# Mazdoor Kisan Shakti Sanghatan vs Union Of India on 23 July, 2018

## Equivalent citations: AIR 2018 SUPREME COURT 3476, AIR 2018 SC( CRI) 1105, (2018) 72 OCR 321, (2018) 9 SCALE 134, (2018) 5 BOM CR 345, (2018) 5 ALL WC 5386, (2018) 3 CRIMES 433, 2018 (3) KLT SN 70 (SC), 2018 (4) KCCR SN 419 (SC), AIRONLINE 2018 SC 66

## Author: A.K. Sikri

## Bench: Ashok Bhushan, A.K. Sikri

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 1153 OF 2017

MAZDOOR KISAN SHAKTI SANGATHAN

VERSUS

THE UNION OF INDIA & ANR.

WITH

CIVIL APPEAL NO. 863 OF 2018

CIVIL APPEAL NO. 862 OF 2018

AND

CIVIL APPEAL NO. 864 OF 2018

JUDGMENT

A.K. SIKRI, J.

Writ Petition (Civil) No. 1153 of 2017, which is filed as public interest litigation under Article 32 of the Constitution of India, challenges the repeated imposition of police order under Section 144 of Code of Criminal Procedure (hereinafter referred to as the “Cr.P.C.”), whereby ban is imposed by the Assistant 18:09:25 IST Reason:

Commissioner of Police, Sub-Division, Parliament Street, New Delhi District prohibiting the following activities without written permission in the areas known as Parliament House, North and South Block, Central Vista Lawns together with its surrounding localities and areas:-

"i) The holding of any public meeting;
ii) Assembly of five or more persons;

iii) Carrying of fire-arms, banners, placards, lathis, spears, swords, sticks, brickbats etc.

iv) Shouting of slogans;

v) Making of speeches etc.
vi) Processions and demonstrations;

vii) Picketing or dharnas in any public place within the area specified in the Schedule and site plan appended to this order"

2) It is the grievance of the petitioner that though a particular order passed under Section 144 of the Cr.P.C. remains in force for a period of 60 days, simultaneously on the expiry of the said period of 60 days another order of identical nature is passed thereby banning the holding of public meetings, peaceful assembly and peaceful demonstrations by the public at large. This, according to the petitioner, is the arbitrary exercise of power which infringes the fundamental right of peaceful assembly guaranteed under Article 19(1)(b) of the Constitution of India. It is stated that by these orders virtually the entire Central Delhi area is declared a prohibited area for holding public meetings and dharnas or peaceful protests. The petitioner has, thus, sought a writ of certiorari seeking quashing of these orders passed under Section 144 of the Cr.P.C. and has also prayed for issuance of writ of mandamus or any other direction laying down the guidelines for holding public meetings, dharnas, etc. To be precise, the prayers made in the writ petition are of the following nature:

"In view of the above-mentioned facts it is respectfully submitted that this Hon'ble Court may be pleased to:

(a) Issue a writ of certiorari or any other direction to quash the orders dated 24.01.2017, 25.03.2017, 24.05.2017, 23.07.2017, 22.09.2017 and 31.10.2017 or any other similar orders issued earlier or subsequent to these dates by the Delhi Police vide which the entire Central Delhi/New Delhi has been declared as a prohibited area;

(c) Declare that imposing a blanket ban on all assemblies in Central Delhi/New Delhi area as illegal;

(d) Declare that repeated promulgation of prohibitory orders under Section 144 of Code of Criminal Procedure as illegal; and

(f) Pass any other or further appropriate writs, orders, or directions as this Hon'ble Court may deem fit and proper in the interests of justice." CIVIL APPEAL NO. 862 OF 2018

3) Civil Appeal No. 862 of 2018, on the other hand, has laid challenge to the judgment and order passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as the "NGT") in Original Application No. 63 of 2016. This Original Application was filed by Respondent Nos. 1 to 7, who are the residents of Jantar Mantar Road. In the said Original Application they had stated that on Jantar Mantar road, particularly the stretch between the Ashoka road and Parliament street, there are residential houses where people are living for number of decades by now. This stretch on Jantar Mantar road, falling between the intersection on Ashoka Road and Parliament street, has been earmarked as residential area even under the Master Plat, 2021. the said road, houses not only residences of members of Parliament but also State Guest house of Kerala, office of Delhi Metro Corporation and offices of political parties. The grievances were that Jantar Mantar has become a ground for organizing protest by various categories of groups, political and non-political. Such protests are not temporary or transient. The protestors have rather put up tents and other arrangements where people have been staying for many months. Some of the structures have been on the site for past several years. It was also averred that the manner in which the demonstrations are held and the area occupied by the protesters are causing noise pollution and air pollution, thereby causing insurmountable and untold miseries to the residents and causing adverse health effect on the residents and their children.

4) The prayer made in the Original Application was to pass appropriate orders directing the Police Commissioner and other government authorities (who were arrayed as respondents) to disallow the protestors of Jantar Mantar Road stretch between Ashoka Road and Parliament Street or prevent them from using loudspeaker or public announcement system. The NGT after hearing the matter has rendered its judgment on 5 th October, 2017, allowing the Original Application of Respondent Nos. 1 to 7 with the issuance of following directions:

> "I. The respondent Government of Delhi, New Delhi Municipal Corporation and Police Commissioner, Delhi to immediately stop all the activities of dharna, protest, agitations, assembling of people, public speeches, using of loud speakers, etc. at Jantar Mantar Road.
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> II. NDMC is directed to remove all make shifts/temporary structures, loud speakers and public address system from the said stretch of Jantar Mantar road.
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> III. NDMC is also directed to remove the garbage/waste lying on the stretch of Jantar Mantar Road and clear the entire area.
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> IV. The respondent shall shift the protestors, agitators and the people holding dharnas to the alternative site at Ram Leela Maidan, Ajmeri Gate, forthwith.

V. The respondents are directed to comply with this order within four weeks from the date of pronouncement of the judgment.

VI. The Chairman, New Delhi Municipal Corporation, the Police Commissioner, Delhi and Government of NCT of Delhi shall file their respective compliance report before the Tribunal within five weeks from the date of the judgment.

When such reports are received, the registry is directed to register the same and place before the Tribunal. There shall be no order as to cost."

5) Civil Appeal No. 862 of 2018 has questioned the validity of the said order on the ground that these directions violate fundamental right of the appellants enshrined in Article 19(1)(b) of the Constitution to hold peaceful demonstrations as the appellants are fighting for the welfare and interest of the farmers and holding dharnas at Jantar Mantar for redressal of the legitimate grievances of these farmers.

CIVIL APPEAL NO. 863 OF 2018

6) Likewise, the appellant in Civil Appeal No. 863 of 2018, aggrieved by the same order of NGT, states that she is the sufferer for many years for the grave offence of rape by a police officer on 16 th June, 2010 and to attract attention of the concerned persons for redressal for her grievance she has been continuously sitting on dharna at Jantar Mantar and with the ban of such dharna by the NGT, her valuable fundamental right is affected. CIVIL APPEAL NO. 864 OF 2018

7) Civil Appeal No. 864 of 2018 is filed by Indian Ex-Serviceman Movement. This organisation, which is fighting for the rights of the ex-servicemen, had been holding dharnas, assembly, speeches, etc. at Jantar Mantar, is precluded from raising its voice because of the order passed by the NGT imposing ban on such types of assemblies.

8) The aforesaid introduction in these two cases clearly reveals the commonality of the issues and legal precepts on the basis of which the subject matter of all the cases is to be decided. For this reason, all the four cases were clubbed together ad heard simultaneously.

FACTS : W.P. (CIVIL) NO. 1153 OF 2017 :-

9) This PIL is filed by the Mazdoor Kisan Shakti Sangathan (for short, "MKSS"). It is claimed that MKSS is a grassroot, unregistered people's organisation formed in 1990 with its headquarters in Devdungri, Rajasthan with bank account number 51041231248 in State Bank of Bikaner and Jaipur, Bhim. The MKSS was a crucial part of the movement that led to the passage of the Right to Information Act in 2005. The platform of village based public hearings or "Jan Sunwais" pioneered by the MKSS in the mid-1990s became institutionalized in processes of the government and is also used as a means of public audit across the country. The MKSS has also been a strong supporter and an integral part of the movement demanding the Right to

> Work, which played an important role in ensuring the passage of the National Rural Employment Guarantee Act (NREGA) in 2005 in India. The MKSS operates through community support for its activities and honorarium for its volunteers. Full time volunteers receive minimum wages as their honorarium. This comes through non-tax deductible donations from individuals that the MKSS receives.
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> 10) It is pointed out in the petition that the Delhi Police has been issuing such prohibitory orders under Section 144 of the Cr.P.C.

for several years. It issues fresh orders as soon as the previous order expires. As per sub-section (4) of Section 144 Cr.P.C., an order can be issued for a maximum period of two months, therefore, the Delhi Police has adopted the tactic of issuing the same order repeatedly as a result of which for the last several years, the entire Central Delhi area is a prohibited area for the purposes of holding dharnas, peaceful demonstrations, etc.

11) The petitioner has annexed these orders dated 24 th January, 2017, 25th March, 2017, 24th May, 2017, 23rd July, 2017, 22nd September, 2017 and 31st October, 2017 as Annexures P-1 to P-6 respectively. All the orders are identically worded. For the sake of clarity, it would be apposite to reproduce text of one such order dated 25th March, 2017, which is as under:

" ORDER

1. Whereas the areas known as Parliament House, North & South Block, Central Vista lawns together with its surrounding localities and areas, are busy places frequented by heavy vehicular and pedestrian traffic.

2. And whereas reports have been received indicating that such conditions now exist that unrestricted holding of public meetings, processions/demonstrations etc. in the area are likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquility.

3. And whereas it is necessary to take speedy measures in this behalf to prevent danger to human life or safety and disturbance of public tranquility.

4. Now, therefore, in exercise of the powers conferred upon me by the virtue of Section 144 Cr.P.C., 1973 (No. 2 of 1974) read with Govt. of India, Ministry of Home Affairs, New Delhi's Notification No. U-11036/(i) UTL dated 9.9.2010, I, Ved Bhushan, Asstt. Commissioner of Police of Sub-Division Parliament Street of New Delhi District do hereby make this written order prohibiting:

> "i) The holding of any public meeting;
>
> ii) Assembly of five or more persons;
>
> iii) Carrying of fire-arms, banners, placards, lathis, spears, swords, sticks, brickbats etc.

iv) Shouting of slogans;

v) Making of speeches etc.

vi) Processions and demonstrations;

vii) Picketing or dharnas in any public place within the area specified in the Schedule and site plan appended to this order;

5. The specific area covered by this prohibitory order, will be the area and building surrounded by Sansad Marg/opposite Registrar of Co-operative Societies, Old Court Building, towards Sansad Marg/Ashoka Road crossing, Ashoka Road, Windsor Place (inclusive Road), Ashoka Road upto Man Singh Road/Ashoka Road R/A, T/R Man Singh Road (exclusive) upto Rajpath, then T/R on Rajpath (inclusive) upto Vijay Chowk , then T/L upto South Fountain, T/R Dalhousie Road upto R/A Dalhousie Road/ Rajaji Marg/Dalhousie Road (exclusive R/A), T/R South Block, Rajpath, North Block, Central Sectt., Church Road upto Gate No. 35 of Rashtrapati Bhawan including MP Flats, North Avenue upto R/A RML (exclusive), Baba Khark Singh Marg upto Gole Dakkhana (exclusive) T/R Ashoka Road T/L Jai Singh Road, excluding Sansad Marg/Tolstoy Marg crossing, Sansad Marg upto Registrar of Co- operative Societies, Old Court Building and Jantar Mantar Road/Tolstoy Marg Crossing, Jantar Mantar Road upto R/A Jantar Mantar Road and Ashoka Road. A details map of this area is enclosed as Annexure to this order.

6. This order shall come into force with effect from 26.03.2017 and shall remain in force for a period of 60 days, i.e., up to 24.05.2017 (both days inclusive) unless withdrawn earlier.

7. Any person contravening this order shall be punishable under Section 188 of Indian Penal Code.

8. As the notice cannot be served individually on all concerned, the order is hereby passed 'Ex-Parte'. It shall be published for the information of public through Press and by affixing copies on the notice boards of the offices of all District Addl. CsP/DcsP/Addl. DcsP, AcsP, Tehsil Offices, all Police Stations concerned and the offices of the NDMs and MCD.

(Ved Bhushan) Asst. Commissioner of Police, Sub-Division Parliament Street New Delhi District"

12) It is averted that Delhi is the national capital, the centre of power and hence aggrieved citizens from all over the country throng the city to get their voices heard. Mass protests have been prevalent in Delhi since colonial times in the form of hartals, satyagraha against the British rule and later Emergency era protests, kisan agitations, Mandal Commission protests, the Jan Lokpal aandolan and the December 2012 gang-rape protests, to name a few. Upto the 1980s citizens of this country had unrestricted rights to hold dharnas, protests and agitations in the Boat Club lawns near India Gate along the Rajpath road. After the Mahendra Singh Tikait agitation, protests at Boat Club lawns were restricted. In fact the unrestricted right to protest was severely curtailed and the entire Central Delhi, which is close to the establishment offices, has been turned into a fortress and the fundamental rights of the citizens are completely denied thereby. However from 1993 till recently,

the only place where the protests were allowed was Jantar Mantar.

13) When attempts were made to restrict protest at Jantar Mantar, the Delhi Police's repeated orders banning protests in Central Delhi were challenged by a Bhopal Gas Pidit Mahaila Stationary Karamchari Sangh member in 2010 before the Delhi High Court, who had come along with other activists to Delhi to raise a protest because of the failure of the Government of India to set up an empowered commission to look into the problems of the victims of toxic gases leak from the plant of the Union Carbide in 1984 but the same protests were being rendered unfruitful because of the orders of the Delhi Police continuously imposing restrictions on the right to protest in Central Delhi. The High Court on 31 st May, 2011, disposed of the petition when the Delhi Police filed an affidavit stating that the continuous prohibition under Section 144 of the Cr.P.C. under the jurisdiction of the New Delhi District declaring certain areas as prohibited area for holding any public meeting, dharna, peaceful protest, etc. has been discontinued. Despite this, the practice of repeated imposition of orders under Section 144 continues, severely restricting the citizens' fundamental right to protest and peaceful assembly.

14) The petitioner also states that the Delhi Police has even advertised for protesters to use Jantar Mantar as the site of protest. However, on 5th October, 2017, the NGT has entirely banned protests at Jantar Mantar on the grounds that it creates a nuisance for the residents of the area and violates environment protection statutes. This order is, however, in complete violation of a citizen's fundamental right to peaceful assembly. With the NGT order banning protests at Jantar Mantar, it is evident that distancing a protest site from where it is most visible to the government and concerned authorities, will have the effect of diluting the impact that the protest seeks to gain. Jantar Mantar has been the site for peaceful protests since 1993 and by the nature of the stretch of road, it is an easily managed and contained space. It gave poor protesters a chance to get food from the gurudwara nearby and gave them a sense of greater visibility, considering the proximity of the venue to the Parliament. With the shifting of the protest site to Ramlila Maidan, there is a fear that this will further distance protesters from a site where they had greater visibility and is hence an unreasonable restriction on the freedom to protest and right to peaceful assembly. Besides the cost of using Ramlila Maidan for protests is Rs. 50,000/- per day which would make protests at the site practically impossible for the common citizen.

15) Mr. Prashant Bhushan, learned counsel arguing in support of the prayers made in this petition, referred to certain relevant provisions of the Cr.P.C. including Section 144 thereof and also that of Delhi Police Act, 1978. He submitted that holding peaceful demonstration by people in order to air grievances and to see that their voice is heard in the relevant quarters, is the right of the people. Such a right can be traced to the fundamental system guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution. Article 19(1)(b) specifically confers a right to assembly and, thus, guarantees that all citizens have right to assemble peacefully and without arms. He submitted that by various pronouncements, this Court as well as High Courts have upheld this fundamental right of the citizens, i.e., right to protest and assemble peacefully without arms is a distinguishing feature of any democracy and it is this feature that provides space for legitimate dissent. It encompasses the right to express grievances through direct action or peaceful protest. Organized non-violent protest marches were a key weapon in the struggle for independence and the right to peaceful protest is now

recognised as a fundamental right in the Constitution. He accepted that while on the one hand, citizens are guaranteed fundamental right of speech and the right to assemble for the purpose of carrying peaceful protest/processions, on the other hand, reasonable restrictions on such rights can be placed by law. Provisions of the Indian Penal code (for short, 'IPC') and Cr.P.C. are in the nature of such reasonable restrictions, which are statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become unlawful. However, his submission was that while exercising such powers the authorities are supposed to act within the limits of law and cannot indulge in excesses in what can be seen as another bid to stifle and impose unreasonable restrictions on the right to peaceful assembly.

16) The submission of Mr. Prashant Bhushan was that having regard to the aforesaid constitutional position, provision of Section 144 of the Cr.P.C. could be used only in emergent situation when there is sufficient ground for proceeding under that Section and there is need for immediate prevention or speedy remedy is desirable. In this behalf, he drew sustenance from the order dated 31 st May, 2011 of Delhi High Court in the case of Bano Bee v. Union of India and Anr.1 wherein similar type of blanket ban on all assemblies in Central Delhi/New Delhi by repeated promulgation of prohibitory order under Section 144 of the Cr.P.C. was deprecated. He referred to the following discussion in the said judgment:

> "5. Ordinarily we would have dealt with the law laid down in Himmat Lal K. Shah Case (supra) and another decision rendered in Babulal Parate v. The State of Maharashtra and Ors. (AIR 1961 SC 884) by the Constitution Bench, but we have come across a decision in Acharya Jagdishwaranand Avadhuta v. Commissioner of Police, Calcutta and another, (AIR 1984 SC 51) wherein it has been held as follows:
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> "The other aspect, viz., the propriety of repetitive prohibitory orders is, however, to our mind a serious matter and since long arguments have been advanced, we propose to deal with it. In this case as a fact from October 1979 till 1982 at the interval of almost two months orders under Section 144(1) of the Code have been made from time to time. It is not disputed before us that the power conferred under this section is intended for immediate prevention of breach of peace or speedy remedy. An order made under this section is to remain valid for two months from the date of its making as provided in sub-section (4) of Section 144. The proviso to sub-section (4) authorises the State Government in case it considers it necessary so to do for preventing danger to human 1 Writ Petition (Civil) No. 5000 of 2010 life, health or safety, or for preventing a riot or any affray, to direct by notification that an order made by a Magistrate may remain in force for a further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired. The effect of the proviso, therefore, is that the State Government would be entitled to give the prohibitory order an additional term of life but that would be limited to six months beyond the two months' period in terms of sub-

section (4) of Section 144 of the Code. Several decisions of different High Courts have rightly taken the view that it is not legitimate to go on making successive orders after earlier orders have lapsed

by efflux of time. A Full Bench consisting of the entire Court of 12 Judges in Gopi Mohun Mullick v.

Taramoni Chowdhrani examining the provisions of Section 518 of the Code of 1861 (corresponding to present Section 144) took the view that such an action was beyond the Magistrate's powers. Making of successive orders was disapproved by the Division Bench of the Calcutta High Court in Bishessur Chuckerbutty v. Emperor. Similar view was taken in Swaminatha Mudaliar v. Gopalakrishna Naidu, Taturam Sahu v. State of Orissa, Ram Das Gaur v. City Magistrate, Varanasi, and Ram Narain Sah v. Parmeshar Prasad Sah. We have no doubt that the ratio of these decisions represents a correct statement of the legal position. The proviso to sub- section (4) of Section 144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indicative of the position that Parliament never intended the life of an order under Section 144 of the Code to remain in force beyond two months when made by a Magistrate. The scheme of that section does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as Section 107 or Section 145 of the Code when individual disputes are raised and to meet a situation such as here, there are provisions to be found in the Police Act. If repetitive orders are made it would clearly amount to abuse of the power conferred by Section 144 of the Code. It is relevant to advert to the decision of this Court in Babulal Parate v. State of Maharashtra where the vires of Section 144 of the Code was challenged. Upholding the provision, this Court observed:

> "Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order...." It was again emphasized (at p.891 of AIR):
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> "But it is difficult to say that an anticipatory action taken by such an authority in an emergency where danger to public order is genuinely apprehended is anything other than an action done in the discharge of the duty to maintain order...." This Court had, therefore, appropriately stressed upon the feature that the provision of Section 144 of the Code was intended to meet an emergency. This postulates a situation temporary in character and, therefore, the duration of an order under Section 144 of the Code could never have been intended to be semi-permanent in character."
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> 17) The aforesaid writ petition was disposed of after taking note of the fact that continuous prohibition under Section 144 of Cr.P.C.

under jurisdiction of New Delhi District had been discontinued and a statement was also made by the respondents that this provision would not be invoked as and when unwarranted except in emergent situation. Contrary to the aforesaid stand taken by the respondents in the said case, submitted Mr. Bhushan, the respondents had started adopting the same tactics of issuing repeated orders under Section 144, Cr.P.C. This practice, according to the learned counsel, was anathema in a democratic set up where people have been guaranteed freedom of speech and freedom of assembly

to vent out their grievance. He submitted that it was a valuable right which was given to the citizenry to let off their esteem and if that right of peaceful demonstration is not allowed, it may take a violent turn.

18) Mr. Bhushan, learned counsel, referred to various judgments where such a right is recognised as fundamental right.

19) He also referred to certain other judgments 2 to buttress his submission that the powers under Section 144 of Cr.P.C. are intended to be used for preventing disorders, obstructions and annoyances.

20) Mr. Bhushan went to the extent of citing international standards, conventions and judgments of foreign courts on the right to peaceful assembly and the right to protest. In support of his submission that such a right had been recognised world over in all democratic countries governed by rule of law, he referred to international conventions like Universal Declaration of Human Rights, International Covenant on Civil and Political Right and 2 (1970) 3 SCC 746, 1961 (3) SCR 423, (2012) 5 SCC 1, (1978) 1 SCC 226, (1973) 1 SCC 227, (1983) 4 SCC 522 Convention on the Rights of the Child. He also relied upon the Guidelines on Freedom of Peaceful Assembly, issued by Organisation for Security and Co-operation in Europe (OSCE) and Council of Europe's Commission for Democracy through Law (Venice Commission). In addition, Mr. Prashant Bhushan also referred to literature contained in United Nations Human Rights Council Special Rapporteur Reports on the rights to freedom of peaceful assembly and of association. Some of the judgments 3 rendered by U.S. Supreme Court and U.K. Courts were also cited by Mr. Prashant Bhushan.

21) While concluding his submissions, Mr. Bhushan argued that the Boat Club area in New Delhi/Central Delhi had also been treated as most suitable place for holding peaceful demonstrations. According to him, it was no solution earmarking the area for demonstration in Ramlila Maidan. It was not a suitable alternative and no solution inasmuch as it was far away from the Central Delhi where offices of the Central Government were located. The very purpose of demonstration is to ensure that voice of demonstrators is heard by the decision makers so that it has adequate impact. If the demonstrators like the petitioners are 3 De Jonge v. State of Oregon; [(1973) US Supreme Court], Shuttlesworth v. City of Birmingham; [(1969) U.S. Supreme Court], Thomas v. Collins; [(1945) US Supreme Court] and Laporte, R. (on the application of) v. Chief Constable of Gloucesershire; [2006] UKHL 55 driven to far away place in Ramlila Maidan in Old Delhi, the very purpose of peaceful demonstration would be rendered meaningless which would clearly amount to violating rights of the petitioner under Articles 19(1)(a) and 19(1)(b) of the Constitution. In this way, argued the learned counsel, the respondents were treating their citizens as their servants. He also submitted that the impugned orders were based on the assumption that whenever there is a demonstration or dharna in New Delhi area, it would lead to violence which was an uncalled for assumption. His plea was that if any particular group has such antecedents of becoming violent, such group can always be prevented from holding demonstrations. For this purpose respondents can always have vigilance inputs. However, there is no reason or rationale in putting a general and complete ban on peaceful demonstrations.

22) M/s. Tushar Mehta and A.N.S. Nadkarni, learned Additional Solicitor Generals, made a strong refutation to the aforesaid arguments of the petitioner. Laying much stress on the sensitive character of the area in question, to justify the issuance of orders passed under Section 144 of the Cr.P.C., they made a fervent plea to uphold these orders. Referring to certain passages from Babulal Parate2, it was submitted that 'clear and present danger' test which was applied by US Courts in such cases was not applicable in the Indian context and the correct test as applied by this Court was that of 'apprehension of breach of peace' test. Specific reliance was placed on the following paragraphs from Babulal Parate2 .

"14. Looking at the section as a whole it would be clear that, broadly speaking, it is intended to be availed of for preventing disorders, obstructions and annoyances and is intended to secure the public weal. The powers are exercisable by responsible Magistrates and these Magistrates have to act judicially. Moreover, the restraints permissible under the provision are of a temporary nature and can only be imposed in an emergency.

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19. It is contended that Section 144 of the Code of Criminal Procedure confers very wide powers upon certain Magistrates and that in exercise of those powers the Magistrates can place very severe restrictions upon the rights of citizens to freedom of speech and expression and to assemble peaceably and without arms.

20. It seems to us, however, that wide though the power appears to be, it can be exercised only in an emergency and for the purpose of preventing obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility or a riot, or "an affray". These factors condition the exercise of the power and it would consequently be wrong to regard that power as being unlimited or untrammelled. Further, it should be borne in mind that no one has a right to cause "obstruction, annoyance or injury etc". to anyone. Since the judgment has to be of a Magistrate as to whether in the particular circumstances of a case an order, in exercise of these powers, should be made or not, we are entitled to assume that the powers will be exercised legitimately and honestly. The section cannot be struck down on the ground that the Magistrate may possibly abuse his powers.

21. It is also true that initially it is the Magistrate concerned who has to form an opinion as to the necessity of making an order. The question, therefore, is whether the conferral of such a wide power amounts to an infringement of the rights guaranteed under Article 19(1)(a) and (b) of the Constitution. The rights guaranteed by sub-clause (a) are not absolute rights but are subject to limitations specified in clause (2) of Article 19 which runs thus:

> "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 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." Similarly the rights to which sub-clause (b) relates are subject to the limitations to be found in clause (3) of Article 19 which runs thus:

"Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause." "The Code of Criminal Procedure was an existing law at the commencement of the Constitution and so, in the context of the grounds on which its validity is challenged before us, what we have to ascertain is whether the conferral thereunder of a power on a Magistrate to place restrictions on the rights to which sub-clauses (a) and (b) of Article 19 relate is reasonable. It must be borne in mind that the provisions of Section 144 are attracted only in an emergency. Thereunder, the initial Judge of the emergency is, no doubt, the District Magistrate or the Chief Presidency Magistrate or the Sub-Divisional Magistrate or any other Magistrate specially empowered by the State Government. But then, the maintenance of law and order being the duty and function of the executive department of the State it is inevitable that the question of formation of the opinion as to whether there is an emergency or not must necessarily rest, in the first instance, with those persons through whom the executive exercises its functions and discharges its duties. It would be impracticable and even impossible to expect the State Government itself to exercise those duties and functions in each and every case. The provisions of the section therefore which commit the power in this regard to a Magistrate belonging to any of the classes referred to therein cannot be regarded as unreasonable. We may also point out that the satisfaction of the Magistrate as to the necessity of promulgating an order under Section 144 of the Code of Criminal Procedure is not made entirely subjective by the section. We may also mention that though in an appropriate case a Magistrate is empowered to make an order under this section ex parte the law requires that he should, where possible serve a notice on the person or persons against whom the order is directed before passing that order. Then sub-section (4) provides that any Magistrate may either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section. This clearly shows that even where an ex parte order is made the person or persons affected thereby have a right to challenge the order of the Magistrate. Sub-section (5) provides that where such a challenge is made, the Magistrate shall give an early opportunity to the person concerned of appearing before him and showing cause against the order. The decision of the Magistrate in such a proceeding would undoubtedly be a judicial one inasmuch as it will have been arrived at after hearing the party affected by the order. Since the proceeding before the Magistrate would be a judicial one, he will have to set aside the order unless he comes to the conclusion that the grounds on which it rests are in law sufficient to warrant it. Further, since the propriety of the order is open to challenge it cannot be said that by reason of the wide amplitude of the power which Section 144 confers on certain Magistrates it places unreasonable restrictions on certain fundamental rights.

> 23. The argument that the test of determining criminality in advance is unreasonable, is apparently founded upon the doctrine adumbrated in Scheneck case [Scheneck v. U.S., 249, US 47] that previous restraints on the exercise of fundamental rights are permissible only if there be a clear and present danger. It seems to us, however, that the American doctrine cannot be imported under our Constitution because the fundamental rights guaranteed under Article 19(1) of the Constitution are not absolute rights but, as pointed out in State of Madras v. V.G. Row [1952 SCR 597] are subject to the restrictions placed in the subsequent clauses of Article 19. There is nothing in the American Constitution corresponding to clauses (2) to (6) of Article 19 of our Constitution. The Fourteenth Amendment to the U.S. Constitution provides, among other things, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; ....".
>
> 24. The framework of our Constitution is different from that of the Constitution of the United States. Then again, the Supreme Court of the United States has held that the privileges and immunities conferred by the Constitution are subject to social control by resort to the doctrine of police power. It is in the light of this background that the test laid down in Scheneck case [Scheneck v. U.S., 249, US 47] has to be understood.
>
> 25. The language of Section 144 is somewhat different.

The test laid down in the section is not merely "likelihood" or "tendency". The section says that the Magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety etc. The power conferred by the section is exercisable not only where present danger exists but is exercisable also when there is an apprehension of danger.

26. Apart from this it is worthy of note that in Scheneck case [Scheneck v. U.S., 249, US 47] the Supreme Court was concerned with the right of freedom of speech and it observed:

> "It well may be that the prohibition of law abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose.... We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights.
>
> But the character of every act depends upon the circumstances in which it is done.... The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre, and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force.... The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity

and degree."

27. Whatever may be the position in the United States it seems to us clear that anticipatory action of the kind permissible under Section 144 is not impermissible under clauses (2) and (3) of Article 19. Both in clause (2) (as amended in 1951) and in clause (3), power is given to the legislature to make laws placing reasonable restrictions on the exercise of the rights conferred by these clauses in the interest, among other things, of public order. Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order. We must, therefore, reject the contention.

28. It is no doubt true that since the duty to maintain law and order is cast upon the Magistrate, he must perform that duty and not shirk it by prohibiting or restricting the normal activities of the citizen. But it is difficult to say that an anticipatory action taken by such an authority in an emergency where danger to public order is genuinely apprehended is anything other than an action done in the discharge of the duty to maintain order. In such circumstances that could be the only mode of discharging the duty. We, therefore, reject the contention that Section 144 substitutes suppression of lawful activity or right for the duty of public authorities to maintain order.

29. Coming to the order itself we must consider certain objections of Mr Mani which are, in effect, that there are three features in the order which make it unconstitutional. In the first place, according to him the order is directed against the entire public though the Magistrate has stated clearly that it was promulgated because of the serious turn which an industrial dispute had taken. Mr Mani contends that it is unreasonable to place restrictions on the movements of the public in general when there is nothing to suggest that members of the public were likely to indulge in activities prejudicial to public order. It is true that there is no suggestion that the general public was involved in the industrial dispute. It is also true that by operation of the order the movements of the members of the public would be restricted in particular areas. But it seems to us that it would be extremely difficult for those who are in charge of law and order to differentiate between members of the public and members of the two textile unions and, therefore, the only practical way in which the particular activities referred to in the order could be restrained or restricted would be by making those restrictions applicable to the public generally."

23) It was, thus, argued that mere apprehension of breach of peace was sufficient to prohibit any demonstration or dharna etc. It was also submitted that Section 144 of the Cr.P.C. permitted anticipatory action and, thus, even on anticipation that a particular demonstration may lead to breach of peace, was sufficient to invoke the provisions of Section 144 Cr.P.C. and pass appropriate prohibitory orders. It was argued that the impugned orders passed should be examined keeping in view the aforesaid principles of law and these orders were passed by the Competent Authority specifying that such demonstrations etc. were likely to cause obstruction to traffic and danger to human safety and disturbances of public tranquility which was specifically stated in para 2 of the orders reading as under:

> "And whereas reports have been received indicating that such conditions now exist that unrestricted holding of public meetings, processions/demonstrations etc. in the area are likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquility."
>
> 24) It was argued that there was due application of mind by the Assistant Commissioner of Police who had gone through the reports and drew to a conclusion therefrom that unrestricted holding of public meetings, processions/demonstrations was likely to cause problems like obstructions to traffic, danger to human safety and disturbances of public tranquility. The Assistant Commissioner of Police, thus, satisfied the requirement of Section 144 of Cr.P.C. It was also argued that there was no complete ban imposed on such public meetings etc. and the orders prohibited these meetings etc. without written permission.

In other words, before holding any such public meetings, processions, demonstrations, etc. prior permission of the authorities was required which should be considered on case to case basis.

25) The learned ASGs laid great emphasis on the fact that New Delhi was the capital city and entire activity of Central Government was mainly located in Central Delhi area which was covered by the prohibitory orders passed, namely, Parliament House, North and South Block, Central Vista Lawns and its surrounding localities and areas. It was also emphasised that there were official visits by foreign dignitaries to this capital city on a regular basis and any untoward incident as a consequence of such public meetings, processions, demonstrations, dharnas, etc had potentials of damaging the reputation of the country itself. The learned counsel went to the extent of arguing that there had been instances where, in the past, on the visit of particular Heads of the Foreign States, attempts were made to hold demonstrations against such persons and their visits, which was not conducive for maintaining healthy bilateral relations between the two countries. The submission in the aforesaid context was that the area covered by prohibitory orders was sensitive area and such demonstrations as well as public meetings etc. could not be allowed in a routine manner. It was also submitted that Delhi being capital of the country, there was a tendency on the part of organizations located throughout the country to come to Delhi and hold public meetings, processions, demonstrations, etc. Please was that if such requests are acceded to then there would be nth number of these public meetings, processions/ demonstrations everyday in Central Delhi which would jeopardise the normal functioning in the Parliament (whenever it is in session) as well as that of the Central Government offices located in North and South Block.

26) The respondents, for the perusal of the Court, produced the record pertaining to these requests which were received by the authorities, showing that alarmingly large number of such requests were received, which was clearly unmanageable. Records of the intelligence reports were also produced for the perusal of the Court to support the plea that orders passed by the Assistant Commissioner of Police under Section 144 Cr.P.C., were backed by sufficient material depicting due application of mind.

27) The learned ASGs also referred to the annexure annexed with the counter affidavit filed on behalf of the respondents to this writ petition. Annexure R-1 gives details of cases of riots registered under Section 186/353, IPC against protest through demonstration for the period from March, 2015 to 5th April, 2018, which shows that most of the time such protest/demonstrations were turning violent leading to commission of crimes under the aforesaid provisions of the IPC. Annexure R-2 gives details of persons who were detained under Section 65 of the Delhi Police Act while holding protest/demonstrations during the said period.

28) It was, thus, submitted that no doubt the petitioner had a right to hold dharnas, protests, marches, demonstrations or public meetings etc. which was their fundamental right. However, such a right was not untrammeled or absolute but was subject to reasonable restrictions. Having peculiar conditions prevailing in this area of New Delhi in question, the impugned orders passed under Section 144 Cr.P.C. amounted to reasonable restrictions. Nevertheless, at the same time, in order to ensure that petitioner and others are able to exercise their right of demonstration, etc., the area in Ramlila Maidan was specifically earmarked for such purposes. It was, thus, argued that promulgation of Section 144 Cr.P.C. was not only a matter of necessity to prevent the breach of public tranquility, riot, affray, but was also in public interest and public safety. Such an order was said to be legally justified on the test of principles laid down in Madhu Limaye v. Sub- Divisional Magistrate4, where the Court held as under:

> "24.....There is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence: see Mst Jagrupa Kumari v. Chobey Narain Singh [37 Cr LJ 95] which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquility, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to 4 (1970) 3 SCC 746 be abated and prevented. We are, however, not concerned with this part of the section and the validity of this part need not be decided here. In so far as the other parts of the section are concerned the key-note of the power is to free society from menace of serious disturbances of a grave character. The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order."

> 29) Reference was also made to the following passage from the judgment of this court in Bimal Gurun v. Union of India 5, wherein it was held as under:

> "Demonstrations whether political, religious or social or other demonstrations which create public, disturbances or operate as nuisances, or create or manifestly threaten some tangible public or private mischief, are not covered by protection under Article

19(1). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. From the very nature of things a demonstration may take various forms; "it may be noisy and disorderly", for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b)."

30) Submission was sought to be buttressed by reading the following extracts from the judgment in the case of Anita Thakur v.

Government of Jammu and Kashmir6, where this Court noticed that more often than not, such protesters take to hooliganism, 5 (2018) SCC Online SC 233 6 (2016) 15 SCC 525 vandism and even destroy public/private property:

"Before adverting to the issue at hand, we would like to make some general remarks about the manner in which these demonstrations are taking shape. Recent happenings show an unfortunate trend where such demonstrations and protests are on increase. There are all kinds of protests: on social issues, on political issues and on demands of various sections of the society of varied kinds. It is also becoming a common ground that religious, ethnic, regional language, caste and class divisions are frequently exploited to foment violence whenever mass demonstrations or dharnas, etc. take place. It is unfortunate that more often than not, such protesters take to hooliganism, vandalism and even destroy public/private property. In the process, when police tries to control, the protesters/mob violently target policemen as well. Unruly groups and violent demonstrations are so common that people have come to see them as an appendage of Indian democracy. All these situations frequently result in police using force. This in turn exacerbates public anger against the police. In Kashmir itself there have been numerous instances where separatist groups have provoked violence. In this scenario, task of the police and law-enforcing agencies becomes more difficult and delicate. In curbing such violence or dispersing unlawful assemblies, police has to accomplish its task with utmost care, deftness and precision. Thus, on the one hand, law and order needs to be restored and at the same time, it is also to be ensured that unnecessary force or the force beyond what is absolutely essential is not used. Policemen are required to undergo special training to deal with these situations. Many times the situations turn ugly or go out of control because of lack of sufficient training to the police personnel to deal with violence and challenges to their authority. There are various documents in the form of police manual and even international covenants proscribing use of unnecessary force and mandating that force should only be used when it is absolutely necessary. Even when used, it should be minimum and proportional to the situation and its use to be discontinued as soon as the danger to life and property subsides.

37. From the above, it is clear that Article 19(1)(a) and (b) gives Constitutional right to all citizens freedom of speech and expression which includes carrying out public

demonstration also but public demonstration also but public demonstration when becomes violent and damages the public and private properties and harm lives of people it goes beyond fundamental rights guaranteed under Article 19(1) and becomes an offence punishable under law." [Emphasis supplied]

31) It was further submitted that the stand of respondents was vindicated by the judgment dated 5 th October, 2017 passed by NGT in Original Application No. 63 of 2016 (Varun Seth and Others v. Police Commissioner, Delhi Police) wherein the NGT judicially recognised that processions, demonstrations and agitations etc. had become regular feature, which was noted by the NGT.

32) Before we proceed to consider the respective submissions advanced by counsel for the parties on either side and take a call therefrom, it would be advisable to take note of the discussion contained in the judgment dated 5th October, 2017 of NGT in Varun Seth's case in the context of Jantar Mantar area . The scope of discussion in the said judgment, though subject matter of challenge in civil appeals, would give more comprehensive picture of the ground realities.

33) The subject matter of the said judgment is confined to the demonstrations etc. at Jantar Mantar Road, particularly the stretch between the Ashoka Road and the Parliament Street. It is also relevant to note that the Original Application before the NGT was filed by the residents who have their residential houses on the aforesaid stretch as the area in question has been earmarked as residential area even under the Master Plan, 2021. That apart, there are residences of Members of Parliament as also State Guest House of Kerala, Office of Delhi Metro Corporation and offices of some of the political parties on the said road.

34) The NGT noticed that Jantar Mantar Road has become a ground for raising protest by various category of groups, political and non-political. Such protests are not temporary or transient. The protestors have rather put up tents and other arrangements where people have been staying for many months. Some of the structures have been on the side of the street. The organizers of these protests make arrangement for food, lodging, etc. on such makeshift structures. They have also affixed loud speakers at various places in the area. NDMC has provided the facility of sanitation and cleaning by making provision for only two mobile toilets. The photographs attached to the application clearly depict the plight of the poor residents, some of them being senior citizens, who had been protesting against unhygienic conditions, litters, crowds, noise pollution, etc. for last couple of years. Apart from it, the personnel of police/paramilitary force at the said stretch of road, which on some days of protest go up to around 200 to 400, also adds to the congestion in the area. The sanitation facility provided in such a situation is grossly inadequate which results in smell emanating from the mobile vans and nearby areas creating unhygienic conditions and low aesthetic value for the residents and others visiting the area. Moreover, some protestors under the garb of cow protection have brought in cows to the said stretch of road and kept them for nearly sixteen months. Even a bullock cart had been kept at the site by the protestors.

35) During the course of heavy protest day, the police completely blocks the road of Jantar Mantar by barricading which coerces the residents of the area to park their vehicles elsewhere and make way

to their residences on foot. This becomes extremely difficult for senior citizens and small children. In fact, there had been instances of medical emergencies where police had to plough the ambulance through the vehicles of the protestors, the police and the crowd. The presence of large number of people as well as vehicles in the area causes traffic jams.

36) The protestors continuously play drums, music, microphones, etc. which disturb the peace and tranquility of the place. The noise emanating from the said area on account of aforesaid loudspeakers, etc. definitely generates noise which exceeds the permissible limit. Under the Noise Pollution (Regulation and Control) Rules, 2000 and the schedule given therewith the ambient air quality standards in respect of the noise for a residential area is 55 db (A) leq during the day time and 45 db (A) leq in the night.

37) The NGT noted the adverse affect of such dharnas and protests at Jantar Mantar Road in the following manner:

> "35. But Jantar Mantar and its surrounding areas, once known for its history, has now become a battle ground for protestors and agitators. The area has become a permanent place for filth and litter indulged in by the protestors. The other civic authorities such as NDMC and the Police authorities have also miserably failed to maintain cleanliness in and around Jantar Mantar. They have further neglected and failed to ensure peaceful and comfortable living for the residents of the locality. The petitioners have placed on record a number of photographs [annexure P 1 (Colly)] which shows permanent structure erected for delivering public speeches, temporary shelters, tents for living. They have mushroomed in the locality. Vehicles are delivering food, drinks, eatables and the protestors cooking food, washing and drying their clothes, etc.
>
> 36. Since long, on the stretch of Jantar Mantar road protest/dharnas are being regularly organized (despite there being no legal or administrative order/permission for designating of place as a protest ground). In recent past, the number of protest/dharnas, as well as that of people constituting them have tremendously increased. The pollution in the area have also increased many folds, on account of noise, large gathering of people, waste, etc. The noise pollution has been increased due to installation of traditional public address system based on the horn loud speakers by protestors. Besides, assembling of large crowds which is at times in thousands, also contribute to the noise pollution. Further, the plight of the residents is compounded by deployment of large number of police and para military personals to control and manage the protestors.

In the result, it not only restricts entry/exit of the residents from their respective residences but also, at times, permits access to the residents only by foot due to complete stoppage of vehicles. There have been instances where the visitors of the people residing in the area have to park their vehicles at the other end of Jantar Mantar road due to restrictions imposed by the police. In fact there is absolutely no space left on the road since the protestors occupy the same and the police personal

monitoring the activity are found to be standing/sitting outside the houses of the residents.

In addition to it, on the entire road there is littering and despite of the best efforts of NDMC, it cannot be cleared because of large crowd gathering in the area and are having food etc. and using mobile toilets/sanitary services at the site of protest. There are protestors who have, in the name of cow protection, been bringing the cows along with bullock carts on the stretch of Jantar Mantar road which aggravates the problem, being faced by the residents since long.

The residents who have to bear the aforesaid problem includes their children and old aged family members. The constant loud noises, round the year, from the protest ground seriously disturb the children even during their examination time. Similarly, the elderly residents have also been diagnosed with noise age related problem. The residents on the stretch of Jantar Mantar road are totally at the mercy of the protestors.

37. The processions, demonstrations and agitations by social groups, NGOs, religious groups and political parties had become a regular feature, so much so, that everyday dharnas, agitations, etc. are being held on Jantar Mantar road. Consequently, the lives of the petitioners and all other residents on Jantar Mantar road is being persistently disturbed by the dharnas which are a few thousands every year. These dharnas and protests are stretched almost on the entire Jantar Mantar road, on both sides and even across the width of the road. Dharnas on Jantar Mantar road are coupled with non-stop slogans and it has developed into a place of inhabitation for the protesters who also carry with them tents and temporary shelters. It is used as a place for sleeping, to take bath, cook food, etc. by the protesters and they live there for months together. Above all, the people sitting on dharna, carrying on processions and agitations continuously play loud speakers, not only during day but also till late night.

38. The continuous activity of the protesters, agitators and dharna/processions for a number of years by now, the site has virtually become hell for the residents of the locality who cannot sleep at night, face noise pollution during the day, having difficulties in ingress and egress to their residencies, much less to say, to take their vehicles up to their residences. Many a times, when dharnas, agitations, processions, etc. are on their peak specially during Parliament session, the residents are even prevented or with great difficulty they are able to walk down to their residences because the Police for the purpose of maintaining law and order puts barricades and even close the road. Such being the situation of the stretch on Jantar Mantar road, great difficulties have been created to the children/students residing in that area. The situation is being aggravated day by day and has resulted in health problems for the residents as many of them now have high blood pressure, become hart patient and old age persons have now started suffering from chronic ailments. The road starting from Jantar Mantar and leading to Parliament has turned into a place of totally different nature which is being used for various purposes. The protesters come there from various parts of the country travelling by trucks, buses, etc., and they park their vehicles in and around the residential buildings. In fact, the locality has completely changed where one finds that men, women and children are bathing, washing their clothes under Delhi Jal Board tankers and the situation becomes worse when the people are seen defecating in the open, on pavements, etc. which creates a totally unhygienic situation on the entire road.

40. It is relevant to mention here that continuous noise by non-stop slogans and use of loudspeakers by the protestors, for hours together, is more than just a nuisance. It constitutes a real and present danger to people's health. Day and night, at home, at work, and at play, noise can produce serious physical and psychological stress. No one can be immune to this stress. Though we try to adjust to noise by ignoring it, the ear, in fact, never closes and the body still responds-sometimes with extreme tension, as to a strange sound in the night."

38) The NGT thereafter discussed the ill-effects of the noise pollution by quoting various research and field studies. It also referred to various statutory provisions which aim to curb noise pollution and the judgments of Supreme Court as well as High Courts, including the judgment in the case of Ramlila Maidan Incident v. Home Secretary, Union of India and Others 7, wherein right to proper sleep has been considered as fundamental right, being a facet of Article 21 of the Constitution. Applying that law to the facts of the case at hand, it came to conclusion that residents of Jantar Mantar Road are not living a normal life and their difficulties were increasing by the day. Such demonstrations with loud noise were also causing various kinds of health problems like hearing problem, blood pressure, hypertension and other serious diseases relating to heart etc. The NGT found that they were suffering because of gross violation of laws, air pollution 7 (2012) 5 SCC 1 and health hazard, due to lack of cleanliness and non-

performance of duties by the authorities of the State. All this is endangering their lives. The environmental conditions at Jantar Mantar Road in relation to noise pollution, cleanliness, management of waste and public health had been grossly deteriorated. The situation was becoming alarming, day by day. On that basis, the NGT found merit in the Original Application filed by the residents.

39) The NGT also noted that earlier the protests/dharnas/agitations were allowed only at Ramlila Maidan, near Ajmeri Gate in Delhi. The said area was the place where people used to assemble for purposes of protest march and processions. It was the point from where the agitators were to start for their destinations like Parliament House, office/residence of the Chief Minister, the Home Minister, etc. etc. Subsequently, the battle ground for protestors and agitators came to be the Boat Club near India Gate. Later, the Police shifted the place of agitation from Boat Club to Jantar Mantar, apparently for the reason that the said place was creating obstruction to traffic. It was the department of Police, as is also mentioned in the reply, that fixed this new place for agitations, dharnas, starting of processions, etc. upto a total number of 5000 people and in case of more, the venue would be Ramlila Maidan. Moreover, with passage of time, the place for agitators/protestors to assemble and start their processions had no longer remained at Jantar Mantar but came down to Jantar Mantar road which, as on date, is fully occupied by protestors, agitators, dharnas, temporary structures/make shifts, demonstrations, slogans, display of various articles and even animals like cows, buffalo's, etc. It had so happened mainly because the agitators and protestors were to ultimately move towards the Parliament House. But strangely, neither the Police nor NDMC tried to prevent them in moving away from Jantar Mantar. Resultantly, the entire Jantar Mantar road, stretching to its total width, has been covered by the protestors. Above all, when the agitation consisting of thousands and thousands of people assemble on Jantar Mantar road, no one is there to check their total number and in case of the number exceeding five thousand, to send them to

Ramlila ground at Ajmeri Gate.

40) In the aforesaid conspectus, the NGT has given the directions (already reproduced above) which include shifting the protestors, agitators and the people holding dharnas to the alternative site at Ramlila Maidan, Ajmeri Gate, Delhi.

41) In order to have holistic view of the issue raised in the Writ Petition (Civil) No. 1153 of 2017 it becomes necessary to first deal with the challenge to the aforesaid orders passed by the NGT, as the particular result of these appeals preferred against that judgment would facilitate the Court to find out the solution for Boat Club area which is the subject matter of the writ petition. Therefore, we first proceed to examine the validity of the judgment dated 5th October, 2017, rendered by the NGT.

42) We have already captured the essence of the reasoning on which the judgment of the NGT is based upon. The considerations which prevailed upon the NGT to pass such an order can be stated, in bullet form. These are :

Area in question where the demonstrations were being held is a stretch between the Ashoka Road and the Parliament Street.

The said area is inhabited as there are residential houses.

The area is marked as “residential area even under Master Plan 2021”.

Apart from houses of private citizens, there are residences of Members of Parliament and also State Guest House of Kerala, Office of Delhi Metro Corporation as well as offices of some of the political parties on the said road.

Holding of protest on the Jantar Mantar road had become a regular feature, where the protests were being held on continuous basis.

Such protests are not temporary or transient. Protestors had put up tents and other arrangements where people had been staying for months together. Even structures had been put on the side of the street, where arrangement for food, lodging etc. were being made.

The protestors had affixed loud speakers at various places in the area.

Use of these loud speakers at all times, including odd times and night hours, was creating noise pollution and this pollution was getting worsened with the continuous plays of drums, music and microphones etc. This noise pollution was exceeding the permissible limits laid down in the relevant rules.

The sanitation facility provided was grossly inadequate, it was resulting in foul smell emanating from mobile toilet, thereby creating unhygienic conditions in the

area.

These unhygienic conditions were compounded by the fact that even cows were brought to the said stretch of road by the protestors and were kept for months together.

On a heavy protest day, the police were completely blocking the Jantar Mantar road by barricading, as a result, residents of the area were forced to park, their vehicles elsewhere and make way to their residences on foot.

It was causing extreme inconvenience to the residents and, in particular, senior citizens and small children.

Their had been instances of medical emergencies where police had to plough the ambulance through the vehicles of the protestors, the police and the crowd.

The traffic jams in the area were a common phenomena. All the aforesaid factors constituted a real and present danger to the health of the residents and also causing serious physical and psychological stress.

43) In the appeals filed by the appellants, questioning the validity of this order, the main ground taken is that it is the fundamental right of the citizens to hold peaceful demonstrations and protest in order to bring out their grievances to the notice of the authorities in power so that the concerned authorities are awakened and attend to their grievances as well as take remedial measures.

Therefore, there could not have been a complete ban on demonstrations in the area in question. It was submitted that Jantar Mantar is the best suited place for holding demonstrations because of its proximity to the power that be. It was also argued that if the authorities had not provided appropriate sanitation facilities or it had failed to remove the cows etc., such a failure on the part of the authorities could not be a ground to put a complete ban on the demonstrations. Instead, directions could be given by the NGT to the authorities to take appropriate measures in this behalf. It was also submitted that a recent study undertaken by the AIIMS shows the adverse effect and health consequences of community noise pollution is not limited to Jantar Mantar but extends to the entire Delhi. Therefore, noise pollution could not be a ground to impose such a ban. It was further argued that Ramleela ground, where the protests are now permitted, is far away from the Parliament. Moreover, the said area is infested by traffic congestion all around and, therefore, would cause much more discomfort and hardships to not only the protestors but the traffic in that area, which is also surrounded by hospitals, school, college, hardship places and cricket ground.

44) Respondent nos. 1 to 7 supported the impugned order by laying emphasis on the reasons which are given therein. It was submitted that the fundamental right of the protestors to hold demonstrations etc. does not extend to causing such discomforts and difficulties to the residents so as to violate the fundamental right of the residents under Article 21 of the Constitution:

> 45) It is further submitted that though the protestors at Jantar Mantar road were being allowed to exercise fundamental right to protest by way of loudspeakers, but the said right cannot be provided by the State to curtail the rights of the residents citizens, qua the right not to listen. The said principle of reasonable restriction on this right is enshrined in Article 19(2) to (6) of the Constitution of India and the burden of proof on State to justify reasonability.

This has been upheld by the Supreme Court of India in the case of Ramlila Maidan Incident7.

46) It is also argued that the Central Government, through MoEF & CC, have notified Noise Pollution (Regulation and Control) Rules on 11.02.2000, under Environment (Protection) Act, 1986, wherein difference zones such as industrial, residential, commercial and silence zones have been categorised for the purpose of regulation and control of noise producing and generating sources. These rules govern the restriction of the use of loud speaker, public address system, noise producing system, etc. Provisions have also been made for ambient air quality standards in respect of noise to control the noise from source.

The respondent had also mentioned about the harmful effects resulting from noise pollution by the various studies made by World Health Organisation and the study undertaken by AIIMS hospital which shows the adverse effect and health consequences of community noise pollution.

47) Aid was also taken from the following judgments.

"(i) Noise Pollution (V), in Re v. Forum Prevention of Environmental and Sound Pollution; (2005) 5 SCC 733

(ii) Anirudh Kumar v. Municipal Corporation of Delhi and Others; (2015) 7 SCC 779

(iii) State of Rajasthan v. G. Chawla and Dr. Pohumal; 1959 Suppl (1) SCR 904

(iv) Rabin Mukherjee and Others v. State of West Bengal and Others; AIR 1985 Cal 222

(v) P.A. Jacob v. The Superintendent of Police, Kottayam and Another; AIR 1993 Kerala 1"

48) We may state at the outset that none of the parties have joined issue insofar as law on the subject is concerned. Undoubtedly, holding peaceful demonstrations by the citizenry in order to air its grievances and to ensure that these grievances are heard in the relevant quarters, is its fundamental right. This right is specifically enshrined under Article 19(1)(a) and 19(1)(b) of the Constitution of India. Article 19(1)(a) confers a vary valuable right on the citizens, namely, right of free speech. Likewise, Article 19(1)(b) gives right to assemble peacefully and without arms. Together, both these rights ensure that the people of this country have right to assemble peacefully and protest against any of the actions or the decisions taken by the Government or other governmental authorities which are not to the liking. Legitimate dissent is a distinguishable feature of any democracy. Question is not as to whether the issue raised by the protestors is right or wrong or it is

justified or unjustified. The fundamental aspect is the right which is conferred upon the affected people in a democracy to voice their grievances. Dissenters may be in minority. They have a right to express their views. A particular cause which, in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. That is the reason that this Court has always protected the valuable right of peaceful and orderly demonstrations and protests.

49) In Babulal Parate v. State of Maharashtra 8, this Court observed:

> "The right of citizens to take out processions or to hold public meetings flows from the right in Art. 19(1)(b) to assemble peacably and without arms and the right to move anywhere in the territory of India."

8 1961 (3) SCR 423

50) In Kameshwar Prasad v. State of Bihar 9 the Court was mainly dealing with the question whether the right to make a demonstration is protected under Article 19(1)(a) and (b) and whether a government servant is entitled to this right. This Court held :

> "A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1)(a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19(1)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievance."

> 51) The Supreme Court has also gone beyond upholding the right to protest as a fundamental right and has held that the State must aid the right to assembly of the citizens. In the Constitution Bench Judgment, Himat Lal K. Shah v. Commissioner of Police, Ahmedabad10 , while dealing with the challenge to the Rules framed under the Bombay Police Act regulating public meetings on streets, held that the Government has power to regulate which includes prohibition of public meetings on streets

9 (1962) Supp 3 SCR 369 10 (1973) 1 SCC 227 or highways to avoid nuisance or disruption to traffic and thus, it can provide a public meeting on roads, but it does not mean that the government can close all the streets or open areas for public meetings, thus denying the fundamental right which flows from Article 19(1)(a) and (b). The Court held:

> "33. This is true but nevertheless the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order.
>
> xxx xxx xxx
>
> 70. Public meeting in open spaces and public streets forms part of the tradition of our national life. In the pre-

Independence days such meetings have been held in open space and public streets and the people have come to regard it as a part of their privileges and immunities. The State and the local authority have a virtual monopoly of every open space at which an outdoor meeting can be held. If, therefore, the State or Municipality can constitutionally close both its streets and its parks entirely to public meetings, the practical result would be that it would be impossible to hold any open-air meetings in any large city. The real problem is that of reconciling the city's function of providing for the exigencies of traffic in its streets and for the recreation of the public in its parks, with its other obligations, of providing adequate places for public discussion in order to safeguard the guaranteed right of public assembly. The assumption made by Justice Holmes is that a city owns its parks and highways in the same sense and with the same rights as a private owner owns his property with the right to exclude or admit anyone he pleases. That may not accord with the concept of dedication of public streets and parks. The parks are held for public and the public streets are also held for the public. It is doubtless true that the State or local authority can regulate its property in order to serve its public purposes. Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion."

52) While adjudicating with respect to the validity of police action against protestors, this Court again reiterated that right to protest was a fundamental right guaranteed to the citizens under Article

19. In the case of Ramlila Maidan Incident (supra), the Court observed that the right to assembly and peaceful agitations were basic features of a democratic system and the Government should encourage exercise of these rights:

> "245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by

exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them."

53) Further, Anita Thakur7, the Court recognised that the right to peaceful protest was a fundamental right under Article 19(1), (b) and (c) of the Constitution, subject to reasonable restrictions. It was finally held that in that while the protestors turned violent first, the police used excessive force:

"12. We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The "right to assemble" is beautifully captured in an eloquent statement that "an unarmed, peaceful protest procession in the land of "salt satyagraha", fast-unto- death and "do or die" is no jural anathema ". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.

13. Notwithstanding above, it is also to be borne in mind that the aforesaid rights are subject to reasonable restrictions in the interest of the sovereignty and integrity of India, as well as public order. It is for this reason, the State authorities many a times designate particular areas and routes, dedicating them for the purpose of holding public meetings.

15. Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. Provisions of IPC and CrPC, discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become "unlawful". At the same time, while exercising such powers, the authorities are supposed to act within the

limits of law and cannot indulge into excesses……."

54) The right to protest is, thus, recognised as a fundamental right under the Constitution. This right is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from State authorities as well a powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of the marginalised and poorly represented minorities.

55) At the same time, aforesaid rights under Article 19(1)(a) and 19(1)(b) of the Constitution are not untrammeled and unlimited in their scope. Article 19(2) to (6) make a specific provision for imposing reasonable restrictions on the rights conferring restrictions on the exercise of such rights. Articles 19(2) and (3), in this behalf read as under:

"(2) Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the 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.

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause"

56) It can be deciphered from the aforesaid provisions that exercise of right to speech conferred in clause (a) and right to assemble peacably and without arms in clause (b) is made subject to reasonable restrictions which can be imposed, inter alia, in the interests of sovereignty and integrity of India or public order. This legal position is also accepted by all the parties.

57) In this hue, we have to examine as to whether total ban of demonstrations etc. at Jantar Mantar road amounts to violation of the rights of the protestors of the Constitution or this would amount to a reasonable restriction in the interest of 'public order'.

There would be also an incidental and interrelated issue, namely, whether the manner in which the demonstrations etc. are held at Jantar Mantar, they violate the fundamental right of the residents guaranteed under Article 21 of the Constitution. If the answer is in the affirmative, it would raise another issue, namely, balancing of the two rights. The right of the protestors under Article 19(1)(a)

and 19(1)b) of the Constitution and the rights of the residents under Article 21 of the Constitution, as both the rights are fundamental rights.

58) In the aforesaid context, it would be pertinent to point out that there may be situations where conflict may arise between two fundamental rights. Situation can be conflict on inter fundamental rights, intra fundamental rights and, in certain peculiar circumstances, in respect of some person one fundamental right enjoyed by him may come in conflict with the other fundamental right guaranteed to him. In all such situations, the Court has to examine as to where lies the larger public interest while balancing the two conflicting rights. It is the paramount collective interest which would ultimately prevail.

59) We may reproduce the following discussion from the judgment of this Court in Subramanian Swamy v. Union of India, Ministry of Law & Ors.11:

> "Balancing of fundamental rights 11 (2016) 7 SCC 221
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> 136. To appreciate what we have posed hereinabove, it is necessary to dwell upon balancing the fundamental rights.

It has been argued by the learned counsel for the petitioners that the right conferred under Article 19(1)(a) has to be kept at a different pedestal than the individual reputation which has been recognised as an aspect of Article 21 of the Constitution. In fact the submission is that right to freedom of speech and expression which includes freedom of press should be given higher status and the individual's right to have his/her reputation should yield to the said right. In this regard a passage from Sakal Papers (P) Ltd. has been commended to us. It says: (AIR pp. 313- 14, para 36) "36. ... Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. If a law directly affecting it is challenged, it is no answer that the restrictions enacted by it are justifiable under clauses (3) to (6). For, the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and clause (1) does not prefer one freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom." (emphasis supplied)

137. Having bestowed our anxious consideration on the said passage, we are disposed to think that the above passage is of no assistance to the petitioners, for the issue herein is sustenance and balancing of the separate rights, one under Article 19(1)(a) and the other, under Article 21. Hence, the concept of equipoise and counterweighing fundamental rights of one with other person. It is not a case of mere better enjoyment of another freedom. In Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat, it has been observed that a particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have

to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the directive principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests. In DTC v. Mazdoor Congress the Court has ruled that articles relating to fundamental rights are all parts of an integrated scheme in the Constitution and their waters must mix to constitute that grand flow of unimpeded and impartial justice; social, economic and political, and of equality of status and opportunity which imply absence of unreasonable or unfair discrimination between individuals or groups or classes. In St. Stephen's College v. University of Delhi this Court while emphasising the need for balancing the fundamental rights observed that: (SCC p. 612, para 96) "96. ... It is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change."

60) In Asha Ranjan v. State of Bihar and Others12, this test of larger public interest to balance two rights has been explained in the following manner:

> "57. The aforesaid decision is an authority for the proposition that there can be a conflict between two individuals qua their right under Article 21 of the Constitution and in such a situation, to weigh the balance the test that is required to be applied is the test of larger public interest and further that would, in certain circumstances, advance public morality of the day. To put it differently, the "greater community interest" or "interest of the collective or social order" would be the principle to recognise and accept the right of one which has to be protected.
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> 58. In this context, reference to the pronouncement in Rev. Stainislaus v. State of M.P. would be instructive. In the said case, the Constitution Bench was dealing with two 12 (2017) 4 SCC 397 sets of appeals, one arising from Madhya Pradesh that related to Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 and the other pertained to the Orissa Freedom of Religion Act, 1967. The two Acts insofar as they were concerned with prohibition of forcible conversion and punishment therefor, were similar. The larger Bench stated the facts from Madhya Pradesh case which eventually travelled to the High Court. The High Court ruled that that there was no justification for the argument that Sections 3, 4 and 5 were violative of Article 25(1) of the Constitution. The High Court went on to hold that those sections "establish the equality of religious freedom for all citizens by prohibiting conversion by objectionable activities such as conversion by force, fraud and by allurement". The Orissa Act was declared to be ultra vires the Constitution by the High Court. To understand the controversy, the Court posed the following questions: (Rev. Stainislaus case, SCC p. 681, para 14) "14. ... (1) whether the two Acts were violative of the fundamental right guaranteed under Article 25(1) of the Constitution, and (2) whether the State Legislatures were competent to enact them?"
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> 59. It was contended before this Court that the right to propagate one's religion means the right to convert a person to one's own religion and such a right is

> guaranteed by Article 25(1) of the Constitution. The larger Bench dealing with the said contention held: (Rev. Stainislaus case, SCC p. 682, para 20) "20. We have no doubt that it is in this sense that the word "propagate" has been used in Article 25(1), for what the article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets.

It has to be remembered that Article 25(1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike." And again: (SCC p. 682, para 21) "21. ... It has to be appreciated that the freedom of religion enshrined in the article is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore be no such thing as a fundamental right to convert any person to one's own religion."

60. The aforesaid judgment in Rev. Stainislaus case clearly lays down, though in a different context, that what is freedom for one is also the freedom for the other in equal measure. The perception is explicated when the Court has said that it has to be remembered that Article 25(1) guarantees freedom of conscience to other citizens and not merely to followers of particular religion and there is no fundamental right to convert another person. The right is guaranteed to all citizens. The right to propagate or spread one's religion by an exposition of its tenets does not mean one's religion to convert another person as it affects the fundamental right of the other. We have referred to this authority as it has, in a way, dwelt upon the "intra-conflict of a fundamental right".

61. Be it stated, circumstances may emerge that may necessitate for balancing between intra-fundamental rights. It has been distinctly understood that the test that has to be applied while balancing the two fundamental rights or inter fundamental rights, the principles applied may be different than the principle to be applied in intra-conflict between the same fundamental right. To elaborate, as in this case, the accused has a fundamental right to have a fair trial under Article 21 of the Constitution. Similarly, the victims who are directly affected and also form a part of the constituent of the collective, have a fundamental right for a fair trial. Thus, there can be two individuals both having legitimacy to claim or assert the right. The factum of legitimacy is a primary consideration. It has to be remembered that no fundamental right is absolute and it can have limitations in certain circumstances. Thus, permissible limitations are imposed by the State. The said limitations are to be within the bounds of law. However, when there is intra-conflict of the right conferred under the same article, like fair trial in this case, the test that is required to be applied, we are disposed to think, it would be "paramount collective interest" or "sustenance of public confidence in the justice dispensation system". An example can be cited. A group of persons in the name of "class honour", as has been stated in Vikas Yadav v. State of U.P., cannot curtail or throttle the choice of a woman. It is because choice of woman in choosing her partner in life is a legitimate constitutional right. It is founded on individual choice that is recognised in the Constitution under

Article 19, and such a right is not expected to succumb to the concept of "class honour" or "group thinking". It is because the sense of class honour has no legitimacy even if it is practised by the collective under some kind of a notion. Therefore, if the collective interest or the public interest that serves the public cause and further has the legitimacy to claim or assert a fundamental right, then only it can put forth that their right should be protected. There can be no denial of the fact that the rights of the victims for a fair trial is an inseparable aspect of Article 21 of the Constitution and when they assert that right by themselves as well as the part of the collective, the conception of public interest gets galvanised. The accentuated public interest in such circumstances has to be given primacy, for it furthers and promotes "Rule of Law". It may be clarified at once that the test of primacy which is based on legitimacy and the public interest has to be adjudged on the facts of each case and cannot be stated in abstract terms. It will require studied scanning of facts, the competing interests and the ultimate perception of the balancing that would subserve the larger public interest and serve the majesty of rule of law. In this regard, we are reminded of an ancient saying:

> "Yadapi siddham, loka viruddham Na adaraniyam, na acharaniyam" The aforesaid saying lays stress on public interest and its significance and primacy over certain individual interest. It may not thus have general application, but the purpose of referring to the same is that on certain occasions it can be treated to be appropriate.

62. There may be a perception that if principle of primacy is to be followed, then the right of one gets totally extinguished. It has to be borne in mind that total extinction is not balancing. When balancing act is done, the right to fair trial is not totally crippled, but it is curtailed to some extent by which the accused gets the right of fair trial and simultaneously, the victims feel that the fair trial is conducted and the court feels assured that there is a fair trial in respect of such cases. That apart, the faith of the collective is reposed in the criminal justice dispensation system and remains anchored."

61) Undoubtedly, right of people to hold peaceful protests and demonstrations etc. is a fundamental right guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution. The question is as to whether disturbances etc. caused by it to the residents, as mentioned in detail by the NGT, is a larger public interest which outweighs the rights of protestors to hold demonstrations at Jantar Mantar road and, therefore, amounts to reasonable restriction in curbing such demonstrations. Here, we agree with the detailed reasoning given by the NGT that holding of demonstrations in the way it has been happening is causing serious discomfort and harassment to the residents. At the same time, it is also to be kept in mind that for quite some time Jantar Mantar has been chosen as a place for holding demonstrations and was earmarked by the authorities as well. Going by the dicta in Asha Ranjan, principle of primacy cannot be given to one right whereby the right of the other gets totally extinguished. Total extinction is not balancing. Balancing would mean curtailing one right of one class to some extent so that the right of the other class is also protected.

62) We feel that the pathetic conditions which were caused as a result of the processions, demonstrations and agitations etc. at the Jantar Mantar were primarily because of the reason that authorities did not take necessary measures to regulate the same. Had adequate and sufficient steps were taken by the authorities to ensure that such dharnas and demonstrations are held within their

bounds, it would have balanced the rights of protestors as well as the residents. For example, the dharnas and protests were allowed to be stretched almost on the entire Jantar Mantar road, on both sides, and even across the width of the road. Instead, a particular area could have been earmarked for this purpose, sufficiently away from the houses etc. so that there is no unnecessary blockage of roads and pathways. Likewise, the demonstrators were allowed to go on with non-stop slogans, even at odd hours, at night, and that too with the use of loudspeakers etc. The authorities could have ensured that such slogans are within the parameters of noise pollution norms and there are no shoutings or slogans at night hours or early morning hours. Again, these dharnas, agitations and processions could be prohibited on certain occasions, for example, whenever some foreign dignitaries visit and pass through the said area or other such sensitive occasions. The authorities could also ensure that the protestors do not bring their trucks/buses etc. and park those vehicles in and around the residential buildings; the protestors are not allowed to pitch up their tents and stay for days together; they are not allowed to bathe or wash their clothes using Delhi Jal Board tankers or defecate in the open, on pavements; and do not create any unhygienic situations. The authorities could also examine, while allowing such demonstration, as to the number of protestors who are likely to participate and could refuse permission to hold any such demonstration etc. when the number is going to be abnormally large which, if allowed, would per se create hardships of various kinds to the residents. These are some of the examples given by us. The underlying message is that certain categories of peaceful protests and demonstrations, in a guarded and regulated manner, could be allowed so as to enable the protestors to exercise their right and, at the same time, ensuring that no inconvenience of any kind is caused to the residents.

63) Before the NGT, the authorities took the position that such demonstrations are to be allowed as the area was earmarked for such purposes. The residents, on the other hand, in the petition filed by them, highlighted the infringement of their rights which were caused by these demonstrations. In this kind of adversarial approach adopted by the parties before the NGT, the NGT went by the ground realities and the pathetic situation faced by the residents because of such demonstrations. Though this analysis of the NGT is without blemish, we, however, feel that the solution was not to ban the demonstrations altogether. Instead, the NGT would have directed the authorities to adopt such measures (some of which are indicated by us above) so that there is a balancing of the rights of both the sections of the society.

64) At this juncture, while discussing the aspect of balancing of the two rights, we have to keep in mind certain other relevant factors as well. In the first instance, what needs to be noted is that a portion of Ramlila Maidan has been earmarked for such demonstrations etc. Therefore, that space is already available. One of the argument raised by the petitioner in the writ petition and appellants in the appeal is that Ramlila Maidan is far away from that portion of New Delhi area where there is a concentration of 'power' and, therefore, holding protests and demonstration at a far place in Ramlila Maidan would have no impact or very little effect. It was stressed that the purpose of holding such demonstrations and raising slogans is that they reach concerned persons for whom these are meant. This may be correct. However, it is also to be borne in mind that we are living in an era of technology where a concerned voice by a group of persons can reach the right quarters by numerous means. Electronic and print media play a pivotal role. Then, we have social media and various applications like 'WatsApp', 'Twitter', 'Instagram' etc. which take no time in spreading such events.

Secondly, though holding protests and demonstrations is an accepted right, at the same time, nobody can claim that I have a right to hold demonstration at one particular area only. While regulating such demonstrations in public interest, particular areas can be earmarked. On the other hand, it is also to be acknowledged that Ramlila Maidan may not be sufficient to cater to this requirement. Again, this place in old Delhi is a part of very congested area and it has its own limitations when it comes to using this area for such purposes. Therefore, some other area is required. Since, Jantar Mantar was the area chosen by the authorities and has been in use for quite sometime, balancing can be done by permitting a limited part of this area for holding peaceful public meetings, processions etc., at least to small groups and, in such a manner, that there is no disturbance or inconvenience of any nature whatsoever, insofar as residents are concerned.

65) Having regard to the aforesaid discussion, we direct the Commissioner of Police, New Delhi in consultation with other concerned agencies, to devise a proper mechanism for limited use of the area for such purposes but to ensure that demonstrations, etc. are regulated in such a manner that these do not cause any disturbance to the residents of Jantar Mantar road or the offices situated there. Detailed guidelines in this respect can be formulated. We may also clarify that a provision can be made for taking requisite prior permission from the Police Commissioner (or his delegated authority) for holding such demonstration by a particular group and while examining such proposals the parameters can be laid down which shall be looked into in order to decide whether the permission is to be granted or not. Two months' time is given to the Commissioner of Police, New Delhi for formulating such guidelines.

66) The petitioner in Writ Petition (Civil) No. 1153 of 2017 wants boat club area to be available for demonstrations, etc. The petitioner has successfully demonstrated that it is their fundamental right under Articles 19(1)(a) and 19(1)(b) of the Constitution. At the same time, it is also not denied that there can be reasonable restrictions on exercise of this right in larger public interest. The respondents have also highlighted in equal measure the sensitivity of this area because of its proximity to the Parliament House, North and South Blocks and other Central Government offices, including frequent visits of Heads of foreign States and other such factors. The respondents are also justified in pointing out that alarmingly large number of requests for holding demonstrations at this place are made. Further, intelligence reports reveal that some of such demonstrations, if allowed, may cause serious law and order situation. The respondents are also correct to the extent that this Court has not adopted 'clear and present danger test', as applied by the US Courts, and instead it is the 'apprehension of breach of peace test' which is to be used in order to decide as to whether a particular demonstration/dharna is to be allowed or not. When orders passed under Section 144 of the Cr.P.C. are examined in this context, one may not find foul with such orders. These orders do not, on their face, appear to be infected with any illegality as they prohibit public meetings, assembly of five or more persons, processions, demonstrations, dharnas, etc. 'without written permission'. Further, such orders are passed on the basis of intelligence reports which indicate that 'unrestricted holding of public meetings', processions, demonstrations, etc. in the area are likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquility.

67) The tenor or these orders and the specific language used therein bring about the following two features:

(a) there should not be 'unrestricted' holding of public meetings, processions, etc.; and

(b) as a corollary, the order mentions that such public meetings, processions, demonstrations, etc. would not be allowed 'without written permission'.

68) The reading of these orders, thus, would indicate that there is no absolute prohibition from holding public meetings, processions, demonstrations, etc. Such activities are to be restricted in larger public interest and, therefore, before any group of persons or person wants to carry out any such processions and dharnas, it has to take prior written permission. This clearly implies that whenever such a request is made, the authority is to examine the same and take a decision as to whether it should allow the proposed demonstration, public meeting etc. or not, keeping in view its likely effect, namely, whether it would cause any obstruction to traffic or danger to human safety or disturbance to public tranquility etc. If requests made are considered and then allowed or rejected keeping in view the aforesaid considerations, there cannot be any quarrel as to the validity of such an order made under Section 144 of the Cr.P.C. That is, however, not the ground reality.

69) No doubt, an order passed under Section 144 of the Cr.P.C.

remains valid for a period of sixty days which is the limit prescribed in that provision. However, just before the expiry of one order, another identical order is passed. Such repeated orders, in continuum, have created a situation of perpetuity. It is argued on behalf of the respondents that as there is no change in the situation, which remains the same insofar as sensitivity of this area and specific/peculiar conditions prevailing, such orders in repetitive form are necessitated. Even if we accept this position and proceed on that basis, this would only mean continuous regulation of the proposed public meetings, processions, demonstrations, etc. by not allowing the same in 'unrestricted' manner. However, in reality no such activities are allowed at all and, therefore, the situation which is created amounts to 'banning' these public meetings, demonstrations, dharnas, etc. altogether rather than 'regulating' the same.

70) In the aforesaid conspectus, here also the Commissioner of Police, New Delhi and other official respondents can frame proper guidelines for regulating such protests, demonstrations, etc. As noted above, the orders issued under Section 144 prohibit certain activities in the nature of demonstrations etc. 'without permission', meaning thereby permission can be granted in certain cases. There can, therefore, be proper guidelines laying down the parameters under which permission can be granted in the Boat Club area. It can be a very restrictive and limited use, because of the sensitivities pointed out by the respondents and also keeping in mind that Ramlila Maidan is available and Jantar Mantar Road in a regulated manner shall be available as well, in a couple of months. Thus, the proposed guidelines may include the provisions for regulating the numbers of persons intending to participate in such demonstrations, prescribing the minimum distance from the Parliament House, North and South Blocks, Supreme Court, residences of dignitaries etc. within which no such demonstrations would be allowed; imposing restrictions on certain routes where

normally the Prime Minister, Central Ministers, Judges etc pass through; not permitting any demonstrations when foreign dignitaries are visiting a particular place or pass through the particular route; not allowing firearms, lathis, spears, swords, etc. to be carried by demonstrators; not allowing them to bring animals or pitch tents or stay overnight; prescribing time limits for such demonstrations; and placing restrictions on such demonstrations, etc. during peak traffic hours. To begin with, authorities can permit those processions and demonstrations which are innocuous by their very nature. Illustratively, school children carrying out procession to advance some social cause or candle march by peace loving group of persons against a social evil or tragic incident. These are some of the examples given by us to signify that such demonstrations can be effectively regulated by adopting various measures instead of banning them altogether by rejecting every request for such demonstrations. We, therefore, feel that in respect of this area as well the authorities can formulate proper and requisite guidelines. We direct the Commissioner of Police, New Delhi, to undertake this exercise, in consultation with other authorities, within two months from today.

71) Writ petitions and appeals stand disposed of in the aforesaid terms.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN)
NEW DELHI;

JULY 23, 2018.