IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO._____ OF 2017

**(PUBLIC INTEREST LITIGATION)**

**IN THE MATTER OF:**

MAZDOOR KISAN SHAKTI SANGHATAN
THROUGH ITS FOUNDER MEMBER
ARUNA ROY
R/O TILONIA, BANDERSINDRI,
AJMER, RAJASTHAN – 305816 ...PETITIONER

VERSUS

1. THE UNION OF INDIA
   THROUGH ITS HOME SECRETARY
   NORTH BLOCK
   NEW DELHI ... RESPONDENT NO. 1

2. THE COMMISSIONER OF POLICE
   DELHI POLICE HEADQUARTERS
   ITO, NEW DELHI-110 002 ...RESPONDENT NO. 2

**WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA CHALLENGING THE ARBITRARY AND REPEATED IMPOSITION OF POLICE ORDERS UNDER SECTION 144 OF THE CRIMINAL PROCEDURE CODE, WHICH INFRINGES ON THE FUNDAMENTAL RIGHT TO PEACEFUL ASSEMBLY GUARANTEED UNDER ARTICLE 19 (1) (b) OF THE CONSTITUTION OF INDIA**

To,

Hon'ble Chief Justice of India and his companion
Justices of the Supreme Court of India

The Petitioner most respectfully showeth:

1. That the petitioner is filing the present writ petition in public interest under article 32 of the Constitution of India, challenging the arbitrary and repeated imposition of orders by the Delhi Police under S. 144 of the Criminal Procedure Code, by which, virtually, the entire Central Delhi area is declared a prohibited area for holding any public meeting, dharna or peaceful protest. The right to peaceful assembly is a fundamental right under article 19(1) (b) of the Constitution of India and is a crucial right for citizens to express their opinion in a democratic State. This right encompasses holding peaceful dharnas

and demonstrations which would also be a crucial aspect of the right to freedom of speech and expression under Article 19 (1) (a) of the Constitution of India. The orders of the Delhi Police are evidently an attack on the fundamental right to protest. A continuous imposition of these orders under S. 144 of the Criminal Procedure Code is an arbitrary and unreasonable restriction on fundamental rights of citizens. The courts have interpreted the imposition of orders under this section only in situations of emergency, after an inquiry into the existence of reasons necessary for such prohibition and by stating the material facts for the imposition. Further that these orders can remain in force for only 2 months. These repetitive orders are therefore an abuse of power by the Delhi Police. They are a clear attempt to curb the right of citizens to protest and to peaceful assembly. This right can be effectively exercised only when citizens are permitted to protest at a place from where their protest will actually be more visible, i.e. near the seat of power. With a ban on protest in the entire central Delhi area, and a further ban on protests at Jantar Mantar following the National Green Tribunal order, citizens are being pushed away from places where their protests had more visibility considering the proximity of venues for protest in Central Delhi, to the Parliament and other government offices.

**INTRODUCTION OF THE PETITIONER**

1A. The petitioner Mazdoor Kisan Shakti Sangathan (MKSS) is a grassroots, 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. The petition is being filed through Aruna Roy, founder member of MKSS who is authorized to file this PIL. She is a citizen of India. She worked in the Indian Administrative Services from 1968 till 1974. The requisite Certificate & Authority Letter from the executive committee of MKSS are filed along with the vakalatnama.

The petitioner has not made any representations to the respondent in this regard because of the extreme urgency of the matter in issue.

The petitioner has no personal interest, or any private or oblique motive, in filing the instant petition. There is no civil, criminal, revenue or any other litigation involving the petitioner, which has or could have a legal nexus with the issues involved in this PIL.

**Case in Brief**

2. The Delhi Police has been issuing such prohibitory orders under S. 144 of the Criminal Procedure Code for several years. It issues fresh orders as soon as the previous order expires. As per sub-section 4 of S. 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.
(A copy of the Delhi Police Orders prohibiting protest in Central Delhi dated 24.01.2017 is annexed as **Annexure P1 (Pages 51-52)**)
(A copy of the Delhi Police Orders prohibiting protest in Central Delhi dated 25.03.2017 is annexed as **Annexure P2 (Pages 53-54)**
(A copy of the Delhi Police Orders prohibiting protest in Central Delhi dated 24.05.2017 is annexed as **Annexure P3 (Pages 55-56)**
(A copy of the Delhi Police Orders prohibiting protest in Central Delhi dated 23.07.2017 is annexed as **Annexure P4** (**Pages 57-58)**
(A copy of the Delhi Police Orders prohibiting protest in Central Delhi dated 22.09.2017 is annexed as **Annexure P5 (Pages 59-62)**

A copy of the Delhi Police Orders prohibiting protest in Central Delhi dated 31.10.2017 is annexed as **Annexure P6 (Pages 63-64)**

3. That the right to peaceful protest is an essential part of the right enshrined in article 19 (1) (b). That in any democratic society, protests play an important part in the civil, political, economic, social and cultural life. It is important to recognise the role that protests have played historically in inspiring positive social change and improved protection of human rights. The Constitution of India guarantees the right to assemble peacefully and the freedom of speech and expression. These have been read to include the right to protest by this Hon'ble Court in various judgements over the years. The State is further required to aid the exercise of fundamental rights of citizens and not pass orders that have the effect of restricting these rights arbitrarily. That the petitioner has moved this Hon'ble Court for the protection of these important fundamental rights. The petitioner hence finds it important to first demonstrate the scope of the right to protest within the Indian Constitutional scheme and the Supreme Courts interpretation of this Article 19 right along with the constitutionality of order under S. 144 of the Cr. P.C. and its scope with respect to the right to protest.

4. 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 2015 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 area which is close to the establishment offices has been turned into a fortress and the fundamental rights of the citizens completely denied. However from 1993 till recently, the only place where the protests were allowed was Jantar Mantar. When attempts were made to restrict protest at

Jantar Mantar, the Delhi Police repeated orders banning protests in Central Delhi was challenged by a Bhopal Gas Pidit Mahaila Stationary Karamchari Sangh member in 2010, 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 Hon'ble High Court on 31.05.2011, disposed off the petition when the Delhi Police filed an affidavit stating that the continuous prohibition under S. 144 of the Cr. P.C. under the jurisdiction of 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 S. 144 continues, severely restricting the citizens' fundamental right to protest and peaceful assembly.

(A copy of the Delhi High Court order dated 31.05.2011 in Writ petition (Civil) No. 5000 of 2010 Bano Bee v. Union of India & Anr is annexed as **Annexure P7 (Pages-65-68)**

5. That the Delhi Police has even advertised for protesters to use Jantar Mantar as the site of protest. However, on 5th October 2017, the National Green Tribunal 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. 50000 per day which would make protests at the site practically impossible for the common citizen.

(A copy of the Indian Express article regarding the Delhi Police advertisement invite protests at Jantar Mantar is annexed as **Annexure P8 (Pages 69-70) .**

(A copy of the National Green Tribunal Order dated 5th October 2017 is annexed as **Annexure P9 (Pages 71-137).**

**THE RIGHT TO PROTEST AS A FUNDAMENTAL RIGHT**

6. That holding peaceful demonstrations 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 freedoms that are guaranteed under Articles 19 (1) (a) and 19 (1) (b) of the Constitution. Article 19(1)(b) specifically confers the right to assemble and thus guarantees that all citizens have the right to assemble peacefully and without arms.

7. That the Courts have also upheld that a citizen's fundamental 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. Organised, non-violent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now recognised a fundamental right in the Constitution. While on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions on the other hand reasonable restriction on such rights can be placed by law. Provisions of the IPC and Cr. PC 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 in

excesses in what can be seen as another bid to stifle and impose restrictions on the right to peaceful assembly.

8. Article 19 reads as follows:

> *Protection of certain rights regarding freedom of speech, etc.*
> *(1) All citizens shall have the right—*
> *(a) to freedom of speech and expression;*
> *(b) to assemble peaceably and without arms;*
> *(c) to form associations or unions;*
> *(d) to move freely throughout the territory of India;*
> *(e) to reside and settle in any part of the territory of India; and*
> *(g) to practise any profession, or to carry on any occupation, trade or business.*
> *(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.*
> *(4) Nothing in sub-clause (c) 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 or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.*

9. That the Constitution of India under Art. 19(1)(a) therefore confers upon each individual the freedom of speech and expression and

under Art. 19(1)(b), the right to assemble peaceably and without arms. The exercise of the right to freedom under 19(1)(a) can however, be reasonably restricted *"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"*, as provided under Art. 19(2) and the right under 19(1)(b) is subject to reasonable restrictions imposed by the State *"in the interests of the sovereignty and integrity of India or public order"*, as provided under Art. 19(3).

10. That the right to protest/hold demonstrations has been held to flow from these rights guaranteed under Art. 19(1)(a) and 19 (1)(b). Each citizen has the right to organise peaceful protests, subject to the reasonable restrictions imposed by the State. This right has been upheld in various judgements of the Supreme Court as stated below:

11. In *Babulal Parate v. State of Maharashtra*, **1961 (3) SCR 423**, this Hon'ble 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 peaceably and without arms and the right to move anywhere in the territory of India."*

12. That in *Kameshwar Prasad v State of Bihar* **[1962] SUPP 3 SCR 369** the Court was mainly dealing with the question whether the right to make a demonstration is protected under Art. 19(1)(a) and (b) and whether a government servant is entitled to this right. The Hon'ble Supreme 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 grievances."*

13. That 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. The Hon'ble Supreme Court in Constitution Bench Judgement, *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad*, (**1973) 1 SCC 227, w**hile 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 or highways to avoid nuisance or disruption to traffic and thus, it can provide rules under which written permission would be needed for holding 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.*
*"70. Public meeting in open spaces and public streets forms part of the tradition of our national life. In pre-independence days such meetings have been held in open spaces 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 a 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 own 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 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."*

14. That adjudicating with respect to the validity of police action against protesters, the Supreme Court again reiterated that right to protest was a fundamental right guaranteed to the citizens under Art. 19. In the case of *Ramlila Maidan Incident v. Home Secretary, Union of India and Ors.* **(2012) 5 SCC 1,** 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 agitation 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 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 tranquility, as it may disturb the social order. This delegate 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.*"

15. Further, in *Anita Thakur and Ors. v. Government of J &K and Ors.* **(2016) 15 SCC 525, THE COURT** recognised that the right to peaceful protest was a fundamental right under Article 19(1)(a), (b) and (c) of the Constitution, subject to reasonable restrictions. It was finally held that in that while the protesters 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 Indian Penal Code and Code of Criminal Procedure, 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..."*

16. That the right to protest is thus recognised 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.

**Orders under S. 144 Code of Criminal Procedure, 1973 and the Right to Protest**

17. That Section 144 of the Code of Criminal Procedure, 1973 reads as follows:

*Section 144 - Power to issue order in urgent cases of nuisance or apprehended danger:*

*"(1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safely, or a disturbance of the public tranquility, or a riot, or an affray.*

*(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.*

*(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.*

*(4) No order under this section shall remain in force for more than two months from the making thereof:*

> *Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.*

*(5) 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, by himself or any Magistrate subordinate to him or by his predecessor-in-office.*

*(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).*

*(7) Where an application under sub-section (5), or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing."*

18. That the Section confers upon an Executive Magistrate special powers to pass prohibitory orders or mandatory orders with respect to some property under his possession or management when there is:

- sufficient ground for proceeding under this section, and
- immediate prevention or speedy remedy is desirable

19. That a major concern for citizens is the inability to protest in the central district of the city as prohibitory orders under S. 144 of the Cr. P.C. are continuously in force in the areas around Parliament street, North and South Blocks and Central Vista Lawns. As can be seen from these orders, the prohibition in Central Delhi area is on:

i. The holding of any public meeting
ii. Assembly of five or more persons
iii. Carrying fire-arms, banners, placards, lathis, spears, swords, sticks, brickbats, etc.
iv. Shouting slogans
v. Making of speeches
vi. Processions and demonstrations
vii. Picketing or dharnas in any public place within the area specified in the schedule and sit plan appended

20. It is submitted that these repetitive orders are illegal and beyond the scope and ambit of orders under S. 144 of the Criminal Procedure Code. That magistrates exercise their powers under this section and

pass wide ranging orders, such as, orders prohibiting unlawful assembly, orders prohibiting lotteries, orders mandating installation of CCTV cameras in markets, *etc.* For the NCT of Delhi, the Ministry of Home Affairs has conferred the power of the Executive Magistrate under this Section to the Assistant Commissioners of Police.

21. S. 144 finds place in the Criminal Procedure Code under the section which is headed "urgent cases of nuisance or apprehended danger". The order under S. 144 rest upon "immediate prevention and speedy remedy". The orders of the Delhi Police completely banning protests in Central Delhi are not based on the need for any immediate prevention of harm or speedy remedy. Further these orders would not quality as reasonable restrictions on the right to peaceful assembly, in the name of maintaining public order, under Article 19(3).

22. That this Hon'ble Court in numerous decisions has outlined the scope of S. 144 of the Criminal Procedure Code. Broadly the powers under the Section are intended to be used for preventing disorders, obstructions and annoyances. The scope of this section as underlined in the various judgements of the Hon'ble Supreme Court can be summarised as follows:

- An order under this section can be passed against an individual or even the public at large.
- The basic requirements of passing such an order have been enumerated as – existence of sufficient ground for proceeding; immediate prevention or speedy remedy must be desirable and an order, in writing, should be passed stating the material facts and be served upon the concerned person.
- Satisfaction of the magistrate as to the necessity of promulgating an order under S. 144 has to be reasonable, least invasive and bona fide. The exercise of power is conditioned by the fact that it can only be exercised in an emergency and for preventing obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the republic tranquillity or a riot, or "an affray".
- The perception of threat to public peace and tranquility should be real and not imaginary or a mere likely possibility. The

Magistrate is expected to exercise his powers legitimately and honestly, within the limits of the Section.

- The restraints permissible under the provision are temporary in nature. An order passed by the Magistrate cannot remain in force beyond two months. The proviso to sub-section (4) empowers the State government to extend the prohibitory orders for an additional term of life but only for a maximum period of six months. This clearly indicates that the Parliament never intended the life of the order of the Magistrate to remain in force beyond two months. The section does not contemplate repetitive orders. Continuous imposition of orders under S. 144 would clearly amount to abuse of the power conferred by the section as these orders cannot be permanent or semi-permanent in character.
- Under sub-section (3) the magistrate is also required, wherever possible, to serve a notice on the person or persons against whom the order is directed. In cases of emergency or when there is a paucity of time, the order can be passed ex parte.
- Therefore, the restraint imposed by the section has to be reasonable and minimal, within the limits of the section. It should not be allowed to exceed the constraints of the particular situation either in nature or in duration.

23. That this Hon'ble Court in a Constitution Bench judgement in *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr and Ors*, **1970 (3) SCC 746**, while dealing with the constitutionality of this provision held that an order under S. 144 of the Cr. P.C. is based on an emergency response to prevent some harmful occurrences. Therefore it may be stated that, law abiding citizens protesting for the realisation of basic human rights, cannot be restricted by orders under this section. The key part of the section is to free society from serious disturbances of a grave character, which cannot be true of a dharna or protest by citizens groups on issues that affect governance and a just realisation of citizens' rights guaranteed by the Constitution of India. The Court held:

> *"24. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent*

*some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification...disturbances of public tranquillity, 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 be abated and prevented... 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 visualises 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..."*:

24. Earlier in *Babulal Parate v State of Maharashtra,* **1961 (3) SCR 423**, while dealing with the scope of S. 144 of the Cr.P.C., the Hon'ble Supreme Court has clearly held:

*"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 tranquillity or a riot, or "an affray"."*

25. However the Delhi Police has been issuing orders under S. 144 Cr. P.C. as a matter of routine without there being any emergent situation which is a clear abuse of the said provision. The blanket ban on the right to protest in the entire Central Delhi area, is a violation of this fundamental right under Article 19 (1) (b). That the aforesaid orders of the Delhi Police are a completely unreasonable restriction on the fundamental right of the citizens of a democratic country to peacefully protest or agitate for public cause by sitting on dharna, etc. It is further submitted that New Delhi being the centre of power as the Union Government sits here, it is the most appropriate

place for protesting against any inaction of the central government. Such protests are the hallmarks of a vibrant democracy that encourages debate and where citizens voices can be heard.

26. That the power under S. 144 has to be exercised in an emergent situation and if it is exercised in a situation where the emergency was not sudden or grave, the exercise of power would be unjustified. An expression of a democratic fundamental right cannot be unreasonably restricted so as to prevent citizens voicing their concerns before the authorities. Every citizen has a right to express dissent and to protest against policies of the government in a peaceful manner. Imposing unreasonable restrictions on this right, by way of repeated orders completely banning protests in Central Delhi area, is a curtailment of this right and completely unjustified. Besides, citizen groups who gather to raise their voices against various human rights issues cannot be viewed as creating a nuisance or a situation of apprehended danger, to warrant a prohibitory order under S. 144 of the Cr. P.C. In a peaceful protest, there cannot be said to be a disturbance to public tranquillity that needs to be prevented in time. The order must only be passed is case of an urgency to maintain public peace and tranquility. This is the basis of S. 144 Cr. P.C.

27. That the features of the exercise of power under S. 144 are that the power must be exercised to serve a public purpose and protect public order and this power is to invoked only when immediate prevention is needed. It is submitted that such power cannot be lawfully exercised when there is only an apprehension of any disturbance to public peace from a proposed public gathering of concerned citizens. The controlling authority is responsible for ensuring the right to hold meetings is exercised without disturbing law and order and to that end, a temporary order under S. 144 can be passed. However repeated imposition of the same order is only a means to thwart freedom of speech and expression which is a fundamental right under the Constitution of India.

28. That S. 144 (2) of the Cr. P.C. provides that in cases of emergency or paucity of time, the order can be made ex parte but the emergency, however must be so sudden as to justify an ex parte order. From a

bare perusal of the Delhi Police orders banning protests and dharnas in Central Delhi area it can be seen that these orders are not based on any emergency situation that requires an immediate remedy, so as to curtail a citizens fundamental right. It is submitted that these repetitive orders of the Delhi Police do not fall within the ambit of orders that are made within the scope of S. 144 (1) and (2) of the Cr. P.C. If there is no difficulty in serving the show-cause notice and there is no emergency, an *ex parte* order cannot be passed. Such an order would vitiate the provision.

29. That the existence of sufficient grounds and need for immediate prevention or speedy remedy are the most important factors to be taken into consideration and in this regard, the perception of the Magistrate has to be relied upon. For this, the perception of threat must be real and not a mere possibility. Besides the order of the Delhi Police banning protests in certain areas needs to be a reasoned order as held by the court. However, the orders of the Delhi Police imposing a S. 144 Cr. P.C. ban on protest in Central Delhi does not give detailed reasons for the imposition of the order.

30. That in the case *Ramlila Maidan Incident v Home Secretary, Union of India and Ors.***, (2012) 5 SCC 1:** *this Court held:*

> *"52. If one reads the provisions of Section 144 Code of Criminal Procedure along with other constitutional provisions and the judicial pronouncements of this Court, it can undisputedly be stated that Section 144 Code of Criminal Procedure is a power to be exercised by the specified authority to prevent disturbance of public order, tranquility and harmony by taking immediate steps and when desirable, to take such preventive measures...*
>
> *54. However, it must be borne in mind that the provisions of Section 144 Code of Criminal Procedure are attracted only in emergent situations. The emergent power is to be exercised for the purposes of maintaining public order.*
>
> *55. It was stated by this Court in Romesh Thapar (1950 SCR 594) that the Constitution requires a line to be drawn in the field of public order and tranquility, marking off, may be roughly, the boundary between those serious and aggravated forms of public*

*disorder which are calculated to endanger the security of the State and the relatively minor breaches of peace of a purely local significance, treating for this purpose differences in degree as if they were different in kind.*

*56. Moreover, an order under Section 144 Code of Criminal Procedure being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case. This would be the requirement of law for more than one reason. Firstly, it is an order placing a restriction upon the fundamental rights of a citizen and, thus, may adversely affect the interests of the parties, and secondly, under the provisions of the Code of Criminal Procedure., such an order is revisable and is subject to judicial review. Therefore, it will be appropriate that it must be an order in writing, referring to the facts and stating the reasons for imposition of such restriction…*

*57. A bare reading of Section 144 Code of Criminal Procedure shows that:*

> *(1) It is an executive power vested in the officer so empowered;*
>
> *(2) There must exist sufficient ground for proceeding;*
>
> *(3) Immediate prevention or speedy remedy is desirable; and*
>
> *(4) An order, in writing, should be passed stating the material facts and be served the same upon the concerned person.*

*These are the basic requirements for passing an order under Section 144 Code of Criminal Procedure. Such an order can be passed against an individual or persons residing in a particular place or area or even against the public in general. Such an order can remain in force, not in excess of two months. The Government has the power to revoke such an order and wherever any person moves the Government for revoking such an order, the State Government is empowered to pass an appropriate order, after hearing the person in accordance with Sub-section (7) of Section 144 Code of Criminal Procedure.*

*58. Out of the aforestated requirements, the requirements of existence of sufficient ground and need for immediate prevention or speedy remedy is of prime significance. In this context, the perception of the officer recording the desired/contemplated satisfaction has to be reasonable, least invasive and bona fide. The restraint has to be reasonable and further must be minimal. Such restraint should not be allowed to exceed the constraints of the particular situation either in nature or in duration. The most onerous duty that is cast upon the empowered officer by the legislature is that the perception of threat to public peace and tranquility should be real and not quandary, imaginary or a mere likely possibility. 59. This Court in the case of Babulal Parate [(1961) 3 SCR 423] had clearly stated the following view:*

> *"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."*

*The above-stated view of the Constitution Bench is the unaltered state of law in our country. However, it needs to be specifically mentioned that the 'apprehension of danger' is again what can inevitably be gathered only from the circumstances of a given case."*

*177. Right from Babulal Parate (supra), this Court has taken a consistent view that the provisions of Section 144 Code of Criminal Procedure cannot be resorted to merely on imaginary or likely possibility or likelihood or tendency of a threat. It has not to be a mere tentative perception of threat but a definite and substantiated one.*

*225. Existence of sufficient ground is the sine qua non for invoking the power vested in the executive under Section 144 Code of Criminal Procedure. It is a very onerous duty that is cast upon the empowered officer by the legislature. The perception of*

*threat should be real and not imaginary or a mere likely possibility. The test laid down in this Section is not that of 'merely likelihood or tendency...Thus, in case of a mere apprehension, without any material facts to indicate that the apprehension is imminent and genuine, it may not be proper for the authorities to place such a restriction upon the rights of the citizen."*

31. The kind of orders mentioned in this section are intended only to prevent dangers to life, health, safety or peace and tranquillity of members of the public. They are only temporary which cannot last beyond two months from the date of making thereof as is clear from sub-section (6). This was held by the Supreme Court in *Md. Gulam Abbas v. Md. Ibrahim,* **(1978) 1 SCC 226**

*"2. This provision confers a jurisdiction to "direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management" with the object, inter alia, of preventing "a disturbance of the public tranquility, or a riot, or an affray". Section 144(3) specifically lays down that the order under this Section "may be directed to a particular individual or to the public generally when frequenting or visiting a particular place". The kind of orders mentioned here are obviously intended only to prevent dangers to life, health, safety or peace and tranquility of members of the public. They are only temporary orders which cannot last beyond two months from the making thereof as is clear from Section 144(6) of the Code. Questions of title cannot be decided here at all. But, previous judgments on them may have a bearing on the question whether, and, if so, what order should be passed under Section 144 Criminal Procedure Code."*

32. Though these orders of the Delhi Police do provide that the public meetings etc. can be held in these areas if the permission is sought from the police and such permission is granted. However as it appears from the orders, no criteria for granting or refusing permission has ever been laid down, thus, the decision of granting or refusing permission has been completely left to the discretion of the

Delhi Police. It is submitted that as a result of such unregulated discretion, the decision is basically left to the subjective whim of the Delhi Police. In the garb of such prohibitory orders, the Delhi Police has been refusing permission for holding dharnas, public meetings, etc in the entire Central Delhi area, which being the centre of power and government, is best suited as a place for holding peaceful protests. In *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad and Anr.* **(1973) 1 SCC 227,** the Hon'ble Supreme Court held that though the authority has power to regulate such public meetings on streets, etc. and therefore it can frame rules laying down that a written permission would be required to hold such meetings, but there must be some standard for granting or rejecting permission. The court held:

> *"39. The real point in this case is whether the impugned rules violate 19(1) (b). Rule 7 does not give any guidance to the office authorised by the Commissioner of Police as to the circumstances in which he can refuse permission to hold a public meeting. Prima facie, to give an arbitrary discretion to an officer is an unreasonable restriction. It was urged that the marginal note of Section 33 – power to make rules for regulation of traffic and for preservation of order in public place, etc – will guide the officer. It is doubtful whether a marginal note can be used for this purpose, for we cannot imagine the officer referring to the marginal note of the section and then deciding that his discretion is limited, specially as the marginal note ends with "etcetra". It is also too much to expect him to look at the scheme of the Act and decide that his discretion is limited.*
>
> *72. The power of the appropriate authority to impose reasonable regulation in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with the fundamental right of assembly. A system of licensing as regards the time and the manner of holding public meetings on public street has not been regarded as an abridgement of the fundamental right of public assembly or of free speech. But a system of licensing public meeting will be held by courts only if definite standards are provided by the law for the guidance of the licensing authority. Vesting of unregulated*

*discretionary power in a licensing authority has always been considered as bad…*

*73. If there is a fundamental right to hold public meeting in a public street, then I need hardly say that a rule like Rule 7, which gives an unguided discretion, practically depended upon subjective whim of an authority to grant or refuse permission to hold a public meeting on public street cannot be held to be valid. There is no mention in the rule of the reasons for which an application for licence can be rejected. "Broad prophylactic rules in the area of free expression and assembly are suspect. Precision of regulation must be the touchstone in an area so closely touching our precious freedoms." see Naacp v. Button).*

33. It is submitted that in the present case also, the Delhi Police has not prescribed any criteria or guidelines for granting or rejecting the permission for holding public meetings. As apprehended in the aforesaid judgement, in the present case also there is every likelihood of the power of permission being misused by the Delhi Police. In fact, various groups and organisations working on different public issues in Delhi or from other states find it very difficult to get the permission for holding meetings, etc from the Delhi Police.

34. That the order passed by the Magistrate can remain in force only for a maximum period of two months, unless extended by the State government. That S. 144 (4) of the Criminal Procedure Code authorises the passing of a provisional order to get over temporary emergencies and does not authorise a Magistrate to grant a permanent injunction prohibiting a procession for an indefinite period. Thus the continuous order of the Delhi Police banning protests completely militate against the letter and spirit of S. 144 and do not therefore withstand the scrutiny of law and need to be quashed.

*35.* That successive orders or renewal of the expired orders are beyond the jurisdiction of the Magistrate. They are an abuse of power as an order under S. 144 is not intended to be permanent or semi-permanent, as evident from the scheme of the section. Only the State

Government has, under the proviso to section 144(4), the power to extend the duration of the Magistrate's order up to six months from the date on which such order would expire on the ground of prevention of *(i)* danger to human life, health or safety, or *(ii)* riot or affray.

*36.* Further, since the constitutional validity of the order under S. 144 Cr.P.C. rests on its temporary character and since sub-section (4) of S. 144Cr.P.C. clearly lays down that the order would not remain in force for more than two months subject to State Government's power to extend it upto a period of six months, it follows that the Delhi Police order which has the effect of perpetual injunction or has the effect of going beyond a period of two months is invalid and needs to be quashed. This has been clearly defined by the Supreme Court in *Acharya Jagdishwaranand Avadhuta and Ors. v. Commissioner of Police, Calcutta and Anr,* **(1983) 4 SCC 522**

> *"16. 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 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...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 ILR 5 Cal. 7 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 and Anr. v. Emperor AIR 1916 Cal 47. Similar view was taken in Swaminatha Mudaliar v. Gopalakrishna Naidu; AIR*

*1916 Mad 1106, Taturam Sahu v. The State of Orissa, AIR 1953 Ori 96, Ram Das Gaur v. The City Magistrate, Varanasi, AIR 1960 All 397 and Ram Naraain Sah and Anr. v. Parmeshwar Prasad Sah and Ors., AIR 1942 Pat 414 . 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. If is relevant to advert to the decision of this Court in Babulal Parate v. State of Maharashtra and Ors., 1961 CriLJ 16 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 :*

> *"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. Similar view was expressed by this Court in Gulam Abbas and Ors. v. State of U.P. and Ors., [1981] 2 Cr. L.J. 1835 where it was said that "the entire basis of action Under Section 144 is provided by the urgency of the situation and the power thereunder is intended to be availed of for preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquillity..." Certain observations in Gulam Abbas's decision regarding the nature of the order under Section 144 of the Code - judicial or executive - to the extent they run counter to the decision of the Constitution Bench in Babulal Parat's case, may require reconsideration but we agree that the nature of the order Under Section 144 of the Code is intended to meet emergent situation."*

*"Thus the clear and definite view of this Court is that an order Under Section 144 of the Code is not intended to be either permanent or semi-permanent in character. The consensus of judicial opinion in the High Courts of the country is thus in accord with the view expressed by this Court."*

37. That based on the Supreme Court's interpretation of the validity of an order under S. 144, the orders of the Delhi Police are illegal. The orders do not refer to any emergent situation, urgency and as such no immediate prevention or speedy remedy is desirable. The orders also do not specify the material facts that show that passing of the order is necessary in view of any emergency or paucity of time, so as to serve the order ex parte. The orders of the Delhi Police read *"As the notice cannot be served individually on all concerned, the order is hereby passed 'Ex-Parte'"*. The repetitive orders of the Delhi Police are in effect permanent in nature and hence, an unreasonable restriction on the fundamental right to peaceful assembly without arms.

**International Standards, Conventions and judgements on the right to peaceful assembly and the right to protest**

38. In International human rights law the right to protest has been read as implicit in the right to freedom of association and the right to peaceful assembly guaranteed by a number of international Conventions. The Hon'ble Supreme Court has read the right to protest to be an integral part of the right to freedom of peaceful assembly which is a fundamental right guaranteed to citizens under the Constitution of India. Many international conventions which have been ratified by India or to which India is a signatory have this right to peaceful assembly included in them. Hence India is under an obligation to interpret domestic law in the light of the obligations under these conventions. The Hon'ble Supreme Court has in many cases directed that action of the States must be in conformity with international law and conventions.

39. In *Gramophone Company Of India Ltd vs Birendra Bahadur Pandey & Ors*, **(1984 SCC (2) 534)**, the Apex Court had held that the comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. The relevant paragraph of the judgement is produced below for perusal.

> *'5. There can be no question that nations must march with the international community and the Municipal law must respect rules of International law even as nations respect international opinion. The comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament...The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with Act of Parliament."*

40. In *Vishaka & Ors vs State Of Rajasthan* **(1997) 6 SCC 241**, the Apex Court has held that international conventions and norms can be used for construing the fundamental rights expressly guaranteed in

the Constitution of India. The relevant paragraphs of the judgement are produced below for perusal.

*'6. Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are:*

*Article 51 :*

*"51. Promotion of international peace and security - The State shall endeavour to -*

*(c) foster respect for international law and treaty obligations in the dealings of organised people with one another;*

*Article 253 :*

*253. Legislation for giving effect to international agreements - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."*

*Seventh Schedule :*

*"List I - Union List:*

*14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.*

*7. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of the*

*Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution.*

> *14. The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in Minister for Immigration and Ethnic Affairs vs. Tech. 128 ALR 535, has recognised the concept of legitimate expectation of its observance in the absence of contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.*
>
> *15. In Nilabati Behera vs. State of Orissa 1993(2) SCC 746, a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity."*

**International Conventions**

41. Some of the important International Declarations that recognise the right to peaceful assembly are enumerated below. The provisions of the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966, Convention on Rights of

the Child, 1990, are binding on India since India has both signed and ratified these conventions and India is bound by its obligations under these Conventions.

42. Universal Declaration of Human Rights

*Article 19 – "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."*

*Article 20(1) - "Everyone has the right to freedom of peaceful assembly and association."*

*Article 29 - "2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society"*

(A copy of the Universal Declaration of Human Rights is annexed as **Annexure P10 (Pages 138-148)**

43. International Covenant on Civil and Political rights

*Article 21 - "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."*

(A copy of the relevant pages of the International Covenant on Civil and Political Rights is annexed as **Annexure P11 (Pages 149-150)**

*44.* Convention on the Rights of the Child

*Article 15 – "1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*

*2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national*

*security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."*

(A copy of the relevant pages of the Convention on Rights of the Child is annexed as **Annexure 912 (Pages 151-152)**

**International Instruments, Special Rapporteur Reports and Guidelines on the Freedom of Peaceful Assembly**

45. Guidelines on Freedom of Peaceful Assembly, Issued by Organization for Security and Co-operation in Europe (OSCE) and Council of Europe's Commission for Democracy through Law (Venice Commission): (2nd edition)

*Section A – Guidelines:*

*"1.1 Freedom of peaceful assembly is a fundamental human right that can be enjoyed and exercised by individuals and groups, unregistered associations, legal entities and corporate bodies...*

*2.1 The presumption in favour of holding assemblies. As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of this freedom should be clearly and explicitly established in law.*

*2.2 The state's positive obligation to facilitate and protect peaceful assembly. It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation. In particular, the state should always seek to facilitate and protect public assemblies at the organizers' preferred location and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.*

*2.3 Legality. Any restrictions imposed must have a formal basis in law and be in conformity with the European Convention on Human Rights and other international human rights instruments.*

*To this end, well-drafted legislation is vital in framing the discretion afforded to the authorities. The law itself must be compatible with international human rights standards and be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, as well as the likely consequences of any such breaches.*

*2.4 Proportionality. Any restrictions imposed on freedom of assembly must be proportional. The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.*

*The principle of proportionality requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city.*

*A blanket application of legal restrictions tends to be over-inclusive and, thus, will fail the proportionality test, because no consideration has been given to the specific circumstances of the case.*

*3.1 Legitimate grounds for restriction. The legitimate grounds for restriction are prescribed in international and regional human rights instruments. These should not be supplemented by additional grounds in domestic legislation.*

*3.2 Public space. Assemblies are as legitimate uses of public space as commercial activity or the movement of vehicular and pedestrian traffic. This must be acknowledged when considering the necessity of any restrictions...*

*20. European Court of Human Rights - Balcik v. Turkey (2007), paragraph 52, and Ashughyan v. Armenia (2008), paragraph 90:*

> *"Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic and, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the ECHR is not to be deprived of all substance."*

*Inter-American commission on human rights: report of the Office of the special rapporteur for Freedom of expression (2008), paragraph 70:*

*"Naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression.*

*37. The more specific the legislation, the more precise the language used ought to be. Constitutional provisions, for example, will be less precise than primary legislation because of their general nature. In contrast, legislative provisions that confer discretionary powers on the regulatory authorities should be narrowly framed and should contain an exhaustive list of the grounds for restricting assemblies (see para. 69). Clear guidelines or criteria should also be established to govern the exercise of such powers and limit the potential for arbitrary interpretation.*

*43. Consequently, the blanket application of legal restrictions – for example, banning all demonstrations during certain times, or in particular locations or public places that are suitable for holding assemblies – tends to be over-inclusive. Thus, they will fail the proportionality test, because no consideration has been given to the specific circumstances in each case...*

*71. Prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate, and any isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution rather than prior restraint.*

*72. An assembly that the organizers intend to be peaceful may still legitimately be restricted on public-order grounds in certain circumstances. Such restrictions should only be imposed when there is evidence that participants will themselves use or incite imminent, lawless and disorderly action and that such action is likely to occur. This approach is designed to extend protection to*

*controversial speech and political criticism, even where this might engender a hostile reaction from others.*

*80. The regulatory authority has a duty to strike a proper balance between the important freedom to peacefully assemble and the competing rights of those who live, work, shop, trade and carry on business in the locality affected by an assembly. That balance should ensure that other activities taking place in the same space may also proceed if they themselves do not impose unreasonable burdens. Temporary disruption of vehicular or pedestrian traffic is not, of itself, a reason to impose restrictions on an assembly. Nor is opposition to an assembly sufficient, of itself, to justify prior limitations. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe upon the rights and freedoms of others. This is particularly so given that freedom of assembly, by definition, constitutes only a temporary interference with these other rights.*

(A copy of Guidelines on Freedom of Peaceful Assembly, Issued by Organization for Security and Co-operation in Europe (OSCE) and Council of Europe's Commission for Democracy through Law (Venice Commission): (2nd edition) is annexed as **Annexure P13 (Pages 153-172)**

46. Resolution of Human Rights Council No. 22/10 (9 April 2013) - The promotion and protection of human rights in the context of peaceful protests states:

*"Acknowledging also that participation in peaceful protests can be an important form of exercising the rights to freedom of peaceful assembly, and of association, freedom of expression and of participation in the conduct of public affairs,*

*Acknowledging further that peaceful protests can contribute to the full enjoyment of civil, political, economic, social and cultural rights"*

*"3. Calls upon States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association, including by*

*ensuring that their domestic legislation and procedures relating to the rights to freedom of peaceful assembly, of expression and of association are in conformity with their international human rights obligations and commitments;*

*4. Urges States to facilitate peaceful protests by providing protestors with access to public space and protecting them, where necessary, against any forms of threats, and underlines the role of local authorities in this regard;"*

(A copy of the Resolution of Human Rights Council No. 22/10 (9 April 2013) - The promotion and protection of human rights in the context of peaceful protests is annexed as **Annexure P14 (Pages 173-176)**

**United Nations Human Rights Council Special Rapporteur Reports on the rights to freedom of peaceful assembly and of association**

47. In accordance with the resolutions of the Human Rights Council, a Special Rapporteur on rights to freedom of peaceful assembly and of association was appointed to present annual reports. Some important observations from these reports have been quoted below. It is pertinent to note the recommendations on requiring the States to create in their laws a presumption in favour of peaceful assemblies and the standards specified for imposition of restrictions on the rights.

48. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, dated 4th February 2016:

This report is a compilation aimed at providing guidance on how applicable international human rights standards may be operationalized in domestic law and practice to ensure greater protection of the rights involved. The Special Rapporteurs were entrusted with this task by a resolution of the Human Rights Council in 2014. This report prepared by them was a compilation of a series of

practical recommendations based on consultations with over 100 experts and more than 50 UN Member States – for the management of assemblies. Some relevant paragraphs from this important report are quoted below:

> "II. The proper management of assemblies
> 5. T*he ability to assemble and act collectively is vital to democratic, economic, social and personal development, to the expression of ideas and to fostering engaged citizenry. Assemblies can make a positive contribution to the development of democratic systems and, alongside elections, play a fundamental role in public participation, holding governments accountable and expressing the will of the people as part of the democratic processes…*
> 7. *The full and free exercise of the right to freedom of peaceful assembly is possible only where an enabling and safe environment for the general public, including for civil society and human rights defenders, exists and where access to spaces for public participation is not excessively or unreasonably restricted. Barriers to forming and operating associations, weak protection from reprisals for those exercising and defending human rights, excessive and disproportionate punishments for violations of the law, and unreasonable restrictions on the use of public spaces all negatively affect the right to freedom of peaceful assembly…*
> 10. *An "assembly", generally understood, is an intentional and temporary gathering in a private or public space for a specific purpose, and can take the form of demonstrations, meetings, strikes, processions, rallies or sit-ins with the purpose of voicing grievances and aspirations or facilitating celebrations…*
> 13. *States have an obligation not only to refrain from violating the rights of individuals involved in an assembly, but to ensure the rights of those who participate or are affected by them, and to facilitate an enabling environment. The management of assemblies thus encompasses facilitation and enablement, and is interpreted in this broad manner throughout the following recommendations."*
> 17. Practical recommendations:

*(a) States should ratify relevant international treaties and should establish in law a positive presumption in favour of peaceful assembly. They should provide legal protection for the different rights that protect those engaged in assemblies and enact and continuously update the laws, policies and processes necessary to implement these rights. No assembly should be treated as an unprotected assembly;"*

18. *Because international law recognizes an inalienable right to take part in peaceful assemblies, it follows that there is a presumption in favour of holding peaceful assemblies. Assemblies should be presumed lawful, subject to the permissible limitations set out in article 21 of the International Covenant on Civil and Political Rights."*

21. *Freedom of peaceful assembly is a right and not a privilege and as such its exercise should not be subject to prior authorization by the authorities. State authorities may put in place a system of prior notification, where the objective is to allow State authorities an opportunity to facilitate the exercise of the right, to take measures to protect public safety and/or public order and to protect the rights and freedoms of others. Any notification procedure should not function as a de facto request for authorization or as a basis for content-based regulation. Notification should not be expected for assemblies that do not require prior preparation by State authorities, such as those where only a small number of participants is expected, or where the impact on the public is expected to be minimal.*

29. *Freedom of peaceful assembly is a fundamental right, and should be enjoyed without restriction to the greatest extent possible. Only those restrictions which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others, and are lawful, necessary, and proportionate to the aim pursued, may be applied. Any restrictions are to be the exception rather than the norm, and must not impair the essence of the right.*

30. *To conform to the principle of proportionality, any restriction must be appropriate to achieve its protective function. To meet the*

*necessity requirement it must also be the least intrusive instrument among those which might achieve the desired result. It must be narrowly tailored to the specific aims and concerns of the authorities, and take into account an analysis of the full range of rights involved in the proposed assembly. In determining the least intrusive instrument to achieve the desired result, authorities should consider a range of measures, with prohibition a last resort. To this end, blanket bans, including bans on the exercise of the right entirely or on any exercise of the right in specific places or at particular times, are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.*

31. *When a State invokes national security and protection of public order to restrict an assembly, it must prove the precise nature of the threat and the specific risks posed. It is not sufficient for the State to refer generally to the security situation. National, political or government interest is not synonymous with national security or public order*

32. *Assemblies are an equally legitimate use of public space as commercial activity or the movement of vehicles and pedestrian traffic. A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance.*

(A copy of the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, dated 4th February 2016, is annexed as **Annexure P15 (Pages 177-210)**

49. Based on the recommendations presented in this report by the UN Special Rapporteurs Maina Kiai and Christof Heyns, an implementation checklist for monitoring implementation of the practical recommendations in the report was prepared.

*10 Principles for Proper Management of Assemblies – Implementation checklist by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association*

This checklist is a companion publication to that report to the special rapportuers report to determine which practical recommendations contained in the report are already in place at the domestic level, and to help assess how well domestic and local authorities manage assemblies.

> Guiding Principle 1 – *"States shall respect and ensure all rights of persons participating in assemblies"*
> Guiding Principle 2 – "*Every person has the inalienable right to take part in peaceful assemblies"*
> Guiding Principle 3 – *"Any restrictions imposed comply with international human rights standards"*
> Guiding Principle 4 – *"States shall facilitate the exercise of the right of peaceful assembly"*

(A copy of the 10 Principles for Proper Management of Assemblies – Implementation check list by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association is annexed as **Annexure P 16 (Pages 211-234)**

*50.* Academy Briefing No. 5 – Facilitating Peaceful Protests, Geneva Academy of International Humanitarian Law and Human Rights (January 2014)
These briefings are prepared to inform government officials, officials working for international organizations, non-governmental organizations, and legal practitioners, about the legal and policy implications of important contemporary issues. Important observations have been quoted below. The report talks about the duty of State to facilitate peaceful protests, the presumption in favour of allowing peaceful protests, what are permissible and unlawful restrictions and protecting participants in peaceful assemblies, etc.

*"The right to freedom of assembly has been described by the European Court of Human Rights as a 'fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society'. From this perspective, the way in which a state facilitates or hinders protest may be described as a measure of its democratic maturity. A tendency to prevent peaceful protests indicates a state's predisposition to be authoritarian or repressive…*

*The state's duty to facilitate peaceful protest has also been clearly recognized by the European Court of Human Rights, which affirmed in its judgment in Oya Ataman v. Turkey that 'the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens'. It concluded that Article 11 of the ECHR implies that states have a positive obligation to secure effective enjoyment of this right…*

*The general duty to facilitate peaceful assembly includes obligations of specific importance for peaceful protest:*

- *To presume in favour of permitting peaceful protests.*
- *To avoid undue interference with peaceful protests.*
- *To protect participants who protest peacefully*

*A state must ensure that its national legislation guarantees the right to freedom of peaceful assembly, of expression, and of association, in accordance with international human rights law and standards. This implies that the state should seek to foster an environment in which these rights may be freely enjoyed. Any policy, action, or procedure that directly or indirectly hinders or impedes peaceful protests should be avoided…*

*As the Human Rights Committee has observed:*

*"When a State party imposes restrictions … it should be guided by the objective to facilitate the right, rather than seeking unnecessary or disproportionate limitations to it. The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.*

*Restrictions are justified only if the intention is to protect one of the legitimate grounds for restriction, namely: (a) national*

*security; (b) public safety; (c) public order; (d) the protection of public health; (e) morals; and (f) the rights and freedom of others. Restrictions on grounds of public order may be justified when there is evidence that protesters will incite lawless or disorderly acts and that such acts are likely to occur.*

*A state's obligation to facilitate peaceful protest implies granting protesters access to public spaces for their assemblies. Laws that regulate the use of public spaces commonly prohibit protests in certain locations (for example, in the vicinity of courts and parliament). States are not entitled, however, to impose restrictions that have the effect of preventing people from exercising their right to assemble. Accordingly, it is proposed that laws should not specify where public assemblies must occur, or compel organizers to meet only where the authorities want.*

(A copy of *Academy Briefing No. 5 – Facilitating Peaceful Protests*, Geneva Academy of International Humanitarian Law and Human Rights (January 2014) is annexed as **Annexure P17 (Pages 235-268)**

**International Case Law on the freedom of peaceful assembly and the right to protest**

51. Several landmark cases in the United States and England have upheld the Constitutional right to freedom of peaceful assembly.

52. In *De Jonge v. State of Oregon, (***1937), US SUPREME COURT,** held:

*"The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental. As this Court said in United States v. Cruikshank, 92 U.S. 542, 552:'The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.' The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress. But explicit mention there does not argue exclusion elsewhere. For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base*

*of all civil and political institutions—principles which the Fourteenth Amendment embodies in the general terms of its due process clause... These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their Legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means."*

53. In Shuttlesworth v. City of Birmingham **(1969) (U.S. Supreme Court)**, held:

*"There can be no doubt that the Birmingham ordinance, as it was written, conferred upon the City Commission virtually unbridled and absolute power to prohibit any 'parade,' 'procession,' or 'demonstration' on the city's streets or public ways. For in deciding whether or not to withhold a permit, the members of the Commission were to be guided only by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals or convenience.' This ordinance as it was written, therefore, fell squarely within the ambit of the many decisions of this Court over the last 30 years, holding that a law subjecting the exercise of First Amendment freedoms to *151 the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional. 2 'It is settled by a long line of recent **939 decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such*

*official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.' Staub v. City of Baxley, 355 U.S. 313, 322, 78 S.Ct. 277, 282, 2 L.Ed.2d 302. And our decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license. 3 'The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands.' Jones v. City of Opelika, 316 U.S. 584, 602, 62 S.Ct. 1231, 1242, 86 L.Ed. 1691 (Stone, C.J.,dissenting), adopted per curiam on rehearing, 319 U.S. 103, 104, 63 S.Ct. 890, 87 L.Ed. 1290"*

54. In Thomas v. Collins, ***(1945) US SUPREME COURT*** *held:*

*Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment...That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. Compare...For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction*

*with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable...*

*Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers."*

55. The United Kingdom's Human Rights Act 1998 provides that every person in the UK has a number of fundamental rights and freedoms, and incorporates the European Convention on Human Rights into the domestic law of the UK. These include the right to freedom of expression and the right to assemble peacefully and associate with others – Arts. 10(1) & 11(1). The Act does not prevent the police, armed forces, or administrators of the state from imposing lawful restrictions on the exercise of peaceful assembly and freedom of association. Restrictions may only be placed on this right if prescribed by law and necessary in a democratic society.

56. In *Laporte, R (on the application of) v. Chief Constable of Gloucestershire* **[2006] UKHL 55**, the appeal by Jane Laporte and cross-appeal by the Chief Constable of Gloucestershire Constabulary raised important questions on the right of the private citizen to demonstrate against government policy and the powers of the police to curtail exercise of that right. The Chief Constable had a power and duty under section 13 of the Public Order Act 1986 (see below, para 22), if certain conditions were fulfilled, to seek an order prohibiting all processions in the Fairford area for a period, but decided after consideration not to do so. Instead, the Chief Constable established a command structure of officers to control the event. The Court held:

*"So the courts below held that, while any breach of the peace at Fairford might not have been sufficiently imminent for Chief Superintendent Lambert to order the arrest of the passengers on the coaches at Lechlade, he was entitled to turn back the coaches. I would reject this reformulation of the common law since it would weaken the long-standing safeguard against*

*unnecessary and inappropriate interventions by the police – and indeed, in theory at least, by ordinary citizens. On the established authorities, the police officer's duty is always to take whatever steps are reasonably necessary to prevent a breach of the peace but that duty arises only when the officer considers that the breach of the peace is imminent. In broad terms that approach was approved by the legislature in section 24(7)(a) and (b) of the Police and Criminal Evidence Act 1984. When the breach appears to be imminent, but not before, all the various options – arrest and detention, restraint, warning etc - become available and the officer can choose the option or combination of options that best fits the circumstances. It follows that Mr Lambert had no power to halt the coaches at Lechlade unless he reasonably considered that a breach of the peace at Fairford was going to happen in the near future."*

57. That in keeping with the various decisions of this Hon'ble Court with respect what constitutes a lawful order on under S. 144 of the Criminal Procedure Code, as well as various International Conventions, Standards, Guidelines and judgements, upholding the freedom of peaceful assembly and the right to protest, the orders of the Delhi Police as stated above, are illegal and an arbitrary restriction on citizens fundamental rights under the Constitution. This Hon'ble Court as well as international human rights instruments on the right to peaceful assembly have held that the restrictions which are imposed by the State should be guided by the objective to facilitate the right rather than seeking disproportionate restrictions on it. Further a restriction on grounds of public order may only be justified when there is evidence that protesters will incite lawless or disorderly acts and that such acts are likely to occur. The Delhi Police repeated and continuous orders have the effect of preventing citizens in a democratic State from exercising their lawful rights and need to be quashed.

58. That the petitioner has not filed any other petition, suit or application in any manner regarding the matter is disputing in this Hon'ble court, or any High Court or any other court

throughout the territory of India. The petitioner has no other better remedy available.

The petitioner is filing the present writ petition on the following grounds:

**GROUNDS**

A. Because the aforesaid orders issued by the Delhi Police, 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 declaring entire Central Delhi as a prohibited area are arbitrary and are in violation of Article 19 (1) (a), (b) & (c) of the Constitution. This Hon'ble court in numerous decisions has explicitly recognised the right to peaceful protest as a fundamental right under Article 19 (1) (a), (b) & (c) of the Constitution. This includes the right to hold peaceful *dharna*, demonstrations etc. for different public causes. The aforesaid orders are in violation of the basic right of the citizens of a democratic country to peacefully protest against the inaction or wrong action of an authority. The act of holding *dharna*, peaceful demonstrations etc. in a democratic country are worldwide acceptable methods of protest.

B. Because the aforesaid orders of declaring prohibitory an entire area, are a totally unreasonable restriction on the fundamental right of the citizen of this country since as a result of the aforesaid order, no place in Central Delhi is left for holding *dharna* etc. They cannot be justified as being *"in the interests of the sovereignty and integrity of India or public order or morality"*. It is submitted that New Delhi being the centre of power as the Union Govt. sits here is the most appropriate place for protesting against any inaction of the central govt. or for the protection of their constitutional right to life. A prohibition on *dharna* in that area prevents the citizen from effectively exercising their right to peaceful protest.

C. Because the aforesaid orders of the Delhi police are in violation of the aforementioned decision of this Hon'ble Court in which it has been declared that right to hold *dharna* or peaceful demonstration etc. is a fundamental right of the citizen of this country and flows from the rights under Article 19(1)(a), (b) and (c) of the Constitution.

D. Because the continuous use of Section 144 Cr.P.C. for declaring the entire Central Delhi as prohibited area is beyond the limits of the said provision and hence, imposes an unreasonable restriction on the fundamental rights of the citizens. The scope of the said provision has been laid down by this Hon'ble Court in its various judgements. It is to be used only in urgency or emergent situations when immediate prevention or speedy remedy is desirable. The material facts necessitating its exercise are to be specified in the order. The order can be passed *ex parte* only when there in cases where emergent promulgation of the order is necessary or there is paucity of time. However, the Delhi Police has been issuing such prohibitory orders under Section 144 Cr. P.C. for the Central Delhi area without there being any emergency. The reasons specified in the order state that the order is necessitated as reports received indicate that unrestricted protests in the area *"are likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquility"*. These reasons evidently do not reflect any urgent pressing need to ban peaceful protests in the Central Delhi area.

E. Because the continuous use of Section 144 Cr.P.C. for declaring the entire Central Delhi as prohibited area is illegal and in violation of the decision of this Hon'ble Court in *Acharya Jagdishwaranand Avadhuta. v. Commissioner of Police, Calcutta,* (1983) 4 SCC 522. It has the effect of a permanent injunction on the right to hold peaceful protests in the Central Delhi region which is impermissible under the Section. Any order passed by the Magistrate can remain in force only for two months, unless extended by the State Government. Hence these orders must be struck down as illegal.

**PRAYER**

In view of the abovementioned 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;

(b) Issue an appropriate writ of mandamus or any other direction laying down the guidelines for holding public meetings, dharnas, peaceful demonstrations etc. in various parts of New Delhi;

(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.

Petitioner

Through:

**(PRASHANT BHUSHAN)**
Counsel for the
Petitioner

Drawn by: Cheryl D'souza, Advocate
Drawn & Filed On: 16th November 2017
New Delhi