier. John Rawls's theory of justice as fairness focuses on the protection of fundamental liberties such as freedom of conscience and expression as essential to an absolutely equitable society²⁸. Policies that require symbolic obedience are contrary to the liberty principle and thus are unjust because they command submission and not affirmation. Alternatively, Ronald Dworkin's definition of rights as "trumps" marks the moral priority of individual freedom to choice by majorities so that unpopular views cannot be overruled by majoritarian view²⁹.

In India, the theoretical positions resonate with the idea of constitutional morality, which was formulated by B.R. Ambedkar and re-affirmed in recent case law. Constitutional morality does not only require formal compliance with the law but also compliance with the spirit of the Constitution, for instance, protecting minorities, freedom of conscience, and civic action on voluntary rather than coerced terms³⁰. Compelling citizens to join in the national anthem, especially in venues such as movie halls or schools, threatens to exchange liberty for ritual compliance and severs democratic legitimacy.

²⁷ *Shyam Narayan Chouksey v. Union of India*, (2017) 3 SCC 146; modified, (2018) 12 SCC 1

²⁸ John Rawls, *A Theory of Justice* 136–42 (Rev. ed. 1999)

²⁹ Ronald Dworkin, *Taking Rights Seriously* 198–99 (Harv. Univ. Press 1977)

³⁰ Benedict Anderson, *Imagined Communities* 6–7 (Verso 1983)

In addition to this, the instrumental superiority of tolerating dissent has been recognized by legal philosophers. Enfranchising non-standing fortifies democratic pluralism by way of the message that the state is tolerant of divergence of opinion. It avoids resentment and backlash that result when the majority puts minorities under its cultural conventions. Comparative constitutional analysis indicates that strong protection of expressive conduct, as under the U.S.

Constitution, promotes a stronger democratic culture, while coercive rituals have the potential to isolate citizens and deprive national symbols of their normative power.

RECONCILING NATIONAL INTEGRITY AND INDIVIDUAL FREEDOM

The challenge lies in balancing the symbolic meaning of national rituals with constitutional guarantees of individual freedom. National symbols like the anthem play a crucial role in creating a shared sense of belonging in India. Nations are "imagined communities," as Benedict Anderson rightly puts it, and anthems like the national anthem are used to express shared identity.⁷ A sensibility for the symbolic role, such as literalism, cannot be used to legitimize coercion, though. Spontaneity has to be employed with mutual respect and loyalty; otherwise, the ritual becomes performative rather than meaningful.

Non-standing, when quiet and non-disturbing, poses no risk to public sovereignty or order. It registers an objection without delegitimizing the Constitution or the anthem. Courts can therefore distinguish between active disruption and passive non-participation and permit the former but regulate the latter. This is a balance of both the interest of the state in creating civic solidarity and that of the individual conscience and freedom of expression. Comparative evidence from the United States jurisprudence shows that such balancing is possible: symbolic dissent does not undermine patriotism but provides the moral basis for voluntary allegiance.

Indian constitutional jurisprudence, previously conservatively oriented, has gradually become receptive to this sort of balanced thinking. Kerala and Bombay High Court decisions have stated categorically that non-standings are not disrespect in themselves, but that they speak of proportionality and purpose of Article 19(1)(a)³¹. By adding these with a liberal-democratic frame more in the nature of general application, India can ensure individual freedoms without intruding on the symbolic dignity of national rites.

³¹ *Faisal Khan v. State of Maharashtra*, 2003 SCC OnLine Bom 28

VI. CONCLUSION: THE WAY FORWARD

The uproar regarding compelled not standing for the national anthem demonstrates a fundamental tension of constitutional democracies: weighing personal freedom against group identity. Historical and legal observation indicates that the Indian national anthem is a symbol of unity, national integration, and shared historical consciousness, but enforced compliance is sure to kill the constitutional ideals it purports to represent. Precedents in court cases, specifically *Bijoe Emmanuel*, draw attention to the fact that silence or absence can indeed be express behavior requiring protection, while later cases such as *Shyam Narayan Chouksey* demonstrate the state's ongoing concern for collective symbolism.

Comparative analysis within the United States points to the virtues of a healthy symbolic speech doctrine. The maintenance of non-participation as expressive conduct guarantees valid opposition and voluntary patriotism. For Rawlsian and Dworkinian theories, coercion violates intuitions of fairness and the moral priority of individual rights. In India, such an argument justifies a proportionate response: permitting silent, non-disruptive non-standing and not permitting overt disruptions threatening public order.

The way forward is to reconcile these opposing values. One, the definition in law is essential: courts must make silent non-participation into a constitutionally protected right. Two, education can limit the gap between statutory understanding and social understanding, limiting harassment or enforcement by vigilantism. Three symbolic rituals need to be redefined as voluntary shows of allegiance instead of mandatory demonstrations. Through the synthesis of constitutional morality, liberal theory, and comparative experience, India can build a society that encompasses the protection of individual liberty and national unity.

Lastly, the validation of non-standing as a valid manifestation of action strengthens democracy. It proves that patriotism can't be coerced and that ideals of the country are strong enough to survive disagreement. Such practice upholds the pluralistic and accommodative vision of India's Constitution and is consistent with wider liberal-democratic principles, making patriotism meaningful and voluntary.