

Right to Dissent in India: An Analysis

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Abstract: *There is a famous story of “The king is naked” in which the arrogant and ruthless king had a weakness to hear his own praise and flattery and the thugs knowing this weakness loot the king by selling him magical clothing claiming to be visible only to loyal and honest people. The king announced his visit to the city in his magical clothing. Out of fear people praised the king who was unknowingly naked. No one had the dare to dissent out of fear. Then a small little boy came out in the crowd as soon as he saw the king and said that the king was naked!*

Dissent is the key to any successful democracy. If there is fear in the minds of people that their dissent can lead to curtailing of their liberty then there is a dire need to contemplate and analyse right to dissent. In India there have been instances where people spoke against the government and anti-national laws were imposed upon them. This paper is an effort to analyze the issue of dissent in India through judicial and legal perspective and offer suggestions to minimize the malaise.

Keywords: Dissent, Liberty, National, Protest, Speech

Introduction

There is a famous story of “The king is naked” in which the arrogant and ruthless king had a weakness to hear his own praise and flattery and the thugs knowing this weakness loot the king by selling him magical clothing claiming to be visible only to loyal and honest people. The king announced his visit to the city in his magical clothing. Out of fear people praised the king who was unknowingly naked. No one had the dare to dissent out of fear. Then a small little boy came out in the crowd as soon as he saw the king and said that the king was naked!¹

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In the farmers’ protest, a review petition on the Shaheen Bagh protest² was filed in the Supreme Court. The court refused to review its earlier verdict which declared that there is no absolute **right to protest**, and it could be subjected to the orders of the authority regarding the place and time. This brings into focus the tug-of-war between morality and state security, freedom, and responsibility.³ On one hand, it is the government’s responsibility to ensure that any protest should not turn into violent chaos. On the other hand, public protests are the hallmark of a free, democratic society, whose logic demands that the voice of the people should be heard by those in power and decisions be reached after proper discussion and consultation.⁴

In spite of this dilemma, in order to preserve the democratic fabric of the Indian society, it is the responsibility of stakeholders in a democracy that all freedoms under Article 19 of the Constitution shouldn’t be seriously impaired.⁵ *The right to dissent is essential for democracy and criticism of the executive, judiciary, bureaucracy, and the Armed Forces cannot be termed “anti-national”.*⁶ **All mature democracies encourage people to disagree** with the establishment, the government, and the party in

¹<https://thekingisnaked.blog/2019/01/09/the-king-is-naked/>

² Amit Sahni Vs Commissioner of Police and Others Civil Appeal No. 3282 of 2020 decided by Supreme Court on 07 Oct 2020

³ <https://madhyapradesh.pscnotes.com/dmpq-current-affairs/dmpq-write-a-short-note-on-significance-of-dissent-in-a-democracy-with-latest-examples/>

⁴ Ibid

⁵ <https://www.drishtiiias.com/current-affairs-news-analysis-editorials/news-editorials/2021-02-23/print>

⁶ <https://www.theweek.in/news/india/2020/02/24/right-to-dissent-is-essential-to-democracy-criticism-cant-be-termed-anti-national-sc-judge.html>

power.⁷ The very reason these countries are referred to as mature democracies is that they value dissent. But throughout the World, a **rising tide against dissent** has been seen.⁸ No one should be harmed for exercising the right to dissent.⁹ In India dissent has been seen. Most of the times, people who criticize the government are **branded as ‘anti-national’**, and legal action is also taken. The recent incident of Disha Ravi, a climate activist, who was arrested on charges of sedition, criminal conspiracy, spreading disaffection against the Indian state, and promoting enmity, shows the reaction of the Government towards criticism.¹⁰ **Article 7 of the Declaration on Human Rights Defenders** explicitly recognises that ‘Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance’¹¹. This paper is an effort to analyse the issue of dissent in India through judicial and legal perspective and offers suggestions to minimise the malaise.

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Understanding Dissent

‘Dissent’ is primarily a difference of opinion. Dissent means “a strong difference of opinion on a particular subject, especially about an official suggestion or plan or a popular belief”. **India’s constitutional democracy** is predicated on the people’s right to call state power to account. While hearing a petition on the **ban of protest** on the Jantar Mantar in New Delhi, the Supreme Court¹² held that, **dissent is a safety valve for democracy. If this safety valve is not allowed to function then the pressure cooker will burst.**¹³ Even at Household level also, there is **no family without dissent** between parents and the children, or between the siblings.¹⁴ A family which learns to deal with dissent rather than authoritatively dismissing it is a **more harmonious family.**¹⁵ Today, **Social Media** has emerged as a new platform for protest in the country. A hotbed for comments, information, unfiltered images and videos, such platforms not only incite social change from the public or leaders, but also affect public sentiments.¹⁶

Constitutional Framework

The **Preamble** to the Constitution of India secures to all its citizens, liberty of thought, expression, belief, faith, and worship. **Article 19(1) (a) to (c)** of Part III Fundamental Rights provides freedom of speech and expression; Freedom to assemble peaceably and without arms; and the freedom to form associations or unions. These freedoms are the mediums through which dissent can be expressed. **At the same time Article 19(2)** authorizes the government to impose **reasonable restrictions** on freedom of speech and expression in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Challenges to Right to Dissent

Any form of public action to challenge the government’s proposals or decisions is also constitutionally legitimate, as long as it is done peacefully.¹⁷ Article 19(2) imposes reasonable restrictions. But, in the recent review petition, the petitioners apprehended that the observations in the Shaheen Bagh judgment against the

⁷ <https://twitter.com/timesofindia/status/1363895420561231872>

⁸ <https://www.10pointer.com/current-affairs/right-to-dissent-is-hallmark-of-democracy>

⁹ <https://twitter.com/usembassyburma/status/1363146574403149829?lang=en>

¹⁰ <https://thewire.in/rights/disha-ravi-arrest-police-disregard-safeguards-law>

¹¹ The Declaration on human rights defenders was adopted by consensus by the General Assembly in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, after 14 year of negotiations. General Assembly Resolution A/RES/53/144 adopted the Declaration on human rights defenders. Available at <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders>

¹² Mazdoor Kisan Shakti Sangathan Vs Union of India and Another Writ Petition (Civil) No. 1153 of 2017 decided by Supreme Court on 23 July 2018

¹³ <https://timesofindia.indiatimes.com/t10-aug-30-2018/2-dissent-is-a-safety-valve-of-democracy-sc/articleshow/65597886.cms>

¹⁴ <https://www.legallore.info/post/right-to-dissent-and-its-validity>

¹⁵ <https://www.thehindu.com/opinion/lead/the-nature-of-dissent/article24857884.ece>

¹⁶ <https://www.10pointer.com/current-affairs/right-to-dissent-is-hallmark-of-democracy>

¹⁷ <https://www.thehindu.com/opinion/op-ed/the-right-to-protest-in-a-free-society/article30618223.ece>

indefinite occupation of public space may prove to be a license in the hands of the police to commit atrocities on the legitimate voice of protest.¹⁸

Recently, not only the protesting farmers but also their supporters, including comedians and journalists, were charged with the Sedition.¹⁹ Further, any arbitrary restraint on the exercise of such rights; for instance, imposing Section 144 shows the inability of the government to tolerate dissent.²⁰ The question is if the Constitution allows the right to dissent, then **why in the garb of Sedition law and Unlawful Activities Prevention Act are exercised to thwart political dissent?** The answer per se seems to be that due to ineffective **implementation of the laws** and non-compliance of the directions laid down by judiciary. For example; imposition of **Section 144** of Cr PC, 1973 in Kashmir and internet **shutdown for around a year** was a common way to curb dissent.

Importance of Right to Dissent

The Right to protest peacefully is guaranteed in the Indian Constitution under Article 19(1)(a) in the form of freedom of speech and expression. Right to say yes includes right to say no too. That is why even in the election process the provision of None of the Above (NOTA) has been provided.

The Right to dissent is central to democracy because it acts as a direction for the political parties to work for the welfare of the people. Absence of dissent will lead to dictatorship. To check abuse of power dissent power must exist.

The Right to dissent acts as a medium to agitate and hold public meetings, protests, etc. against the arbitrary exercise of power.

Dissent power enables the people to keep a vigil and monitor the acts of the government which in a way is also a mode to provide feedback to the government about their policies and actions.

Limitations Needed on Right to Dissent

Dissent does not guarantee a licence to violence. Hence protests and peace must go hand in hand. They need to co-exist in mutually. That is why; the Constitution itself imposes reasonable restrictions.

Right to dissent cannot be exercised at the cost of public inconvenience. In the Shaheen Bagh Case, the Supreme Court found the **indefinite occupation of a public road** by the protestors **unacceptable**. The judgment upheld the right to peaceful protest against the law but made it unequivocally clear that public ways and public spaces cannot be occupied, and that too indefinitely.

The rumours spread through social media also lead to protest and dissent. This too needs to be channelized to curb misleading news.

Despite **legal duties imposed on States** to respect, protect and fulfill the rights to dissent and protest, these rights are routinely misunderstood and increasingly violated, with dissenters facing dire consequences including arrest, imprisonment, displacement, disappearance, and death.

Judicial Perspective on Dissent

In **Ramlila Maidan Incident Vs Home Secretary, Union of India and others**,²¹ the Supreme Court had held, “Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action.”

In **Vineet Jindal Vs Union of India, Ministry of Information and Broadcasting and Others**²² the Delhi High Court held that a democracy governed by the rule of law would be “in serious peril” if “creative voices were stifled or intellectual freedom was suppressed or suffocated”. Quoting French writer Voltaire in its

¹⁸ <https://thewire.in/law/shaheen-bagh-review-petition-supreme-court-public-places-protest-verdict>

¹⁹ Section 124 A IPC

²⁰ <https://www.10pointer.com/current-affairs/right-to-dissent-is-hallmark-of-democracy>

²¹ Suo motu Writ Petition (Criminal) No. 122 of 2011 decided on 23 February, 2012

²² Writ Petition(Civil) 13276/2021 and CM APPL. 41889/2021

order, the court said: “While I wholly disagree with what you say, I will defend to the death your right to say it”.²³

The Allahabad High Court in the case of **Yashwant Singh Vs State of UP and Others**²⁴ held in explicit terms that merely expressing dissent against the affairs of a government or its functionalities is not a criminal offence. It is noteworthy that the Right to Dissent is the most important right granted by the Constitution of India. “Expressing dissent on law and order situation in the State, is a hallmark of a constitutional liberal democracy like ours, constitutionally protected under Article 19 of the Constitution.” The brief facts of the case are that one Yashwant Singh tweeted that the CM of Uttar Pradesh had turned the State of Uttar Pradesh into a “Jungleraj” having no law and order in the State. He also tweeted that abductions, murders and ransom are rampant in the State. The UP Police lodged a FIR against him under Section 66-D of the IT Act which deals with punishment for cheating by personation by using computer resource and u/s 500 of the Indian Penal Code which deals with Punishment for Defamation. Yashwant Singh filed a writ petition in the Allahabad High Court praying for quashing the FIR lodged against him. It was argued on behalf of the petitioner that the right to dissent is a fundamental right which has been enshrined under Article 19 of the Constitution which guarantees Right to Freedom of Speech and Expression to all citizens of our country. It was also submitted on behalf of the petitioner that mere dissent in no way amounts to committing a crime under the Indian Penal Code and it was prayed that the said FIR ought to be quashed as the same has been malafidely lodged to coerce the petitioner to stop expressing his dissent against the State government. The Court held that “We after analysing the above provisions, qua allegation made in the FIR do not find even remotely a commission of offence under Section 66-D, as said provision relates to cheating by impersonation. It is not the case of prosecution that while committing the overt act, the petitioner either tweeted using other’s twitter handle or was there any allegation of cheating. No offence under Section 66-D IT Act is made out.” With regard to the charge of Defamation, the Court held that “In so far, Section 500 IPC is concerned, same is also not made out, as the alleged tweet cannot be said to fall within the mischief of defamation.” The Court quashed the said FIR and categorically held that “Expressing dissent on law and order situation in the State, is a hallmark of a constitutional liberal democracy like ours, constitutionally protected under Article 19 of the Constitution.” The rightful claim to dissent is an existential right of the individual.²⁵

The Supreme Court, in its landmark decision in **Kedar Nath Singh Vs State of Bihar**²⁶ the Supreme Court was entrusted with the task of deciding the constitutionality of the sedition law, which, over the years, has been used as a tool to curb dissent against the powers that be.²⁷ The Court, after analysing the history of the law and previous judgments on Sedition, held that the provision was constitutionally valid in light of restrictions contained under Article 19(2) of the Constitution as it is “in the interest of public order”.

*In Tara Singh Gopi Chand Vs State*²⁸ the Punjab and Haryana High Court struck down Sec- 124A IPC and held that “India is now a sovereign democratic State. Governments may go and be caused to go without the foundations of the State being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about...The unsuccessful attempt to excite bad feelings is an offence within the ambit of Section 124A. In some instances, at least the unsuccessful attempt will not undermine or tend to overthrow the State. It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the constitution. The section then must be held to have become void.”²⁹

²³ <https://indianexpress.com/article/india/right-to-dissent-vibrant-democracy-delhi-hc-7643761/>

²⁴ Criminal Misc. Writ Petition No.13058 of 2020 Decided by Allahabad High Court on 23 Nov 2020

²⁵ Friedrich Durrenmatt

²⁶ 1962 AIR 955

²⁷ <https://www.barandbench.com/columns/sedition-challenge-what-is-the-keadar-nath-singh-judgment>

²⁸ 1951 CriLJ 449

²⁹ <https://www.thehinducentre.com/the-arena/current-issues/dissent-democracy-why-the-sentinel-should-strike-down-ipc-sec-124a/article65685090.ece>

Suggestions

Dissent is not just about criticism alone. It is also about **showing new perspectives and a way forward for a better welfare. Following suggestions can be helpful:**

A fair and effective adjudicative mechanism in constitutional matters can meaningfully prevent agitation on the street. Studies have shown that social movements could be less radical and less oppositional when the issues could be effectively sorted out by way of fair litigation means.³⁰

Courts need to ensure timely agitation, which can reduce the agitation on public places.

Certain areas should be earmarked for protests so that the agitations do not cause public inconvenience.

A robust Public Enquiry System can minimize protests. When information is properly given lot many doubts can be removed leading to reduction in dissent incidents.

Citizens should also inculcate a civic culture of rationally accepting the authority of State and a belief in participation in civic duties. For the sake of protesting dissent should not be exercised out of political ill will. Self-responsibility is a must.

Conclusion

There are many such kings and rajas that are seen parading in front of the public with their own autocracy away from the issues. If someone tries to show them a mirror he is either not heard or pushed away.³¹ A citizen has the right to say or write whatever he/she likes about the Government, or its measures, by way of criticism or comments, so long as the person does not incite people to violence against the Government established by law or with the intention of creating public disorder.³² Dissent and democracy are two sides of the same coin. It is through debate and discussion that the diverse perceptions are explored. To reach the truth both positive and negative aspects will be confronted. In a progressive society, contradictory opinions should be viewed positively. They act as a guide to perform better. In the words of Rabindranath Tagore³³:

Where the mind is without fear and the head is held high;

Where knowledge is free;

Where the world has not been broken up into fragments by narrow domestic walls;

Where words come out from the depth of truth; Where tireless striving stretches its arms towards perfection;

Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit;

Where the mind is led forward by thee into ever-widening thought and action

Into that heaven of freedom, my Father, let my country awake.

³⁰ https://www.crackias.com/news_topic.php?news_id=15423&page_no=1#popup1

³¹ https://readerblogs-navbharattimes-indiatimes-com.translate.google/?p=25129&x_tr_sl=hi&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc

³² <https://economictimes.indiatimes.com/news/india/govt-criticism-not-sedition-rules-sc/articleshow/83213999.cms?from=mdr>

³³ <https://www.nios.ac.in/media/documents/srsec302new/302EL10.pdf>