
NATIONAL FLAG AND ANTHEM AS SYMBOL OF PROTEST: A HISTORICAL & CONTEXTUAL PRETEXT IN LIGHT OF ARTICLE 19

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ABSTRACT

The national flag and the anthem encapsulate the diversity of a country. A protest keeps a check on the government to prevent arbitrary use of power and usage of flag symbolises the solidarity of the nation against any of the injustice. India has witnessed number of protests over the years and each government has tried to suppress them by either making a compromise or resorting to strict measures.

The article discusses the history and evolution of the National Flag and anthem for the purpose of unity and protests against the British rule. In this context, the use of flag and anthem in protests and the conflict between the rights and duties of people are highlighted. *The conflict, whether the usage of national flag and anthem in protests violate the public order, morality or integrity in context to Article 19, is presented as well.*

Further, it is established that use of Flag and anthem in protests is a major element of demonstrations whether it be by the self-proclaimed nationalists or the people of the actual cause or the nuisance creators. People of a democratic nation use it to justify their actions with their definition of nationalism and sometimes which leads to disrespect. The same lyrics of anthem and the very same tricolour which is standing with no change in it has enough power to be instrumental in the process of bringing such huge changes.

Keywords: National Anthem, Flag, Protest, Democracy.

INTRODUCTION

Saffron White and Green, a sign of unity or the dissent is seen. Freedom of expression, granted as a fundamental right is the most important facet of a democracy which chains in itself the right to protest. The representation of solidarity of our country is done with our flag and the anthem which flow as a sign of togetherness in protests as well. The intriguing part is that the birth of our flag and the anthem was for protest against the British rule and as we advanced towards our independence it was more like a thread which knit all the people together and hence attaches a sentimental value which brings in respect. So, the conflict arises on the part of the representation of togetherness either for the respect of the symbol or for use of the symbol as disapproval. Being the citizens of a state, we have a right to use our national flag and Anthem and any kind of restriction may raise a question over the kind of democracy in our country.

The national flag and the anthem are considered to have encapsulated in itself the diversity of our country and the suppression of any out of those sows the seeds for protests. But this very symbol which is the pride of every person of the nation was restricted from private use. It was only after the Naveen Jindal¹ case that this constraint was withdrawn but gave rise to the Flag code of 1950² bringing in regulations for the rights declared. With recent Citizenship Amendment Act (CAA)³ and National Register for Citizens (NRC) protests in the picture, the nationalism of a person aligned with protest has come into question. So, what makes us intrigued is that what is nationalism? and why is it linked to protests? National Flag is playing a significant role in this protest as well. The All-India Council for Unity of Muslims (AIMIM) president appeals people to hoist national flag on the houses as a protest against National Register for Citizens (NRC) and Citizenship Amendment Act (CAA) and in these protests, the waving the national flag is being considered by some to be providing legitimacy to it⁴. But why does the flag's use make it sound legal when the right has already been given to us?

A protest is something which keeps a check on the government to prevent arbitrary use of power and when a flag is used, it symbolises the solidarity of the nation against any of the injustice. India, known to be the largest democracy, has witnessed end number of protests and

¹ Union of India vs. Naveen Jindal, (2004) 2 SCC 510

² MINISTRY OF HOME AFFAIRS, https://www.mha.gov.in/sites/default/files/flagcodeofindia_070214.pdf , (last visited Feb 6, 2021).

³ The Citizenship (Amendment) Act, 2019, Act No. 47, Acts of Parliament, 2019 (India).

⁴ TIMES OF INDIA, <https://timesofindia.indiatimes.com/india/shahnawaz-slams-owaisi-for-asking-people-to-fly-tri-colour-to-protest-against-cao-nrc/articleshow/72924316.cms> (last visited Feb 7, 2021).

each government has always tried to suppress these by either making a compromise or resorting to strict measures. The paradox of a society is that the very same integration of the tricolour along with the synthesis of some 'swaras' are considered as a symbol of integrity of our nation and on the parallel grounds is an epitome of divide due to difference in opinion.

SEEDS OF PROTEST IN NATIONAL FLAG AND THE ANTHEM

1. HISTORY OF INDIAN FLAG

The initial idea of the national flag was more of a representation of imperialism rather than a symbol of nationalism with similar signs as of the other colonies to depict the subjugation of all under the crown. The flag as an epitome of nationalism emerged after the revolt of 1857 but was still in conflict due to the iconography and symbols being linked to religion. The united movement started due to the proposed plan of lord Curzon to partition Bengal in 1905. Several different flags were proposed which had a mass appeal but all with the same object, that was unity for protest against injustice. One of the flags was designed by Margaret Nobel, commonly known as sister Nivedita with the portrayal of Indian spirituality using lamps, on the other hand, we had flag design by Sachindra Prasad Bose showing Hindu Muslim unity with symbols of lotus and crescent-shaped moon along with 'Bande Mataram' inscribed on it. The journey of music has been parallel to the evolution of flags with the representation of colour, and symbols of communities.⁵

The next milestone of the development of flag design lands on to 'satyagraha' of Gandhiji. Mohandas Karamchand Gandhi had mentioned in his journal 'Young India' quite often about the development of the flag. It can be recognised clearly that with each new step in the lines of protest more and more designs of the flag were created rather few of them evolved. Following what Gandhi said, that Pingalli Venkayya approached him with several ideas for a flag but none of them was liked by him. Gandhi ordered Venkayya to design a flag within three hours, incorporating the symbol of the spinning wheel and the colour red and green so that it can be displayed in the congress session on Bezwada in 1921. 'Charkha' depicted India's freedom in its ability to provide for its need concerning the idea of 'swadeshi' but also as a country.⁶ Gandhi

⁵Srirupa, R., "A Symbol of Freedom": *The Indian Flag and the Transformations of Nationalism, 1906–2002*. 65(3), J ASIAN STU , pp.495-527. (2006).

⁶ Virmani A, "National Symbols under Colonial Domination: the Nationalization of the Indian Flag, March-August 1923" PAST & PRESENT 164-169 (1999).

wanted to represent unity with erasing the identity of the communities which should be the idea to be followed in the present times, maintaining a unified state but at the same time not letting it fade the identity of any religion or region. The major roots of protest strengthen from the thought in the minds of people that their identity will be lost and so the state should provide such assurance which does let this insecurity to grow.

However, increasing demands for further adjustment led him to turn colour interpretations into something more secular. The bottom of the red stripe was a sacrifice, the middle green stripe reflected the hope and the top white stripe represented peace. In 1923 came into being the variant of the flag identical to the present one. It was designed by Pingali Venkayya and had the white, saffron and green stripes mounted in the white section with the spinning wheel. It was hoisted during an event commemorating the Jallianwallah Bagh massacre on April 13, 1923, in Nagpur. It was considered the Swaraj flag and became the symbol of self-rule which was demanded by the Indians.⁷

The Constituent Assembly adopted it as a National Flag of Free India on 22 July 1947. The colours and their meaning remained similar after the advent of Independence. Also, Emperor Asoka's Dharma Charkha was adopted as the symbol on the banner, instead of the spinning wheel. Thus the Congress Party's tricolour flag finally became Independent India's tricolour flag.

It cannot be denied that the design of flag included many conflicts as each wanted to display their beliefs or faith which gave them a sense of belongingness to both the nation and the flag. Somehow these conflicts in the history have very accurately explained that the sign of protests has a protest in themselves, that means that even people join for a common cause there is always a difference in opinion which can be seen in the present times as well. The national flag has grown out of the seeds of protest.

2. HISTORY OF NATIONAL ANTHEM

Similar to the situation of the National flag, the birth of National Anthem was also to show solidarity against the British rule. Though this opinion is conflicted by few yet Rabindranath Tagore made sure to answer the misinterpretations of his beautiful piece of writing. The song,

⁷ Samanth Subramaniam, *The Origin and meaning of India's National Anthem*, N WORLD, (Feb. 7, 2021, 7:08 PM) <https://www.thenational.ae/world/asia/the-origin-and-meaning-of-india-s-national-anthem-1.714515>.

a Brahma hymn composed in Bengali. It was first sung at the Indian National Congress session on December 27, 1911, and eventually adopted by the Indian Constitution when it came into force in 1950, as the Indian National Anthem⁸. It was claimed that the essence of the song was to praise King George V on the occasion of Delhi durbar in 1911. Some scholars argue that the British Indian press misrepresented the song that was sung at the Indian National Congress in December when the song was sung at the event and the issue came to the fore only when it was finally adopted as the National Anthem.

Rabindranath Tagore wrote a few letters in support of his claims against this dispute, which were later published⁹. On 10 November 1937, Tagore described the controversy in a letter to Pulin Bihari Sen, In the service of His Majesty, who was his uncle, he had asked him to write a congratulatory song to the Emperor. He was astounded by the order. It caused a great stir in his heart. In response to that great mental turmoil, he pronounced the victory in Jana Gana Mana of that Bhagya Vidhata [God of Destiny] of India who has from age after age held steadfast the reins of India's chariot through rising and fall, through the straight path and the curved. That Lord of Destiny, that Reader of India's Collective Mind, that Perennial Guide, could never have been George V, George VI or any other George. He stated that even his official friend had understood this song. After all, even though his admiration for the crown was excessive, mere common sense did not lack him. Tagore also said in another letter dated 19 March 1939, "I should only ridicule myself if I wish to respond to those who find me capable of such unbounded ignorance as to sing in praise of George the Fourth or George the Fifth as the Eternal Charioteer leading the pilgrims on their journey through countless ages of the eternal history of mankind."¹⁰. Recognized as a patriot himself, who in protest against the Jallianwallah Bagh massacre renounced knighthood and whose poem and song *Ekla chalo re* inspired Gandhiji in his work and determination, Tagore's statements in support of his creation have a special place of mention. Like every idea in the country, the national anthem also witnessed a conflict. So why not use this very anthem to express our conflict of ideas in the present-day scenario.

⁸ Ministry of Home Affairs, Government of India ,

https://mha.gov.in/sites/default/files/NationalAnthem%28E%29_2.pdf, (last visited Feb. 6, 2021).

⁹ The original letter in Bengali appears in Tagore's biography Ravindrajivani, volume II page 339 by Prabhatkumar Mukherjee

¹⁰ UOH HERALD, <https://herald.uohyd.ac.in/bharat-bhagya-vidhata/> (last visited Feb. 7, 2021).

Reference of Rabindranath Tagore, *Purvasa, Phalgun*, pg 738,(1354)-(the book was published in the Bengali year 1354 also known as *bangabda*)

The first stanza of Rabindranath Tagore's five-stanza poem *Bharot Bhagyo Bidhata*, or "Dispenser of India's destiny" opens with praise of the Almighty, who guides the country's destiny. The poem includes the majority of provinces of pre-independence India, beginning in the north and circling west, mentioning the regions of Punjab, Sindh, Gujarat, Maharashtra, the southern states speaking Dravidian languages, and Odisha and Bengal. This inclusion of all the provinces brings in unity amongst the people with acknowledging the region of each person. It also discusses the important geographic features like Himalaya, Vindhya, Yamuna and Ganga. Though it was disputed yet it successfully incorporates everyone to move together and work to achieve success, which can be considered for development of the nation and pray to the God for carve the path of India's destiny.

CONFLICT BETWEEN RIGHTS AND DUTIES?

The right to protest peacefully is provided in the Indian Constitution under *Article 19(1)(a)*¹¹ ensures the freedom of speech and expression; *Article 19(1)(b)*¹² assures citizens the right to assemble peaceably and without arms, thus covering the right to protest. These rights preserve the essence of democracy. These provisions are a part of the fundamental right which cannot be denied to any individual and on the other side falls the fundamental duty of Respect for national Flag and anthem under *Article 51-A(a)*¹³ and to some extent *Article 51-A(c)*¹⁴ which aims to protect the integrity of the state¹⁵. But these duties are unenforceable and were added in the Indian Constitution under the 42nd Amendment Act in 1976 however it is considered that they have an intrinsic element of compliance.

*The Article 19 (2)*¹⁶ allows for reasonable restrictions to be imposed on all fundamental rights, including that of freedom to speech and expression and it was held in **Romesh Thappar v State of Madras**¹⁷ that *Article 19(1)(g)*¹⁸ is the spirit of the constitution and our democracy. In the case of **Maneka Gandhi v Union of India**¹⁹ it was observed that the reasonable

¹¹ INDIA CONST. art. 19(1)(a)

¹² INDIA CONST. art. 19(1)(b)

¹³ INDIA CONST. art. 51A(a)

¹⁴ INDIA CONST. art. 51A(c)

¹⁵ KERELA STATE LEGAL SERVICES AUTHORITY, KOCHI - <http://kelsa.nic.in/downloads/E1.pdf> (last visited Feb. 8, 2021).

¹⁶ INDIA CONST. art. 19(2)

¹⁷ Romesh Thapar v State of Madras 1950 AIR 124, 1950 SCR 594

¹⁸ INDIA CONST. art. 19(1)(g)

¹⁹ Maneka Gandhi v Union of India 1978 AIR 597, 1978 SCR (2) 621

restrictions should not hinder the action of rights of others.²⁰ Hence it can be said that right to protest is available but with reasonable restriction and these restrictions should not extend their limit to the point it interferes in the other rights as well. These restrictions do not explicitly debar usage of national flag or anthem. The grounds which are mentioned are state security, friendly relations with foreign states, public order, decency and morality and sovereignty and integrity of India. Though one drawback in this article is that public order, morality are terms which are very wide and subjective hence are seen to have been misused multiple times.

If we analyse in context to fundamental duty it only extends to the part that we not disrespecting the flag and the anthem. It is what a person is expected, being a citizen and that is why the provision was added being unenforceable though there was an attempt of it. The Supreme Court dismissed a petition that wanted the implementation of Justice JS Verma Committee's recommendations²¹ for the legal enforcement of Fundamental Duties as enshrined in Part IV (A) of the Constitution of India by Ashwini Kumar Upadhyay in which the bench explicitly said that you are the government and you are so powerful that you can get this done. Though Fundamental duties do not discuss much yet we have separate provisions which fill up the gaps. Regarding disrespect of these national symbols like the Flag Code and²² Prevention to insults of national honour act 1971²³ restricts any use of national symbols.

There are different perspectives of the court in various cases regarding Fundamental duties and the case of *Charu Khurana v. Union of India*²⁴ it is said that Part III, IV and IV-A of the Constitution of India run through a common thread. A very different approach is carried out in the case of *Ramlila Maidan Incident*,²⁵ re, discussing that 51-A doesn't cast any duty on the state specifically but and the fact remains that the duty of every citizen of India is collective duty of the state, so there is nothing 'Fundamental' in these duties. In the case of *Amit Sahni v. Commissioner of Police*²⁶, it was discussed by the court that protesters cannot occupy any

²⁰ Priya T, "Freedom Of Speech And Expression" ACADEMIKE, (Feb. 7, 2021, 9:40 AM) <https://www.lawctopus.com/academike/freedom-of-speech-and-expression/>

²¹ NATIONAL HUMAN RIGHTS COMMISSION, <https://nhrc.nic.in/press-release/rights-and-duties-go-hand-hand%E2%80%99-justice-js-verma>, (last visited Feb. 8, 2021).

²² MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA https://mha.gov.in/sites/default/files/FlagAdvisoryEnglish_02082019.pdf, (last visited Feb. 9, 2021).

²³ The Prevention Of Insults To National Honour Act, 1971, Act No. 69, Acts of Parliament, 1971 (India).

²⁴ Charu Khurana v. Union of India (2015) 1 SCC 192, 206-09

²⁵ Re-Ramlila Maidan Incident Dt ... vs Home Secretary And Ors (2012) 5 SCC 1,

²⁶ Amit Sahni v. Commissioner of Police 2020 SCC OnLine SC 808.

public place for indefinite time which is causing public inconvenience. It was highlighted by the court that there should be a balance of right to hold demonstration and the right to commute.

There might be a question regarding why enforce this respect on people to respect the flag and the anthem. To a great extent, this is a very internalised feeling amongst the people to respect the flag. Somehow there are a lot of emotions attached to it, coupled with the struggle of so many people. The Flag and the Anthem are representatives of our nation, the people who were in the freedom movement and so the point regarding their honour was raised. In a way, any person disregarding the Flag and the anthem hurts the sentiments of the people, along with it the flag and the anthem connotes to the solidarity and formation of India, which some makes it important to do so. In some way, we should be obliged towards the people involved in freedom movement with whose sweat and blood we see an independent India. No citizen is supposed to be forced to hoist the flag or sing the national anthem but when you are willingly doing so then do with all the respect.

The conflict arises on the point that whether the usage of national flag and anthem in protests violate the public order, morality or integrity? Somehow it is a very subjective view and rather can also be used as per the convenience of the person holding power to manage any situation. The part which needs to be noticed is that use of the flag and the anthem in protests is not considered disrespect when protests turn dirty and the flag is about to lose its sanctity by becoming a mere weapon of violence then the conflict arises. In protest paper or plastic, flags are used and later just discarded and thrown off on the ground which is against its dignity. Any kind of writing on the flag is also unacceptable. Only when, while protesting the public burns, defaces, defiles or tramples the national flag for preventing those times only such a provision of fundamental duty is present. Even national Anthem is printed out or written on posters which are just disposed of with other regular things. Though the acts are already present which curb this disrespect but the mention of it in the constitution brings in more legitimacy and protests are usually a stand for safeguarding the spirit of the constitution so there are fewer chances of disrespect.

RESPECT: GIVEN OR ASKED FOR?

The use of flag and anthem in protests germinates a dilemma about the respect of them. Is it a compulsion because of which people respect the flag and the anthem or is it something ingrained in us inherently? There have been cases where there were protests against the

enforcing of the respect for the national anthem and ironically it uses the national flag as the symbol of disagreement. The problem is not about not wanting; it is more about fitting in nationalism everywhere. Nationalism is a term which can be interpreted in multiple ways, for some it is as simple as a love for the nation but for some, a sense of hate for other countries also tags along turning it into a serious issue since repercussions of aggressive nationalism had been witnessed by the whole world.

In the case of *Bijoe Emmanuel*²⁷, three children studying in a school in Ettumanoor were expelled from school after they refused to sing the national anthem of India. Their father had asked them not to salute the flag or sing the anthem because it was against their religious faith in Jehovah's Witnesses. Through their representative, they filed a writ petition in the High Court of Kerala State, seeking to restrain authorities from preventing their school attendance. They alleged that their expulsion amounted to an infringement of their fundamental rights to freedom expression under Article 19 and freedom of religion under Article 25²⁸ of the Constitution of India. The High Court dismissed the petition on the ground that no word or thought in the national anthem could offend any religious beliefs.

In the case of *Shyam Narayan Chouksey v. Union of India*²⁹, a writ petition filed by the petitioner stated that the anthem is sometimes sung in various impermissible circumstances which cannot be allowed given regard to the national honour and National Anthem is to be respected and shown due honour by everyone in this country.³⁰ The court as an interim measure, gave few directions one of which said that the national anthem cannot be printed and displayed in a manner disgraceful to its status and tantamount to disrespect as the concept of the protocol associated with its singing has its inherent roots in National identity, National integrity and Constitutional Patriotism. It shall be played before the beginning of a feature film and everyone present in the hall is obliged to stand up to show respect to the National Anthem. The entry and exit doors shall remain closed before the National Anthem is played or sung in the cinema hall on the screen so that no one can create any kind of disturbance which will amount to disrespect to the National Anthem and they can be opened after it is over. Also, while it is being played in the Cinema Halls, it shall be with the National Flag on the screen.

²⁷ *Bijoe Emmanuel v. State of Kerala* (1987) AIR 748.

²⁸ INDIA CONST. art. 25

²⁹ *Shyam Narayan Chouksey v. Union of India* (2018) 2 SCC 574.

³⁰ Shan Kohli, *Parody of National Anthem: Ram Gopal Varma ki nayi Aag*, 3 NUJS L. Rev. 215 (2010)

Moreover, the Court referred to clause (a) of Article 51(A), Fundamental Duties found in Part IV A of the Constitution and held that it is the sacred duty of each citizen to uphold the values enshrined in the Constitution. And one of those values is to show respect for the national anthem and the album. The National Anthem, which is the emblem of constitutional patriotism and the intrinsic national nature, binds the country's citizens to show respect for it as the citizens have to know that they are living in a democracy, and that is the fundamental duty.³¹ The notion of a different concept of, or interpretation of, individual rights is legally unconstitutional. Fundamental duties show Indian Constitutional spirit. Those are the values if every person follows them carefully. There will be no need to claim fundamental rights. As, if no one is going to violate others right why someone is going to have to claim them again.

One's respect towards the nation is a very personal choice and the overt manifestation of it does not mean that there is actual respect. Respect is something which comes from within and such a decision bring in more chances of protest. When something is forced upon people they revolt even if it is the national anthem or the flag by using the same for the protest. When this anthem is already a symbol of solidarity which connects people then there is no need to enforce any such law until and unless it amounts to disrespect.

PROTESTS - A DAY TO DAY REFERENDUM

Be it the Swadeshi Movement of 1905, the CAA protests or the farmer's protest, these movements have sculpted the history of the nation. India is such a nation which will rise if witnessing any injustice and protests which acts as a check on the government or any other body which can act arbitrarily. National integration is not something which can be build or shaped. It has to breed silently in the minds and hearts of people. People who decide to protest against the government, any law, is for anything that runs counter to the majority view on some issue, are afraid that the very act of protest might earn them the epithet of being anti-national. The national flag, they hope, will act as a "shield" that should not be challenged about their nationalistic credentials.

³¹ Editorial Note, *The Supreme Court's National Anthem Mandate: A Misunderstanding of Habermasian Constitutional Patriotism*, 10 NUJS L. Rev [i] (2017)

There have been a series of protests in India, whether it be the chipko movement, or Nibhaya, or Lokpal bill. India has always risen for the right of people. From social to political to environmental causes, all kinds of protests have taken place with the presence of our national flag and the anthem to show dissent. India is such a diverse state and representation of each community is done in the flag and the anthem hence we see the unity of each individual by the display of these in the demonstration. Since Anna Hazare's hunger strike till the present protests, the demand of the tricolour has alleviated. There was a huge mount in the sales of plastic or paper flags since then. On December 19, India saw country-wide protests opposing the Citizenship (Amendment) Act. Notwithstanding the restrictions, hundreds of flag-waving students and activists converged near the historic Jantar Mantar in the afternoon to voice their anger against the contentious law after police forcefully evicted protesters from areas around Red Fort and Mandi House. In Delhi, while the police attempted to disperse a crowd of young students at the end of the day, they greeted them with a rendition of the national anthem and asked them to join in. The protesters wear Muslim caps and many of the women wear the hijab headscarves, but they also sing national songs, read out sections of the constitution and carry pictures of independence hero Mahatma Gandhi and B.R. Ambedkar, who led the drafting of the constitution, "This tricolour is our symbol against fascism," Asaduddin Owaisi, an MP who heads a Muslim party, said of India's saffron, white and green flag during a rally. Indian Muslims protesting against a citizenship law which they say is discriminatory are carrying national flags and copies of the constitution, aiming to prevent themselves from being tainted as "anti-Indian".

There have been efforts by the police forces at times to curb such a referendum and they had been given authority for so by acts such as Armed Forces Special Powers Act³² (AFSPA), Terrorist and Disruptive Activities (Prevention) Act³³ (TADA), Prevention of Terrorism Act (POTA)³⁴. The Irom Sharmila's protest stands as an example of the arbitrary use of the power. Maintenance of Internal Security Act (MISA)³⁵ during the 1975 emergency, invoked by Indira Gandhi was a depiction of restricting public will and detaining them for so. People raising voice and protesting the rule which was not even authorised were barred because of to the threat to

³² Armed Forces Special Powers Act (AFSPA), 1958, Act No. 28, Acts of Parliament, 1958 (India).

³³ Terrorist and Disruptive Activities (Prevention) Act, 1987, Act No. 28, Acts of Parliament 1987 (India).

³⁴ Prevention of Terrorism Act, 2002, Act No. 15, Acts of Parliament 2002 (India).

³⁵ Maintenance of Internal Security Act, 1971, Act 26, Acts of Parliament, 1971 (India).

save their lives. Due to presence of these acts and the arrogance of the political leaders force them to indulge in the use of muscle power, makes our democracy surrounded by questions.³⁶

The Farmers protest on 26th January 2021 brought in a new stir in regard to giving parity to religious flags and the national flag. Many of the protesters, driving tractors, reached the Red Fort while some of them hoisted religious flags on its domes and the flagstaff at the ramparts, where the national flag is unfurled by the prime minister on Independence Day. The flag code discusses that no other flag should be hoisted above or side by side to the national flag. In connect to the farmer's protest, mother and brother of a farmer, who died in a road accident near the Ghazipur protest site, have been booked along with another person for allegedly insulting the national flag after a video of his last rites here showed the body draped in the Tricolour. It has been discussed in the flag code that the national flag cannot be used as drapery in any form in a private funeral and can be used for only state/ military/ paramilitary forces.

Peaceful protests with the use of the flag and the anthem should be encouraged to prevent damage to the public property and injury to people. These protests act as constructive criticism in case of any unconstitutional order. But protest is something which requires high level of responsibility and all possible measures should be taken to avoid it from turning into a mob which creates violence and breaks the laws of the land. Democracy is for, of and by people along and people's opinion is the major facet of it, which should be acknowledged. Rather than waiting for the parliament to come into session people give an instant review on the law or any issue, thus saving time.

3. SEDITION

Section 124 A of Indian Penal Code³⁷ describes sedition in India. Section 124A was implemented in 1870 by the British colonial government when it felt the need for a special section to deal with the 19th-century radical Wahhabi movement, headed by Syed Ahmed Barelvi and based around Patna. Section 124A IPC remained on the statute book. After the First Amendment to the Constitution and the introduction of the words "in the interests of public order" to the exceptions to Article 19(1)(a), it became extremely difficult to challenge

³⁶ Anand Teltumbde, *Criminalizing People's Protest*, Vol 48 No.14, ECONOMIC AND POLITICAL WEEKLY, pg 10-11, (2013)

³⁷ Indian Penal Code, 1860, Act No. 45, Acts of Parliament, 1860 (India).

the constitutionality of section 124A. In 1962, In the *Kedarnath Singh*³⁸ case, the Supreme Court upheld the constitutionality of the law but limited the scope of the law to actions involving intention or propensity to cause chaos, disruption of law and order, or incitement to violence. The Supreme Court thus added additional protection to the statute: it was not only tolerated constructive criticism or disapproval, but it was allowable if the speech in question had no intention or propensity to cause violence or disruption of law and order. Section 124A of the IPC has its relevance in the war against secessionist and terrorist elements and faces a Maoist rebellion in different states and rebel groups are operating a parallel government and advocate overthrow of the government. On the other side Section, 124A is unsuited in a democracy as it constrains the freedom of speech and expression. Dissent and criticism are essential ingredients in a vibrant democracy and Right to question, criticize and change rulers are very fundamental to the idea of democracy. Hence is a very conflicting provision.

IN THE GARB OF NATIONALISM- AN ATTEMPT TO CREATE CHAOS?

Many times, it is seen that a protest starts with a great cause and it ends up into chaos involving violence or damage to public property. Uproar aimed to bring about positive change but due to the involvement of some misguiding elements, the protests turn dirty. Majorly the role in making these demonstrations lose their essence is politicising the matter and overt or covert involvement of politicians in it³⁹. It is something very saddening that something as sensitive as a rape case is also not left out of this party politics. The politicians consider themselves as the epitome of nationalism, which is a very subjective term and hence is taken up by every party in a different name. people are also aligned to the thinking patterns of a political party and hence join these opposing factions of protests. It can be said all protests are a triangle, one side is the actual concern for the issue, one side joins in bringing violence and in the counter rises the last side linking into to nationalism

During the protests on Supreme court order on Atrocities against SC/ST Act⁴⁰, another section of people started to rise to counter that by raising the agenda of anti-reservation protests. While the protests were in the process some nuisance creating elements joined it and then there were riots and few people were killed especially in Madhya Pradesh. Turning every issue about

³⁸ Kedar Nath Singh v State of Bihar (1962) AIR 955, 1962 SCR Supl. (2) 769

³⁹ Bayley, D. *Public Protest and the Political Process in India*. 42(1), PACIFIC AFFAIRS, pg 5-16. (1969)

⁴⁰ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Act No. 33, Acts of Parliament, 1989 (India).

nationalism is not correct but many people join the protests for it and bring in a state of anarchy by shifting the flow of the protest in the direction which was not even the agenda. Sometimes the protests aggravate, turning into a devastating high tide due to clash in opinions. They incite violence by doing unlawful activities such as burning the flag or defacing it. Loving your country and spirit of oneness is important but not to the extent that it starts eclipsing every issue. Sometimes it is a tactic to divert people from the other important issue; we had the *Ayodhya Judgement*⁴¹ and the CAA but the highlight of the protest was to the level that people are not paying heed to the economic slowdown in the country.

The use of the Flag and the anthem in protests is a major element of demonstrations by self-proclaimed nationalists or by the citizens of the real cause or the producers of nuisance. It is used by citizens of a democratic nation to justify their acts by describing nationalism and, at times, contributing to disrespect. The anthem and the tricolour which is staying constant has enough power to be instrumental in the process of bringing such huge changes.

CONCLUSION

To, sum up, the protest is a method of voicing the opinion of masses and is something which cannot be denied if the country claims to be democratic. The presence of the national flag and the anthem in demonstrations cannot be questioned as the citizens have the first right over it. If we go back to history both of these were framed for the citizens to collectively rise against injustice. The only obligation with it is not to disrespect the national flag or the anthem. So, in no way, there should be a conflict regarding their use in demonstrations. Recently with end number of issues rising in our nation, there would be a conflict of opinions but what keeps everyone united would be for the betterment of the country. These protests act as a system of daily elections and just move to strengthen our democracy. The 'tiranga' stands erect on the Indian soil with the echoing melody of the anthem depicting the freedom and liberty of the nation.

⁴¹ M Siddiq (D) Thr Lrs V. Mahant Suresh Das & Ors, (2019) 4 SCC 641.