

IN THE HON'BLE SUPREME COURT OF INDIA

WRIT PETITION (CRIMINAL) NO. _____ OF 2021

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

MUKESH & ORS.

....PETITIONERS

VERSUS

STATE OF TRIPURA & ORS.

....RESPONDENTS

PAPERBOOK

(FOR INDEX KINDLY SEE INSIDE)

COUNSEL FOR PETITIONERS: **PRASHANT BHUSHAN,**

SYNOPSIS AND LIST OF DATES

That in *Sajal Awasthi v. Union of India, W.P. (C) 1076/2019* and *Association For Protection of Civil Rights (APCR) v. Union of India, W.P. (C) 1096/2019*, there is a challenge to the constitutional validity of the Unlawful Activities (Prevention) Act, 1967, and said matters are currently pending before a bench presided by the Hon'ble Chief Justice of India, which *vide* order dated 06.09.2019 issued notice on these petitions.

The present petition is being filed under Article 32 of the Constitution of India in relation to the targeted political violence against the muslim minorities in the State of Tripura during the second half of the month of October, 2021, and the subsequent efforts by the State of Tripura to monopolize the flow of information and facts emanating from the affected areas by invoking provisions of the Unlawful Activities (Prevention) Act, 1967, (hereinafter, UAPA) against members of civil society including advocates and journalists who have made the effort to bring facts in relation to the targeted violence in the public domain.

If the State is allowed to criminalize the very act of fact finding and reporting -and that too under the stringent provisions of the UAPA in which anticipatory bail is barred and the idea of bail is a remote possibility- then the only facts that will come in the public domain are those that are convenient to the State due to the 'chilling effect' on the freedom of speech and expression of members of civil society. If the quest for truth and reporting

thereof itself is criminalized then the victim in the process is the idea of justice.

Such circumstances strike at the very foundations of a participative democratic society as it curbs the 'free flow of information and ideas' and no inconvenient facts will be available in the public domain for the citizenry to demand 'corrective action' from the State where there have been shortcomings and lapses on its part.

Briefly, the facts are that around 14.10.2021 reports emerged from Bangladesh of violence against the Hindu minorities during the period of Durga Puja on allegations of blasphemy. In a perverse counterblast, political right wing forces in the State of Tripura started fomenting religious passions against the muslim minorities. Processions by right wing political forces were led ostensibly to protest against the violence in Bangladesh but that led to violence against the muslim minorities in the State of Tripura. In a targeted and orchestrated manner, there were incidents of arson, looting, and violence on the establishments of muslim citizens and attacks and burning of mosques at various places in Tripura. There was major violence during a rally by right wing forces such as the Vishwa Hindu Parishad on 26.10.2021. News of the ensuing violence that followed have been widely reported in international media such as BBC, The Economist, and major news media organizations in India.

A four member fact finding team of Advocates including Petitioners No. 1 & 2 herein visited some of the affected regions

in the State of Tripura between the dates of 30.10.2021 and 01.11.2021. On the basis of their interaction with the persons affected by the violence and visit to sites where attacks on Mosques had occurred; on 02.11.2021, they put in the public domain a fact finding report titled as "*Humanity Under Attack in Tripura #Muslim Lives Matter*", published by *Lawyers for Democracy*, in a press release at the Press Club of India.

The fact finding report:

- documents the testimonies of victims of the violence who interacted with the fact finding team whose establishments were attacked, burnt, looted;
- documents incidents of attacks on twelve (12) mosques with pictorial evidence;
- documents two (2) specific complaints made by victims of the violence to the Panisagar Police Station of State of Tripura dated 29.10.2021 on which no FIR had been registered as on date of publication of report;
- calls out the ruling political dispensation of State of Tripura for abdication of their constitutional duty to protect equally the Right to Life of all citizens of Tripura including the minority community;
- demands the constitution of an inquiry committee headed by a retired High Court judge to investigate the incidents, compensation to victims, reparation of damaged religious places etc; and,
- demands strict action against people and organizations who made provocative and false posts in the social media to incite people to violence.

In such circumstances, the registration of FIR NO. 2021WAG181 on 03.11.2021, a day after the report was made public, at the West Agartala Police Station under sections 153a/153b/469/471/503/504/120b of Indian Penal Code and Section 13 of Unlawful Activities Prevention Act, 1967, against “*unknown persons*”, and subsequent issue of Section 41(a) notices under Code of Criminal Procedure to Petitioners No. 1 & 2 on the same date as per which they have to appear before the Tripura police on 10.11.2021 is *ex facie* an attempt to curb the free flow of information from the riot affected areas given that there is nothing in the report which even remotely supports any secessionist activity, or questions the sovereignty or territorial integrity of India, or causes any disaffection against the State of India. The ingredients of the definition of ‘unlawful activities’ under section 2(1)(o) of UAPA are not even remotely made out.

The report does not exaggerate any of the facts and accurately documents what was learnt and seen by the fact finding team. There were no deaths; therefore no deaths were reported. It only corroborates with further specifics and in greater detail what has also been broadly reported by national and international media. The report and contents thereof do not fall within any of the restrictions on freedom of speech and expression under Article 19(2) of the Constitution of India and is covered by Article 19(1)(a) of the Constitution of India.

The absurdity is further compounded by the fact that though the FIR refers to 102 social media posts which are alleged to have

intended to cause communal disharmony and intended to cause disaffection against the State; and the notice under Section 41(a) calls upon the Petitioners No. 1 & 2 to delete the offensive posts -no post actually referred to in the FIR have in fact been made by the Petitioners No. 1 & 2.

Petitioner No. 3 is a journalist by profession presently with *Newslick* and earlier with Aaj Tak (India Today) and Economic Times. As reports of the violence committed on the 26.10.2021 including arson on mosques came in on 27.10.2021, he tweeted, "*Tripura is burning*". He too has been roped in the FIR and his post is at Serial No. 60 of the 102 social media posts referred to in the FIR. His tweet was factual reporting of what was in fact being reported by major news media on 27.10.2021 and by no stretch of imagination can be construed to attract the stringent provisions of UAPA and amount to an "unlawful activity"

In ***Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76*** vis-a-vis Terrorist And Disruptive Activities (Prevention) Act, 1987, this Hon'ble Court observed,

"8. ...Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law."

More recently in ***Patricia Mukhim v. State of Meghalaya and Ors 2021 SCC OnLine SC 258***, this Hon'ble Court observed,

15. The attack upon six non-locals, carried out by masked individuals, is not denied by the State; its reporting too is not denied. The State in fact issued a press release. There appears to be no headway in the investigations. The complaint made by the Dorbar Shnong, Lawsohtun that the statement of the Appellant would incite communal tension and might instigate a communal conflict in the entire State is only a figment of imagination. The fervent plea made by the Appellant for protection of non-tribals living in the State of Meghalaya and for their equality cannot, by any stretch of imagination, be categorized as hate speech. It was a call for justice - for action according to law, which every citizen has a right to expect and articulate. Disapprobation of governmental inaction cannot be branded as an attempt to promote hatred between different communities. Free speech of the citizens of this country cannot be stifled by implicating them in criminal cases, unless such speech has the tendency to affect public order.

In such circumstances, the petitioners are seeking quashing *qua* the petitioners herein of the FIR mentioned hereinabove. The petitioners are also challenging the constitutional validity of Section 2(1)(o) r/w Section 13 of the UAPA and provision pertaining to bail under Section 43(d)(5) of the UAPA.

Recently, speaking at a function organised by Viswanath Pasayat Memorial Committee, Hon'ble Justice (Retd.) Rohinton Nariman stated, *"I exhort the Supreme Court to not keep sending the case back to the government. Governments will come and go, and it is not the government's business to start amending or repealing laws. There is a live case before the Supreme Court and it is important that the court use its power to strike down section 124A and the offending provisions of the UAPA to ensure that the citizens can breathe more freely. Maybe then India will move from 142 out of 180 to much higher (in the RSF's 2021 World Press Freedom Index)".* The history of the UAPA, he said,

can be traced back to India's wars with China and Pakistan. "We had China and Pakistan wars. Thereafter, we introduced the draconian legislation, Unlawful Activities (Prevention) Act. UAPA is a draconian Act as it has no anticipatory bail and has minimum 5 years imprisonment. This Act is not under scanner yet. This too has to be looked into along with the sedition law," he said. "There is a chilling effect on free speech. If you are booking persons, including journalists, under these laws which come with large sentences and no anticipatory bail, people would not speak their mind," Justice Nariman added.

Section 13 of the Unlawful Activities (Prevention) Act, 1967 provides punishment for unlawful activities. Section 2(1)(o) of UAPA, which defines "unlawful activity", reads as follows:

"2. (1)(o) 'unlawful activity', in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;"

It is submitted that the impugned definition of 'unlawful activities' prohibits an innocuous speech by threat of punishment. It casts a 'wide net' on freedom of speech and expression and makes even possession of documentational

literature, reporting of information, expression of ideas, thoughts, and discussions which are no threat to security of India and have no tendency to create public disorder punishable under Section 13 of the Act. The overbroad language of the section leaves open the possibility that the person criticising measures of government or acts of public officials, might also come within the ambit of the penal section. Further, the impugned section abridges the right to free speech and expression in the absence of tangible and proximate harm.

The definition fails to define criminal offence with sufficient definiteness and is so 'vague' so as to make its application dependent solely on the discretion of police machinery. Ordinarily, neither the accused would be put on notice as to what exactly is the offence which has been committed nor would the authorities administering the section be clear as to on which side of the draw a particular speech/expression will fall. The vagueness of the definition of unlawful activity; the 'wide net' that it casts on freedom of speech and expression; its tendency to bring within its fold mere criticism of government policies or actions of the day without any effect on public order or security, sovereignty and integrity of India; and its indiscriminate use by the authorities against those critical of the government in view of the absolute bar on anticipatory bail in Section 45(d)(4) of the act of 1967 and almost impossibility of securing bail under Section 45(d)(5) of the act of 1967, produces a 'chilling effect' on freedom of speech and expression and the sections read together are violative of Articles 14, 19(1)(a) & 21 of the

Constitution of India. [**Supdt., Central Prison v. Dr Ram Manohar Lohia, (1960) 2 SCR 821; Kameshwar Prasad v. State of Bihar 962 Supp (3) SCR 369; Shreya Singhal v. Union of India, (2015) 5 SCC 1**].

Hence, the present petition.

LIST OF DATES

DATE	PARTICULARS
1967	<p>In response to the threat of left wing extremism, The Unlawful Activities (Prevention) Act, 1967, was enacted. Section 2(1)(o) defines 'unlawful activities' as under:</p> <p><i>2. (1)(o) 'unlawful activity', in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—</i></p> <p><i>(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or</i></p> <p><i>(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or</i></p> <p><i>(iii) which causes or is intended to cause disaffection against India;</i></p>

	<p>Section 13 provides punishment for unlawful activities as under:</p> <p><i>13. Punishment for unlawful activities.—(1) Whoever—</i></p> <p><i>(a) takes part in or commits, or</i></p> <p><i>(b) advocates, abets, advises or incites the commission of,</i></p> <p><i>any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.</i></p> <p><i>(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under Section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.</i></p> <p><i>(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.</i></p>
2008	<p>The act of 1967 has been amended a number of times. New Sections 43-A to 43-F were inserted by Act 35 of 2008, (w.e.f. 31-12-2008). Sections 43(d)(4) and Sections 43(d)(5) provide as under:</p> <p><i>43-D. Modified application of certain provisions of the Code.-</i></p> <p><i>(4) Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.</i></p> <p><i>(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act</i></p>

shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

This Hon'ble Court's judgement in ***NIA v Watali (2019) 5 SCC 1*** ruled that it is not permissible for courts to even engage in a detailed analysis of prosecution case while considering bail under UAPA and to weigh whether evidence adduced by prosecution is even sufficient or not. The Watali judgement further ties the hands of the defence. The grant of bail is rendered impossible till the end of the trial, which can take generations.

It is submitted that the vagueness of the definition of unlawful activity; the 'wide net' that it casts on freedom of speech and expression; it's tendency to bring within it's fold mere criticism of government policies or actions of the day without any proximate nexus on public order or security, sovereignty and integrity of India; and it's indiscriminate use by the authorities against those critical of the government in view of the

	<p>absolute bar on anticipatory bail in Section 45(d)(4) of the act of 1967 and almost impossibility of securing bail under Section 45(d)(5) of the act of 1967, produces a 'chilling effect' on freedom of speech and expression and the sections read together are violative of Articles 14, 19(1)(a) & 21 of the Constitution of India.</p> <p>Further amendments to the act have been carried out in 2013 and 2019.</p>
06.09.2021	<p>In <i>Sajal Awasthi v. Union of India, W.P. (C) 1076/2019</i> and <i>Association For Protection of Civil Rights (APCR) v. Union of India, W.P. (C) 1096/2019</i>, there is a challenge to the constitutional validity of the Unlawful Activities (Prevention) Act, 1967, and said matters are currently pending before a bench presided by the Hon'ble Chief Justice of India, which <i>vide</i> order dated 06.09.2019 issued notice on both these petitions.</p>
10.10.2021	<p>Speaking at a function organised by Viswanath Pasayat Memorial Committee, Hon'ble Justice (Retd.) Rohinton Nariman stated, "<i>I exhort the Supreme Court to not keep sending the case back to the government. Governments will come and go, and it is not the government's business to start amending or repealing laws. There is a live</i></p>

	<p><i>case before the Supreme Court and it is important that the court use its power to strike down section 124A and the offending provisions of the UAPA to ensure that the citizens can breathe more freely. Maybe then India will move from 142 out of 180 to much higher (in the RSF's 2021 World Press Freedom Index)". The history of the UAPA, he said, can be traced back to India's wars with China and Pakistan. "We had China and Pakistan wars. Thereafter, we introduced the draconian legislation, Unlawful Activities (Prevention) Act. UAPA is a draconian Act as it has no anticipatory bail and has minimum 5 years imprisonment. This Act is not under scanner yet. This too has to be looked into along with the sedition law," he said. "There is a chilling effect on free speech. If you are booking persons, including journalists, under these laws which come with large sentences and no anticipatory bail, people would not speak their mind," Justice Nariman added.</i></p>
<p>14.10.2021 - 15.10.2021,</p>	<p>It was reported that some Hindu temples in Bangladesh were vandalised by unidentified Muslim bigots during Durga Puja celebrations on allegation of blasphemy. Deaths of members of the minority Hindu community in Bangladesh were also subsequently reported.</p>

15.10.2021- 26.10.2021 1	<p>In a perverse counterblast, political right wing forces in the State of Tripura started fomenting religious passions against the muslim minorities. Processions by right wing political forces were led ostensibly to protest against the violence in Bangladesh but that led to violence against the muslim minorities in the State of Tripura. In a targeted and orchestrated manner; there were incidents of arson, looting, and violence on the establishments of muslim citizens and attacks and burning of mosques at various places in Tripura. There was major violence during a rally by right wing forces such as the Vishwa Hindu Parishad on 26.10.2021. News of the ensuing violence that followed have been widely reported in national and international media such as BBC, The Economist, and major news media organizations in India. It was reported,</p> <p><i>...As per reports, by October 27, during protests organised by right-wing Hindu groups like the Viswa Hindu Parishad (VHP), Hindu Jagran Manch, Bajrang Dal and Rashtriya Swayamsevak Sangh (RSS) against anti-Hindu violence in Bangladesh, at least 15 mosques and over a dozen of houses and shops belonging to Muslims were vandalised in Tripura.</i></p> <p><i>The violence in the state has led to rising fears among many Muslims, who are a minority forming 8.6% of the total population. Those who live in the Unakoti and North Tripura districts told The Wire that they were feeling particularly vulnerable.</i></p>
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	<p><i>People from the violence-affected areas say they are being targeted "without any reason". While attacks against Hindus in Bangladesh are being used as an excuse for the violence and vandalism in Tripura, the minority Muslim population in the state knows they have nothing to do with what happened in the neighbouring country....</i></p>
27.10.2021	<p>Amidst all the violence that was being widely reported, Petitioner No. 3 herein, a journalist with <i>Newsclick</i>, tweeted, "Tripura is burning".</p>
29.10.2021:	<p>The Hon'ble High Court of Tripura took Suo-Moto cognizance of the violence in the State of Tripura registered as WP (C) (PIL) No. 22 of 2021. The basis of this suo-moto petition were various press reports in both National newspapers as well as local newspapers on the issue of violence, which occurred on 26th of October 2021 in North Tripura District, Unakoti District as well as Sipahijala District. Notices were issued through the Advocate General of State of Tripura. The note produced by the Advocate General mentions that the Vishwa Hindu Parishad in Panisagar Sub-Division, North Tripura district, organized the rally. It also stated that about 3500 people attended the protest rally. The relevant paragraph of the note of the AG reproduced in the above order is as under:</p> <p><i>"On 26th October, 2021 a protest rally was organized by Viswa Hindu Parisad in Panisagar Sub Division, North Tripura District. The protest</i></p>

	<p><i>rally was organized against the vandalism of Durga Puja Pandals and Hindu Temples in Bangladesh. As per estimate a total of about 3500 people attended the protest rally. The people participating in the rally took protest march in the area of Panisagar, Rowa and proceeded towards Damcherra road. In view of this protest march necessary police arrangement was made by North Tripura District Police...”</i></p> <p>Apart from other directions, the Hon’ble High Court directed the State of Tripura to initiate appropriate action against all social media platforms in order to ensure that false, fictitious and fabricated news articles or visual footages do not come on to the social media platforms and even if they do so -they are removed at the earliest opportunity.</p>
<p>1. 30.1 0.20 21- 01.1 1.20 21 & 02.11.202 1</p>	<p>A four member fact finding team of Advocates including Petitioners No. 1 & 2 herein visited some of the affected regions in the State of Tripura between the dates of 30.10.2021 and 01.11.2021. On the basis of their interaction with the persons affected by the violence and visit to sites where attacks on Mosques had occurred; on 02.11.2021, they put in the public domain a fact finding report titled as “<i>Humanity Under Attack in Tripura #Muslim Lives Matter</i>”, published by <i>Lawyers for Democracy</i>, in a press release at the Press Club of India.</p>

The fact finding report:

- documents the testimonies of victims of the violence who interacted with the fact finding team whose establishments were attacked, burnt, looted;
- documents incidents of attacks on twelve (12) mosques with pictorial evidence;
- documents two (2) specific complaints made by victims of the violence to the Panisagar Police Station of State of Tripura dated 29.10.2021 on which no FIR had been registered as on date of publication of report;
- calls out the ruling political dispensation of State of Tripura for abdication of their constitutional duty to protect equally the Right to Life of all citizens of Tripura including the minority community;
- demands the constitution of an inquiry committee headed by a retired High Court judge to investigate the incidents, compensation to victims, reparation of damaged religious places etc; and,
- demands strict action against people and organizations who made provocative and false posts in the social media to incite people to violence.

03.11.2021 1	<p>On the very next day of publication of the report in the public domain, FIR No. 2021WAG181, dated 03.11.2021, was registered at West Agartala Police Station, Agartala, Tripura under section 153A, 153B, 469, 471, 503, 504 and 120B of Indian Penal Code and section 13 of the Unlawful Activities Prevention Act, 1967, on a complaint made by the Sub Inspector of Police of West Agartala Police Station, (Respondent No. 2 herein) against 102 "unknown persons". The relevant extracts of the FIR are as under:</p> <p><i>"It has been brought to my knowledge by the concerned officials of Tripura Police that some persons/ organizations are publishing/ posting social media posts in various platforms like Facebook, Twitter, YouTube distorted and objectionable news items/ statements regarding recent clash and alleged attack upon mosques of Muslim communities in the state.</i></p> <p><i>Accordingly I have examined the social media posts and found that before 03/11/2021 on several date and time publishing these news items/ posts the persons/ organizations used photographs/ videos of some other incidents, fabricated statements/ commentary for promoting enmity between religious groups/ communities and also for provoking the people of different religious communities to cause breach of public peace. The rumors spread by them are intended to cause harm to the reputation of Tripura Police/ Govt of Tripura in presence of a Criminal Conspiracy. The URL addresses of these social media posts as shared by the official of Cyber crime unit of Tripura Police Crime Branch</i></p>
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are enclosed herewith. Some screen shots of these posts are also enclosed...

It has been further found that some of these posts/ statements are intended to disrupt sovereignty and territorial integrity of India and it amounts to Unlawful Activities as defied in the Unlawful Activities Act 1967. It is also found that some religious bodies visited Tripura and made some briefing in press and other Medias relating to the recent incident in distorted manner and there has been used in some of the social media posts to create disharmony among the communities etc. It is appeared that they also formed part of the conspirators engaged in such nefarious activities.

Under the above circumstance the account holders of these social media posts, persons who made these false and fabricated statements and their unknown accomplices in to a Criminal conspiracy have committed offence punishable U/S 153A /153B /469/ 471/ 503/ 504/ 120B IPC and Sec 13 of the Unlawful Activities Act 1967. It is requested to take necessary legal by registering a specific case and thus oblige thereby...".

The FIR refers to 102 links on Social Media of which 68 are of Twitter, 32 of Facebook, and 2 of Youtube.

That on the very same day as registration of the aforementioned FIR, a section 41(a) notice under the Code of Criminal Procedure dated 03.11.2021 was served on the official email account of Peoples Union for Civil Liberties addressed to

Petitioner No. 1 and Petitioner No. 2 herein. The relevant extract of the notice is as under:

"In exercise of the power conferred under sub section (1) of section 41A of the Code of Criminal Procedure. I hereby inform you that a specific case vide No. 2021WAG181 under section 153A, 153B, 469, 471, 503, 504 and 120B of Indian Penal Code and section 13 of the Unlawful Activities Prevention Act dated 03.11.2021 has been registered at West Agartala Police Station, against the social posts circulated by you/ statements made by you for promoting enmity between religious groups as well as provoking the people of different religious communities to cause breach of peace.

During the investigation, your involvement has been found in connection with the case. As such, there are reasonable grounds to question you to ascertain the facts and circumstances relating to the case.

Hence, you are asked to immediately delete these fabricated and false statements/comments made/ circulated by you in the media and also to appear before me by 10/11/2021 hrs at West Agartala Police Station."

There is nothing in the report which even remotely supports any secessional activity, or questions the sovereignty or territorial integrity of India, or causes any disaffection against the State of India. The report and contents thereof do not fall within any of the restrictions on freedom of speech and expression under Article 19(2) of the Constitution of India and is covered by Article 19(1)(a) of the Constitution of India.

	<p>The absurdity is further compounded by the fact that though the FIR refers to 102 social media posts which are alleged to have intended to cause communal disharmony and intended to cause disaffection against the State and are against security and sovereignty of the State; and the notice under Section 41(a) calls upon the Petitioners No. 1 & 2 to delete the offensive posts -no post referred to in the FIR have in fact been made by the Petitioners No. 1 & 2.</p> <p>Petitioner No. 3 is a journalist by profession presently with <i>Newslick</i> and earlier with Aaj Tak (India Today) and Economic Times. As reports of the violence committed on the 26.10.2021 including arson on mosques came in on 27.10.2021, he tweeted, "<i>Tripura is burning</i>". He too has been roped in the FIR and his post is at Serial No. 60 of the 102 social media posts referred to in the FIR. His tweet was factual reporting of what was in fact being reported by major news media on 27.10.2021 and by no stretch of imagination can be construed to attract the stringent provisions of UAPA.</p>
03.11.2021	That notice u/s 91 of the Code of Criminal Procedure was issued to Twitter, Inc, seeking

	<p>blocking of twitter pages/accounts and providing information about the admin/user of the Twitter pages/accounts. Petitioner No. 3's tweet of 27.10.2021, stating "<i>Tripura is burning</i>" is at Serial No. 60 of the aforementioned notice.</p>
07.11.2021	<p>The Editors Guild of India stated, "<i>The Editors Guild of India is deeply shocked by the Tripura Police's action of booking 102 people, including journalists, under the coercive Unlawful Activities (Prevention) Act, for reporting and writing on the recent communal violence in the State. The State police has sent notices to various social media platforms under UAPA,</i>" With respect to Shyam Meera Singh, (Petitioner No. 2 herein) being booked under UAPA for merely tweeting "<i>Tripura is burning</i>", the guild stated, "<i>This is an extremely disturbing trend where such a harsh law, where in the processes of investigation and bail applications are extremely rigorous and overbearing, is being used for merely reporting on and protesting against communal violence,</i>" It said: "<i>The Guild is of the opinion that this is an attempt by the State government to deflect attention away from its own failure to control majoritarian violence, as well as to take action against the perpetrators of this. Governments cannot use stringent laws like UAPA to suppress</i></p>

	<p><i>reporting on such incidents."</i> The ECI demanded an objective and fair investigation by the State government into <i>"the circumstances of the riots instead of penalising journalists and civil society activists"</i>. It reiterated its earlier demand to the Supreme Court to take cognisance of the manner in which laws like UAPA were <i>"unjustifiably"</i> used, and to issue stringent guidelines on charging journalists under them. <i>"This move comes a few days after the police had filed UAPA charges against some Delhi-based lawyers who had visited Tripura as part of an independent fact-finding enquiry commission into the communal violence,"</i> it said.</p>
09.11.2021	<p>The <i>Indian Express</i> in an editorial titled, <i>"UAPA against lawyers, journalists in Tripura is part of playbook of state heavy-handedness. Judiciary must step in"</i> published on 09.11.2021 stated,</p> <p><i>While harsh laws have existed and been misused even earlier, what stands out today is the apparent lack of qualms in the ruling establishment in wielding them as weapons against citizens.</i></p> <p><i>The Tripura police's decision to charge lawyers, journalists and 100-odd social media users with the Unlawful Activities (Prevention) Act (UAPA) for posts on communal violence is one more example of the flagrantly excessive use of a draconian law. This comes a few days after the Jammu and Kashmir police registered a case under UAPA against unknown students in two Srinagar medical colleges after they "cheered for</i></p>

Pakistan” in an India-Pakistan T20 match. The Tripura police, too, has pushed the interpretation of the harsh anti-terror law across vital distinctions and boundaries by wielding it against the authors of a fact-finding report, among others. Four lawyers from Delhi had gone to Tripura on a fact-finding mission after violence reportedly erupted against Muslims in the state last month, in a disturbing echo of the anti-Hindu violence that broke out, across the border, in Bangladesh during Durga Puja celebrations. The lawyers’ report, released online, flagged targeted vandalism of mosques and shortcomings of the BJP government in dealing with anti-minority mobilisations and recommended a judicial probe. None of this falls outside the remit of actions that citizens and members of civil society can — and do — undertake in a democracy to pressure governments to act. It is hard to see how any of this constitutes an offence under Section 13 of UAPA, which applies to an act that “incites secession” or “disrupts the sovereignty of India” or “causes disaffection against India”. Subsequently, owners of 102 social media accounts, including journalists who posted about the violence in Tripura and amplified the report, also faced charges under provisions of IPC “of promoting enmity” between communities, besides UAPA. The police have drawn a “one-to-one” correlation between the lawyers’ visit and social media comments that “potentially” create communal hatred, but the law itself — and the Supreme Court — have set a higher bar. A citizen’s right to freedom of speech and expression cannot be curtailed unless they resort to violence or incite violence.

Indeed, this appears to be a part of the playbook of heavy-handedness that has been perfected by governments. This involves the twisting of stringent laws such as the UAPA or the sedition law to quell dissent or intimidate anyone who

	<p><i>contests or might contest the state's version. While harsh laws have existed and been misused even earlier, what stands out today is the apparent lack of qualms in the ruling establishment in wielding them as weapons against citizens. In UAPA cases, the legal process can itself become a prolonged punishment, given the lower judiciary's reluctance, barring a few exceptions, to grant bail to the accused. The Delhi High Court, however, struck a welcome dissenting note earlier this year while granting bail to anti-CAA activists — it criticised the state's tendency to confuse "protest" for "terrorist activity". Last month's Supreme Court judgment in the Thwaha Fasal case, too, clears the path for less oppressive interpretations of the UAPA.</i></p> <p><i>In Tripura, and elsewhere, the onus is on the judiciary to step in to raise the questions and draw the red lines in order to uphold the fundamental freedoms of citizens against a transgressing executive power.</i></p>
10 Nov, 2021	Hence, the present petition

IN THE HON'BLE SUPREME COURT OF INDIA
WRIT PETITION (CRIMINAL) NO. _____ OF 2021
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. MUKESH

....PETITIONER NO. 1

2. ANSARUL HAQ ANSARI @ANSAR INDORI

... PETITIONER NO. 2

3. SHYAM MEERA SINGH

...PETITIONER NO. 3

VERSUS

1. STATE OF TRIPURA
THROUGH IT'S CHIEF SECRETARY
V77R+CJH, KHEJURBAGAN, AGARTALA,
TRIPURA-799010

...RESPONDENT NO. 1

2. TAPAN CHANDRA DAS,
COMPLAINANT
SUB INSPECTOR OF POLICE
WEST AGARTALA POLICE STATION ...RESPONDENT NO. 2

3. OFFICER IN CHARGE
WEST AGARTALA POLICE STATION
AGARTALA, TRIPURA WEST ...RESPONDENT NO. 3

4. SRIKANT GUHA, SUB INSPECTOR OF POLICE
INVESTIGATING OFFICER OF CASE
WEST AGARTALA POLICE STATION
AGARTALA, TRIPURA WESTRESPONDENT NO. 4

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA IN THE MATTER OF INVOCATION OF UNLAWFUL ACTIVITIES PREVENTION ACT, 1967, BY THE STATE OF TRIPURA AGAINST MEMBERS OF THE CIVIL SOCIETY INCLUDING ADVOCATES AND JOURNALISTS WHO HAVE DOCUMENTED AND SPOKEN OUT AGAINST THE TARGETED ATROCITIES PERPETRATED ON THE MINORITIES IN OCTOBER, 2021, SO AS TO MONOPOLIZE THE FLOW OF INFORMATION FROM AREAS AFFECTED BY THE VIOLENCE BY CRIMINALIZING THE VERY ACT OF 'FACT FINDING' AND 'REPORTING' THAT CREATES A 'CHILLING EFFECT' ON THE FREEDOM OF SPEECH AND EXPRESSION

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition
Of the Petitioner's above named

MOST RESPECTFULLY SHOWETH:

1. That in *Sajal Awasthi v. Union of India, W.P. (C) 1076/2019* and *Association For Protection of Civil Rights (APCR) v. Union of India, W.P. (C) 1096/2019*, there is a challenge to the constitutional validity of the Unlawful Activities (Prevention) Act, 1967, and said matters are currently pending before a bench presided by the Hon'ble

Chief Justice of India, which *vide* order dated 06.09.2019 issued notice on these petitions.

The present petition is being filed under Article 32 of the Constitution of India as the State of Tripura has invoked the Unlawful Activities (Prevention) Act, 1967, (hereinafter, UAPA) against members of the civil society that have documented and commented on the orchestrated and targeted political violence in the month of October, 2021, by right wing forces against the muslim minorities in the State of Tripura. UAPA has been invoked against advocates to suppress a fact finding report titled as "*Humanity Under Attack in Tripura #Muslim Lives Matter*" as regards the violence and also journalists for merely tweeting "*Tripura is burning*"-which it was at the time when the tweet was made.

The report titled, "*Humanity Under Attack in Tripura #Muslim Lives Matter*", has been published by *Lawyers for Democracy*, on the findings of a four member fact finding team comprising of Advocate Ehtesham Hashmi (Supreme Court of India), Advocate Amit Srivastav (Member, Coordination Committee , Lawyers for Democracy), Advocate Ansarul Haq Ansari @ Ansar Indori (National Secretary, National Confederation of Human Rights Organizations) who is Petitioner No. 2 herein and Advocate Mukesh (Member, Peoples Union for Civil Liberties, Delhi) who is Petitioner No. 1 herein. The orchestrated and targeted violence was perpetrated by political right wing

forces on the minority muslim community in the State of Tripura in the month of October, 2021 -purportedly as a counterblast to violence perpetrated on minority Hindu community in Bangladesh- which continued until 26.10.2021. The aforementioned team visited the affected regions in the State of Tripura between the dates of 30.10.2021 and 01.11.2021. On the basis of their interaction with the persons affected by the violence, and visit to sites where attacks on Mosques had occurred, and interaction with some officials of the District Administrations, they prepared the aforementioned report and published it in the public domain on 02.11.2021. The report:

- documents the testimonies of victims of the violence who interacted with the fact finding team whose shops were attacked, burnt, looted;
- documents incidents of attacks on twelve (12) mosques with pictorial evidence;
- documents two (2) specific complaints made by victims of the violence to the Panisagar Police Station of State of Tripura on which no FIR had been registered as on date of publication of report;
- calls out the ruling political dispensation of State of Tripura for abdication of their constitutional duty to protect equally the Right to Life of all citizens of Tripura including the minority community; and,
- demands the constitution of an inquiry committee headed by a retired High Court judge to investigate the incidents,

compensation to victims, reparation of damaged religious places etc.

- Significantly, the team had also demanded strict action against people and organizations who made provocative and false posts in the social media to incite people to violence.

The petition seeks quashing *qua* Petitioners herein of FIR NO. 2021WAG181 registered on 03.11.2021 (one day after the aforementioned fact finding report was made public on 02.11.2021) at the West Agartala Police Station, Tripura, under sections 153a/153b/469/471/503/504/120b of Indian Penal Code and Section 13 of Unlawful Activities Prevention Act, 1967, against "*unknown persons*" and all subsequent and consequential proceedings arising therefrom as: violative of the freedom of speech & expression of the petitioners protected under article 19(1)(a) of the Constitution of India; *malafide*; abuse of process of law; and as the FIR *prima facie* discloses no cognizable offences *qua* the petitioners herein.

Lastly, the petition challenges the constitutional validity of Section 2(o) [Definition of 'Unlawful Activity'] r/w Section 13 [Punishment for Unlawful Activities] and Section 43(d)(5) of the Unlawful Activities (Prevention) Act, 1967, in so far as they are inconsistent with the fundamental rights of the petitioner herein under Articles 14, 19(1)(a), & 21 of the Constitution of India.

1A. ABOUT THE PETITIONERS

Petitioner No. 1 is Mukesh who is an advocate registered with Bar Council of Delhi

He is a graduate from the Faculty of Law, Delhi University. He has been associated with All India Central Council of Trade Unions, Communist Party of India (Marxist-Leninist) and Peoples Union for Civil Liberties. As a student and thereafter as an advocate he has earlier been part of two other fact finding committees. In September, 2018, he had been a part of a team that did a survey on working conditions of factory workers in industrial areas of the National Capital Region. Since, October of 2019, he has been assisting the Workers Union of Kalawati Saran Hospital, New Delhi. In February of 2021, he was also a part of a team that made an assessment report and fact finding of population living near the sites of protests being conducted by the farmers at Singhu Border as well as Tikri Border. He has also assisted contract workers of Rajkumari Amrit Kaur College of Nursing in their struggle against unjust termination.

Petitioner No. 2 is Ansarul Haq Ansari @ Ansar Indori, an Advocate registered with Bar Council of Rajasthan

He is a human rights activist who regularly practices in the courts of Kota District of Rajasthan. He has also appeared before the Hon'ble High Court of Rajasthan and before this Hon'ble Court in some matters.

Petitioner No. 3 is a Senior Sub-Editor with *Newclick*. Earlier he was a Sub-Editor with Aaj Tak (India Today Group) and Economic Times. He is a critic of the BJP government and regularly brings to light on his Twitter social media handle the grievances of the marginalized and minority communities. He is regularly targeted on the social media by supporters of the BJP and RSS for his outspoken views criticizing the BJP/RSS government.

That the petitioners have means to pay costs if any imposed by the Hon'ble Court.

That the petitioner has not filed any similar petition praying for the same reliefs as herein before any other court of law and no such petition is pending.

The petitioners have no better remedy available than to approach this Hon'ble Court as they are residents of the National Capital Region and given that the Section 41(a) notice under Code of Criminal Procedure requires Petitioners No.1 & Petitioners No. 2 to be present before the Investigating Officer in Agartala on 10.11.2021, there is not enough time and resources available to approach the Hon'ble High Court of Tripura. The difficulty is further compounded by the specific bar on grant of anticipatory bail by virtue of Section 43(d)(4) of the Unlawful Activities (Prevention) Act, 1967, and the looming threat of their arrest if they have to visit Tripura to engage a lawyer over there.

FACTS

2. **September, 2019:** In *Sajal Awasthi v. Union of India, W.P. (C) 1076/2019* and *Association For Protection of Civil Rights (APCR) v. Union of India, W.P. (C) 1096/2019*, there is a challenge to the constitutional validity of the Unlawful Activities (Prevention) Act, 1967, and said matters are currently pending before a bench presided by the Hon'ble Chief Justice of India, which *vide* order dated 06.09.2019 issued notice on both these petitions. A copy of order dated 06.09.2019 in W.P.(C) No. 1076/2019 and W.P.(C) 1096/2019 is annexed hereto as **Annexure P1** at **Pages 67**

3. **Around the 14th-15th of October, 2021,** it was reported that some Hindu temples in Bangladesh were vandalised by unidentified Muslim bigots during Durga Puja celebrations on allegation of blasphemy. Deaths of members of the minority Hindu community in Bangladesh were also subsequently reported. A copy of report dated 14.10.2020 published in *The Hindu*, titled, "*Goons attack Hindu temples in Bangladesh during Durga Puja, 4 killed; paramilitary force called in*" is annexed hereto as **Annexure P2** at **Pages 68-69** . A report dated 16.10.2021 published in *The Hindu* titled, "*Two killed in religious unrest in Bangladesh*" is annexed hereto as **Annexure P3** at **Pages 70** .

4. **Between 15.10.2021 and 26.10.2021:** That in a perverse counterblast to the aforementioned violence against Hindus in Bangladesh, right wing political forces started using the violence in Bangladesh to target the minority muslim community in Tripura. Clashes were reported between the police of Tripura and such right wing forces as the police apprehended threat to peace and communal harmony in the State. In a report titled, "*Tripura: Clash Between Police, Right-Wing Groups Protesting Violence Against Minorities in Bangladesh*", on 22.10.2021, *The Wire*, reported as under:

More than 12 persons including three police officer were injured after a clash took place on Thursday between the police and right-wing groups in the Maharani area under Udaipur sub-division of Tripura's Gomati district.

The police had denied right-wing groups permission to hold a protest rally against purported communal attacks on minorities in Bangladesh.

Police said that following reports of deterioration of law and order, they were not granting permission for the protest rally as the rally was supposed to be held in Fotamati and Hirapur areas in the subdivision, which have some minority housing clusters.

Speaking to The Wire, inspector general (law and order) Arindam Nath said a rally was supposed to take place organised by the Vishwa Hindu Parishad (VHP) in Futamati, Maharani and in Hirapur area, which is minority dominated.

"Since a few days, we were receiving information of some mischief. As a precautionary measure the district administration has promulgated CrPC 144 on Thursday which was to conclude on Friday at 6 am. When the district

magistrate of Gomati district and the superintendent of police went patrolling, more than 200 activists of the VHP came out for rally and were adamant to hold the rally. They were dispersed using mild force," Nath said.

He said initially three police personnel and other security force workers sustained injuries after the protestors resorted to stone pelting when their procession was halted.

"We have registered a suo moto case on the incident," Nath said.

Abhijit Chakraborty, a local RSS leader who joined the rally, claimed that they had taken prior permission but when they came out and assembled for the procession, they were obstructed citing security reasons.

"The protesters were baffled by this sudden obstruction and there was some scuffle. We suspect some people might have tried to confuse the administration saying we would disrupt law and order. Twelve protesters sustained injuries in the lathi charge and are now under treatment at Gomati district hospital," Chakraborty said.

However, the vice-president of the Vishwa Hindu Parishad said that no such rallies were organised by their organisation and claimed that the rally was organised by another right-wing group, the Hindu Jagaran Manch.

Later, Shashvat Kumar, SP, Gomati district told The Wire, "The organisation was not specific. There were gatherings of people in that area, and since the area was communally sensitive an order under CrPC 144 was issued by the district magistrate. Still they gathered and the police tried to resist them peacefully, and they started pelting stones on at. So police used mild force to disperse them."

On Thursday, similar protest rallies were taken out in Agartala in West Tripura and Dharmanagar in North Tripura district as well.

Around 13 organisations held a large protest rally at Agartala on Thursday and submitted a deputation to the Bangladesh assistant high commissioner's office here demanding that the authorities identify people involved with attacks on minorities in Bangladesh and punish them.

Over 10,000 people joined in a similar protest rally at Dharmanagar in north Tripura district on Thursday evening.

A copy of report titled, "*Tripura: Clash Between Police, Right-Wing Groups Protesting Violence Against Minorities in Bangladesh*", published on 22.10.2021, in *The Wire*, is annexed hereto as **Annexure P4** at **Pages 71-72**

5. That on 22.10.2021, the State Election Commission declared the dates for local body elections to be held in Tripura in the month of November, 2021.
6. That the acts of targeted violence continued until 26.10.2021. An article titled, "*With Little Hope of Government Protection, Muslims in Tripura Are Living in Fear*", published by *The Wire* on 01.11.2021 documents the harrowing persecution of the minority community as under:

...As per reports, by October 27, during protests organised by right-wing Hindu groups like the Viswa Hindu Parishad (VHP), Hindu Jagran Manch, Bajrang Dal and Rashtriya Swayamsevak Sangh (RSS) against anti-Hindu violence in Bangladesh, at least 15 mosques and over a dozen of houses and shops belonging to Muslims were vandalised in Tripura.

The violence in the state has led to rising fears among many Muslims, who are a minority forming 8.6% of the

total population. Those who live in the Unakoti and North Tripura districts told The Wire that they were feeling particularly vulnerable.

People from the violence-affected areas say they are being targeted "without any reason". While attacks against Hindus in Bangladesh are being used as an excuse for the violence and vandalism in Tripura, the minority Muslim population in the state knows they have nothing to do with what happened in the neighbouring country....

A copy of an article titled, "*With Little Hope of Government Protection, Muslims in Tripura Are Living in Fear*", published by *The Wire* on 01.11.2021 is annexed hereto as **Annexure P5** at **Pages 73-80**

7. **27.10.2021:** That on 27.10.2021, news reports started coming in of vandalization of shops and mosques in a VHP rally and imposition of Section 144 of Code of Criminal Procedure in the affected areas. Amidst all the violence that was being widely reported, Petitioner No. 3 herein, a journalist with *Newslick*, tweeted, "*Tripura is burning*" as under



Shyam Meera Singh ✓
@ShyamMeeraSingh

Tripura is burning!

2:24 PM · 27/10/21 from [New Delhi, India](#) · [Twitter for iPhone](#)

||| [View Tweet activity](#)

1,107 Retweets **53** Quote Tweets **4,999** Likes

A copy of news report dated 27.10.2021 published by *India Today*, titled as, "*Mosque, shops vandalised during VHP protest rally in Tripura, Section 144 imposed*" is annexed hereto as **Annexure P6** at **Pages** 81-82. A copy of screenshot of the tweet dated 27.10.2021 made by Petitioner No. 3 herein is annexed hereto as **Annexure P7** at **Pages** 83.

8. **29.10.2021**: The Hon'ble High Court of Tripura took Suo-Moto cognizance of the violence in the State of Tripura registered as WP (C) (PIL) No. 22 of 2021. The basis of this suo-moto petition were various press reports in both National newspapers as well as local newspapers on the issue of violence, which occurred on 26th of October 2021 in North Tripura District, Unakoti District as well as Sipahijala District. Notices were issued through the Advocate General of State of Tripura who provided a brief note indicating steps taken by the State of Tripura to bring about communal harmony as well as action taken against the perpetrator of such violence. The note produced by the Advocate General mentions that the Vishwa Hindu Parishad in Panisagar Sub-Division, North Tripura district, organized the rally. It also stated that about 3500 people attended the protest rally. The relevant paragraph of the note of the AG reproduced in the above order is as under:
"On 26th October, 2021 a protest rally was organized by Viswa Hindu Parisad in Panisagar Sub Division, North Tripura District. The protest rally was organized against the vandalism of Durga Puja Pandals and Hindu Temples

in Bangladesh. As per estimate a total of about 3500 people attended the protest rally. The people participating in the rally took protest march in the area of Panisagar, Rowa and proceeded towards Damcherra road. In view of this protest march necessary police arrangement was made by North Tripura District Police..."

Apart from other directions, the Hon'ble High Court also directed the State of Tripura to initiate appropriate action against all social media platforms in order to ensure that false, fictitious and or fabricated news articles or visual footages do not come on to the social media platforms and even if they do so -they are removed at the earliest opportunity.

A copy of order dated 29.10.2021 passed by the Hon'ble High Court of Tripura in Suo Moto W.P.(C) PIL NO. 22/2021 is annexed hereto as **Annexure P8** at **Pages 84-89**

9. **That on 30.10.2021**, *The Quint*, published an article titled, "*Tripura Anti-Muslim Violence: How Social Media Was Used to Mobilize Mobs: The Quint studied the social media profiles and WhatsApp groups of some local right-wing leaders.*" and found that from 17.10.2021 onwards various social media posts were made by social media accounts of right wing leaders in Tripura with the finding that:

We discovered a systematic mobilization of the mobs in Tripura with the violence in Bangladesh as a trigger point. The messages primarily sought to show how Muslims are evil and lives can be endangered by them if they don't act

now. While we could not find a direct call to violence, the above messages and trends do argue a strong point as to why mosques were burnt or vandalized and Hindu houses were burnt.

A copy of the analysis in *The Quint* published on 30.10.2021, titled, "*Tripura Anti-Muslim Violence: How Social Media Was Used to Mobilize Mobs: The Quint studied the social media profiles and WhatsApp groups of some local right-wing leaders.*" is annexed hereto as **Annexure P9** at **Pages 90-105**

10. **30.10.2021-01.11.2021:** That after the abatement of violence on 26.10.2021, as part of a four member fact finding team with the other members being Advocate Ehtesham Hashmi (Supreme Court of India), Advocate Amit Srivastav (Member, Coordination Committee , Lawyers for Democracy), Advocate Ansar Indori (National Secretary, NCHRO) (Petitioner No. 2); the Petitioner herein i.e. Advocate Mukesh (Member, PUCL Delhi), (Petitioner No. 1) travelled from Delhi to Tripura and were there between 30.10.2021 and 01.11.2021. During this visit, the team interacted with various persons affected by the targeted violence, visited sites affected by the violence, and met some officials of the district administration as well. A copy of the return tickets of the Petitioners No. 1 & 2 from Delhi to Tripura are annexed hereto as **Annexure P10** at **Pages 106-107**

11. **02.11.2021:** Upon their return to Delhi, fact finding report titled as "***Humanity Under Attack in Tripura #Muslim Lives Matter***", was put in the public domain by ***Lawyers for Democracy*** in a press conference at the Press Club of India around 4:00pm on 02.11.2021. The report:

- documents the testimonies of victims of the violence who interacted with the fact finding team whose shops were attacked, burnt, looted;
- documents incidents of attacks on twelve (12) mosques with pictorial evidence;
- documents two (2) specific complaints made by victims of the violence to the Panisagar Police Station of State of Tripura on which no FIR has been registered;
- calls out the ruling political dispensation of State of Tripura for abdication of their constitutional duty to protect equally the Right to Life of all citizens of Tripura including the minority community; and,
- demands the constitution of an inquiry committee headed by a retired High Court judge to investigate the incidents, compensation to victims, reparation of damaged religious places etc.
- Significantly, the report also demanded strict action against people and organizations who made provocative and false posts in the social media to incite people to violence.

A copy of the fact finding report titled as "***Humanity Under Attack in Tripura #Muslim Lives Matter***", put in the public domain on 02.11.2021 by ***Lawyers for***

Democracy, on the basis of the four member fact finding team including petitioner herein which visited Tripura between 30.10.2021 and 01.10.2021 (i.e. After abatement of violence on 26.10.2021) is annexed hereto as **Annexure P11** at **Pages** 108-119. Copy of the complaints dated 29.10.2021 referred to in the fact finding report made to the Old Panisagar Police Station on which no FIR was registered as of making of the report are annexed hereto as **Annexure P12** at **Pages** 120-121

12. **03.11.2021:** On the very next day of publication of the report in the public domain, FIR No. 2021WAG181, dated 03.11.2021, was registered at West Agartala Police Station, Agartala, Tripura under section 153A, 153B, 469, 471, 503, 504 and 120B of Indian Penal Code and section 13 of the Unlawful Activities Prevention Act, 1967, on a complaint made by the Sub Inspector of Police of West Agartala Police Station, (Respondent No. 2 herein) against 102 "unknown persons". The relevant extracts of the FIR are as under:

"It has been brought to my knowledge by the concerned officials of Tripura Police that some persons/ organizations are publishing/ posting social media posts in various platforms like Facebook, Twitter, YouTube distorted and objectionable news items/ statements regarding recent clash and alleged attack upon mosques of Muslim communities in the state.

Accordingly I have examined the social media posts and found that before 03/11/2021 on several date and time publishing these news items/ posts the persons/ organizations used photographs/ videos of some other

incidents, fabricated statements/ commentary for promoting enmity between religious groups/ communities and also for provoking the people of different religious communities to cause breach of public peace. The rumors spread by them are intended to cause harm to the reputation of Tripura Police/ Govt of Tripura in presence of a Criminal Conspiracy. The URL addresses of these social media posts as shared by the official of Cyber crime unit of Tripura Police Crime Branch are enclosed herewith. Some screen shots of these posts are also enclosed...

It has been further found that some of these posts/ statements are intended to disrupt sovereignty and territorial integrity of India and it amounts to Unlawful Activities as defied in the Unlawful Activities Act 1967. It is also found that some religious bodies visited Tripura and made some briefing in press and other Medias relating to the recent incident in distorted manner and there has been used in some of the social media posts to create disharmony among the communities etc. It is appeared that they also formed part of the conspirators engaged in such nefarious activities.

Under the above circumstance the account holders of these social media posts, persons who made these false and fabricated statements and their unknown accomplices in to a Criminal conspiracy have committed offence punishable U/S 153A /153B /469/ 471/ 503/ 504/ 120B IPC and Sec 13 of the Unlawful Activities Act 1967. It is requested to take necessary legal by registering a specific case and thus oblige thereby...".

The FIR refers to 102 links on Social Media of which 68 are of Twitter, 32 of Facebook, and 2 of Youtube. A copy of FIR No. 2021WAG181, dated 03.11.2021, registered at West Agartala Police Station, Agartala, Tripura under section 153A, 153B, 469, 471, 503, 504 and 120B of Indian Penal Code and section 13 of the Unlawful Activities

Prevention Act 1967, against "unknown persons" is annexed hereto as **Annexure P13** at **Pages 122-131**

13. That none of the social media posts referred to in the FIR have been made by Petitioner No. 1 or Petitioner No. 2.
14. That social media post at Serial No. 60 referred to in the FIR has been made by Petitioner No. 3. As referred to hereinabove, amidst all the reports of the violence being perpetrated against Muslim citizens of Tripura and attacks on Mosques (admitted to by the State of Tripura before the Hon'ble High Court of Tripura), on 27.10.2021, Petitioner No. 3, a journalist with Newsclick by profession, had tweeted THREE WORDS - "*Tripura is burning*".
15. **03.11.2021:** That on the very same day as registration of the aforementioned FIR, a section 41(a) of the Code of Criminal Procedure dated 03.11.2021 was served on the official email account of Peoples Union for Civil Liberties addressed to Petitioner No. 1 and Petitioner No. 2 herein. The relevant extract of the notice is as under:

"In exercise of the power conferred under sub section (1) of section 41A of the Code of Criminal Procedure. I hereby inform you that a specific case vide No. 2021WAG181 under section 153A, 153B, 469, 471, 503, 504 and 120B of Indian Penal Code and section 13 of the Unlawful Activities Prevention Act dated 03.11.2021 has been registered at West Agartala Police Station, against the social posts circulated by you/ statements made by you for promoting enmity between religious groups as well as provoking the people of different religious communities to cause breach of peace.

During the investigation, your involvement has been found in connection with the case. As such, there are reasonable grounds to question you to ascertain the facts and circumstances relating to the case.

Hence, you are asked to immediately delete these fabricated and false statements/comments made/circulated by you in the media and also to appear before me by 10/11/2021 hrs at West Agartala Police Station."

That as none of the social media posts referred to in the impugned FIR have been made by Petitioners No. 1 & 2, the issuance of Section 41(a) notice is without any ground or reason, arbitrary, and malicious with a view to intimidate them and to suppress the fact finding report referred to hereinabove. As per the notice, Petitioners No. 1 & 2 are required to be present before the Investigating Officer of the case Agartala, Tripura, on 10.11.2021 and are facing the threat of imminent arrest. A copy of the notices under Section 41(a) of Code of Criminal Procedure issued to Petitioners No. 1 and 2 herein are annexed hereto hereto as **Annexure P14** at **Pages** 132-133

16. **03.11.2021:** That notice u/s 91 of the Code of Criminal Procedure was issued to Twitter, Inc, seeking blocking of twitter pages/accounts and providing information about the admin/user of the Twitter pages/accounts. Petitioner No. 3's tweet of 27.10.2021, stating "*Tripura is burning*" is at Serial No. 60 of the aforementioned notice. A copy of notice u/s 91 of the Code of Criminal Procedure issued to Twitter, Inc, by the West Agartala Police Station is annexed hereto as **Annexure P15** at **Pages** 134-136

17. **07.11.2021:** The Editors Guild of India stated, "*The Editors Guild of India is deeply shocked by the Tripura Police's action of booking 102 people, including journalists, under the coercive Unlawful Activities (Prevention) Act, for reporting and writing on the recent communal violence in the State. The State police has sent notices to various social media platforms under UAPA,*" With respect to Shyam Meera Singh, (Petitioner No. 3 herein) being booked under UAPA for merely tweeting "*Tripura is burning*", the guild stated, "*This is an extremely disturbing trend where such a harsh law, where in the processes of investigation and bail applications are extremely rigorous and overbearing, is being used for merely reporting on and protesting against communal violence,*" It said: "*The Guild is of the opinion that this is an attempt by the State government to deflect attention away from its own failure to control majoritarian violence, as well as to take action against the perpetrators of this. Governments cannot use stringent laws like UAPA to suppress reporting on such incidents.*" The ECI demanded an objective and fair investigation by the State government into "*the circumstances of the riots instead of penalising journalists and civil society activists*". It reiterated its earlier demand to the Supreme Court to take cognisance of the manner in which laws like UAPA were "unjustifiably" used, and to issue stringent guidelines on charging journalists under them. "*This move comes a few days after the police had filed UAPA charges against some Delhi-based lawyers who had visited Tripura as part of an independent fact-finding*

enquiry commission into the communal violence," it said. A copy of the report published on 07.11.2021 in *The Hindu* titled as, "Editors Guild shocked by Tripura Police's move" is annexed hereto as **Annexure P16** at **Pages 137-138**

18. **08.11.2021:** Petitioner No. 3 herein, journalist by profession, received notice from Twitter, Inc, stating, "*that Twitter has received a request from Tripura Police Crime Branch, regarding your Twitter account, @ShyamMeeraSingh, that claims the following content violates India's Information Technology Act.*

@ShyamMeeraSingh

<https://twitter.com/ShyamMeeraSingh/status/1453283848696049668>

We have not taken any action on the reported content at this time as a result of this request."

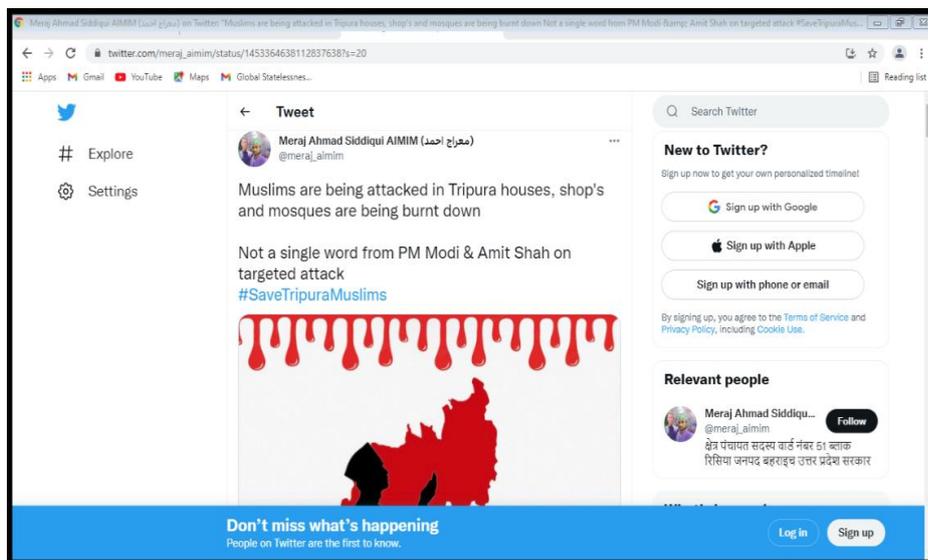
The tweet in question is the same one referred to hereinabove. A copy of the notice received by Petitioner No. 3 from Twitter Inc. is annexed hereto as **Annexure P17** at **Pages 139**

19. That the petitioners herein have no role in any of the other social media posts referred to in the FIR. The persons who may have made those posts are responsible for the contents of the same. While some of these social media posts have now been deleted in pursuance of the legal notices served by the Respondents; screenshots of the still available social media posts show that many of the 102 persons/accounts booked under UAPA *vide* the impugned

FIR have a common theme: they are critical of the powers that be.

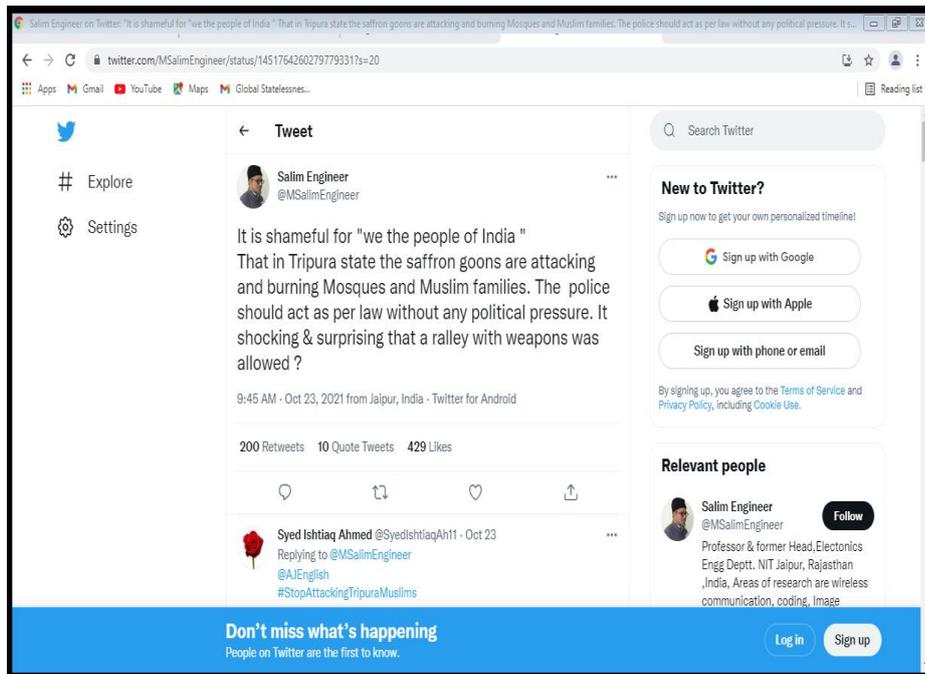
Screenshots of a couple of tweets referred to in FIR are reproduced hereunder without any further comment:

- i. https://twitter.com/meraj_aimim/status/1453364638112837638?s=20



The above Tweet reads: *Muslims are being attacked in Tripura, Houses, Shops and mosques are being burnt down. Not a single word from PM & Amit Shah on targeted attacks.*

- ii. <https://twitter.com/MSalimEngineer/status/1451764260279779331?s=20>



This tweet reads: *It is shameful for 'we the people of India' That in Tripura state the saffron goons are attacking and burning Mosques and Muslims families. The police should act as per law without any political pressure. It shocking & surprising that a rally with weapons was allowed?*

20. That *qua* the petitioners herein, the FIR is an attempt to muzzle their freedom of speech and expression and registration of FIR qua them is *ex facie* absurd, malicious, and abuse of process of law. *Prima facie* no cognizable offence is made out against the petitioners herein on a bare perusal of the FIR in so far as they are concerned. The invocation of the draconian UAPA against them is an attempt to suppress voices critical of the government of the day and the state police for their inaction and inability -deliberate or otherwise- in taking action against the actual perpetrators of the violence.

21. The report does not exaggerate any of the facts and accurately documents what was learnt and seen by the fact finding team. There were no deaths; therefore no deaths were reported. It only corroborates with further specifics and in greater detail what has also been broadly reported by national and international media. A copy of the report published in the BBC titled, "*Tripura: Anti-Muslim violence flares up in Indian state*" dated 28.10.2021 is annexed hereto as **Annexure P18** at **Pages 140-144**. A copy of report titled, "*Bangladesh's religious minorities are under attack*" published on 06.11.2021 in The Economist is annexed hereto as **Annexure P19** at **Pages 145-146**. A copy of editorial titled, "*UAPA against lawyers, journalists in Tripura is part of playbook of state heavy-handedness. Judiciary must step in*" published on 09.11.2021 in the Indian Express is annexed hereto as **Annexure P20** at **Pages 147-148**
22. The FIR is *ex facie* an attempt to curb the free flow of information from the riot affected areas given that there is nothing in the report which even remotely supports any secessionist activity, or questions the sovereignty or territorial integrity of India, or causes any disaffection against the State of India. Therefore, the ingredients of 'Unlawful activity' are not even prima facie made out.
23. Invocation of Section 13 of the Unlawful Activities Prevention Act, 1967, is a colorful exercise of power

knowing full well the statutory bars on grant of anticipatory bail and the remote possibility of securing regular bail by virtue of Section 43(d)(4) & Section 43(d)(5) of the act of 1967.

24. As regards the offences invoked under the Indian Penal Code, it is submitted that the report and contents thereof do not fall within any of the restrictions on freedom of speech and expression under Article 19(2) of the Constitution of India and is covered by Article 19(1)(a) of the Constitution of India & thereby none of the sections of Indian Penal Code are attracted either.
25. The absurdity is further compounded by the fact that though the FIR refers to 102 social media posts which are alleged to have intended to cause communal disharmony and intended to cause disaffection against the State; and the notice under Section 41(a) calls upon the Petitioners No. 1 & 2 to delete the offensive posts -no post referred to in the FIR have in fact been made by the Petitioners No. 1 & 2.
26. That in such circumstances petitioners herein have been constrained to approach this Hon'ble Court as they have no other efficacious remedy available.
27. That no other petition has been filed by petitioner herein before this or any other court seeking the same reliefs.

GROUND

In light of the facts and circumstances aforementioned the petitioners are preferring the present petition on the following grounds without prejudice to each other:

- A. **BECAUSE**, the fact finding report titled as "*Humanity Under Attack in Tripura #Muslim Lives Matter*", published on 02.11.2021, by *Lawyers for Democracy*, on the findings of a four member fact finding team comprising of Advocate Ehtesham Hashmi (Supreme Court of India), Advocate Amit Srivastav (Member, Coordination Committee , Lawyers for Democracy), Advocate Ansar Indori (National Secretary, NCHRO), & Petitioner No. 1 herein i.e. Advocate Mukesh (Member, PUCL Delhi) has brought on record evidences into the orchestrated and targeted violence perpetrated by political right wing forces on the minority muslim community in the State of Tripura in the month of October, 2021 -purportedly as a counterblast to violence perpetrated on minority Hindu community in Bangladesh- which continued until 26.10.2021. The aforementioned team visited the affected regions in the State of Tripura between the dates of 30.10.2021 and 01.11.2021. On the basis of their interaction with the persons affected by the violence, and visit to sites where attacks on Mosques had occurred, and interaction with some officials of the District Administrations, they prepared the aforementioned report and published it in the public domain on 02.11.2021. The report:

- documents the testimonies of victims of the violence who interacted with the fact finding team whose shops were attacked, burnt, looted;
- documents incidents of attacks on twelve (12) mosques with pictorial evidence;
- documents two (2) specific complaints made by victims of the violence to the Panisagar Police Station of State of Tripura on which no FIR had been registered as on date of publication of report;
- calls out the ruling political dispensation of State of Tripura for abdication of their constitutional duty to protect equally the Right to Life of all citizens of Tripura including the minority community; and,
- demands the constitution of an inquiry committee headed by a retired High Court judge to investigate the incidents, compensation to victims, reparation of damaged religious places etc.
- Significantly, the team had also demanded strict action against people and organizations who made provocative and false posts in the social media to incite people to violence.

If the State is allowed to criminalize the very act of fact finding and reporting -and that too under the stringent provisions of the UAPA in which anticipatory bail is barred and the idea of bail is a remote possibility- then the only facts that will come in the public domain are those that are convenient to the State due to the 'chilling effect' on the freedom of speech and expression of members of civil

society. If the quest for truth and reporting thereof itself is criminalized then the victim in the process is the idea of justice.

Such circumstances strike at the very foundations of a participative democratic society as it curbs the 'free flow of information and ideas' and no inconvenient facts will be available in the public domain for the citizenry to demand 'corrective action' from the State where there have been shortcomings and lapses on its part.

NO BAR TO QUASHING OF FIR UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

- B. **BECAUSE**, this Hon'ble Court has in appropriate cases - particularly those where freedom of speech and expression of a citizen is at stake- quashed FIRs in exercise of its jurisdiction under Article 32 of Constitution of India (**See Vijay Shekhar v. Union of India, (2004) 4 SCC 666; Rini Johar v. State of M.P, (2016) 11 SCC 703; Monica Kumar v. State of U.P., (2017) 16 SCC 169; Priya Prakash Varrier v. State of Telangana, (2019) 12 SCC 432; Amitbhai Anilchandra Shah v. CBI (2013) 6 SCC 348; Vinod Dua v. Union of India & Ors 2021 SCC OnLine SC 414**)
- C. **BECAUSE**, the allegations mentioned in the FIR do not prima facie constitute any offence or make out any case against the petitioners under section 153A,

153B, 469, 471, 503, 120 B of Penal Code, 1860 and section 13 of Unlawful Activities (Prevention) Act, 1967. Therefore, as per the principle *laid down in State of Haryana & Ors. vs. Bhajan Lal & Ors, 1992 Suppl. (1) SCC 335* the present FIR is liable to be quashed in order to prevent undue harassment to the petitioner by these false allegations. This Hon'ble Court held that FIR's may be quashed:

"102.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is

a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In **State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283** this Hon'ble Court has held:

21. The position which emerges from these decisions and the other decisions which are discussed by brother A.N. Sen is that the condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmad [AIR 1945 PC 18 : (1944) 71 IA 203 : 217 IC 1] will apply. The court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received.

22. There is no such thing like unfettered discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code. I may,

in this behalf, usefully draw attention to the warning uttered by Mathew, J. in his majority judgment in Prabhu Dayal Deorah v. D.M., Kamrup [(1974) 1 SCC 103 : 1974 SCC (Cri) 18 : AIR 1974 SC 183 : (1974) 2 SCR 12, 22-23 : 1974 Cri LJ 286] to the following effect: (SCC p. 114, para 21)

"We say, and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. And observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law."

FIR HAS BEEN LODGED AS A COUNTER BLAST TO SCUTTLE FREEDOM OF SPEECH AND EXPRESSION OF PETITIONERS

D. **BECAUSE**, Section 13 of the Unlawful Activities (Prevention) Act, 1967 provides punishment for unlawful activities. Section 2(1)(o) of UAPA, which defines "unlawful activity", reads as follows:

"2. (1)(o) 'unlawful activity', in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the

territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;”

By no stretch of imagination the social media post of Petitioner No. 3 and the fact finding report prepared by Petitioners No. 1 and 2 were intended to disregard sovereignty and territorial integrity of India that may even remotely amount to unlawful activities as defined in The Unlawful Activities (Prevention) Act, 1967. There is no utterance in the social media post or report to overthrow the government by unlawful or unconstitutional means. There is nothing in the social media post or report about secession or impairing the integration of the country. The social media post and report merely draw attention to the violence that was in fact being perpetrated which every citizen has a right to articulate under Article 19(1)(a) of the Constitution of India.

E. **BECAUSE**, even a bare reading of FIR shows that no prima -facie case can be made out against the petitioners under Section 13 of The Unlawful Activities (Prevention) Act, 1967. Petitioners No. 1 and 2 have not made any of the 102 social media posts referred to in the FIR. Their involvement is limited to being members of the fact finding team that published the fact finding report. The report titled "*Humanity under attack in Tripura*" prepared *inter*

alia by Petitioners No. 1 and 2, is protected under Article 19(1)(a) of the Constitution of India. No part of the report has the tendency to create communal disharmony or to cause disaffection against the State or has any remote nexus with secessionist activities. The report has been published on 02.11.2021 much after abatement of violence on 26.10.2021. Further, no breach of public peace has taken place after the publication of the report. The report documents the testimonies of victims of the violence who interacted with the fact finding team whose shops were attacked, burnt, looted; documents incidents of attacks on twelve (12) mosques with pictorial evidence; and documents two (2) specific complaints made by victims of the violence to the Panisagar Police Station of State of Tripura on which no FIR had been registered as of making of the report. It cannot be said that the report *promotes enmity between religious groups or provokes the people of different religious communities to cause breach of peace*. The criminal case against the Petitioners No. 1 and 2 stifles their fundamental right of freedom of speech and expression enshrined under Article 19(1)(a) and is an attempt to suppress the fact finding report.

F. **BECAUSE**, Petitioner No.3's tweet which is at serial No. 60 of the FIR only states that, "*Tripura is burning*" which in fact was due to targetted and orchestrated violence committed by right wing majoritarian forces against the muslim minority communities in the State of Tripura at the time. The State of Tripura has in fact admitted as much

before the Hon'ble High Court of Tripura in Suo Moto W.P. (C) No. 22/2021. Reporting the truth is the fundamental right of every journalist. The allegation in the FIR is that the social media posts and statements circulated by the Petitioner were fabricated and promotes enmity between religious groups as well as promotes people of different religious communities to cause breach of peace. By no stretch of imagination the social media posts of Petitioner No. 3 and report prepared Petitioner 1 and 2 were intended to disregard sovereignty and territorial integrity of India that may even remotely amount to unlawful activities as defined in The Unlawful Activities (Prevention) Act, 1967. Pertinently, there is no utterance in the social media posts/ statements to overthrow the government by unlawful or unconstitutional means. Further, the statements also do not talk about secession or impairing the integration of the country. The statements merely draws attention to the violence that was in fact being perpetrated which every citizen has a right to articulate under Article 19(1)(a) of the Constitution of India.

G. **BECAUSE**, this Hon'ble Court in ***Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76*** vis-a-vis Terrorist And Disruptive Activities (Prevention) Act, 1987 observed:

"8. ...Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law."

H. **BECAUSE**, criticism of policies and acts of government cannot be regarded as an attempt to promote hatred between different communities. In ***S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574*** this Hon'ble Court emphasized that the freedom of expression means the right to express opinion by words of mouth, writing, printing, picture or in any other manner. It would thus include the freedom to criticise the government policies and operations. The Court concluded in para 53:

"We end here as we began on this topic. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself. In Maneka Gandhi v. Union of India, (1978) 1 SCC 248 Bhagwati J., as he then was, observed: "Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic setup. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential".

Further, Vivian Bose, J. as he then was in the Nagpur High Court in the case of ***Bhagwati Charan Shukla Vs.***

Provincial Government AIR 1947 Nag 1 : 226 1C 590 : 47 Cri LJ 994 : ILR 1946 Nag 865 has observed "that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. This in our opinion, is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus".

That, to an ordinary reasonable man, the speech of the petitioners can be in no sense be branded as an attempt to promote hatred between different communities or to provoke the people of different religious communities to cause breach of peace.

In ***Indibly Creative Private Ltd. v. State of West Bengal (2020) 12 SCC 436*** the state by misusing its police power caused an obstruction of the public exhibition of the Petitioner's Bengali feature film. The grievance of the Petitioner was that the State of West Bengal was misusing police power and acting as "super censor". This Hon'ble Court after holding that police has *overreached their statutory powers and have become instruments in a concerted attempt to silence speech* granted compensation to the Petitioner with the following observations:

"47. Public power must be conscious of the fact that ours is a democracy simply because the Constitution recognises the inalienable freedoms of every citizen. Power has been

entrusted to the State by the people under a written Constitution. The State holds it in trust and its exercise is accountable to the people. The State does not entrust freedoms to the people: the freedoms which the Constitution recognises are inseparable from our existence as human beings. Freedom is the defining feature of human existence. Freedoms are not subject to power. Public power is assigned by the people to Government. Ours is a controlled Constitution, a Constitution which recognises the fullest element of liberty and freedom and of the answerability of power to freedom.

48. *The views of the writer of a play, the metre of a poet or the sketches of a cartoonist may not be palatable to those who are criticised. Those who disagree have a simple expedient: of not watching a film, not turning the pages of the book or not hearing what is not music to their ears. The Constitution does not permit those in authority who disagree to crush the freedom of others to believe, think and express. The ability to communicate "ideas" is a legitimate area of human endeavour and is not controlled by the acceptability of the views to those to whom they are addressed. When the ability to portray art in any form is subject to extra-constitutional authority, there is a grave danger that fundamental human freedoms will be imperilled by a cloud of opacity and arbitrary State behaviour."*

In ***Patricia Mukhim v. State of Meghalaya and Ors*** **2021 SCC OnLine SC 258**, this Hon'ble Court has quashed an FIR lodged under section 153-A of Penal Code, 1860 against the Appellant for a facebook post wherein she criticised the state for not taking action against the culprits who attacked the non-tribals youngsters. Further, the Appellant in the facebook post had also demanded suitable action against the culprits. It was the case of the prosecution that the that the statement made by the Appellant in the Facebook post incited communal tension which might instigate a communal conflict. This Hon'ble

Court relying on the decisions in ***Bilal Ahmed Kaloo v. State of A.P (1997) 7 SCC 431, Ramesh v. Union of India (1988) 1 SCC 668 , and Pravasi Bhalai Sangathan v. Union of India (2014) 11 SCC 477*** held:

13. In the instant case, applying the principles laid down by this Court as mentioned above, the question that arises for our consideration is whether the Facebook post dated 04.07.2020 was intentionally made for promoting class/community hatred and has the tendency to provoke enmity between two communities. A close scrutiny of the Facebook post would indicate that the agony of the Appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the Dorbar Shnong of the area in not taking any action against the culprits who attacked the non-tribals youngsters. The Appellant referred to the attacks on nontribals in 1979. At the most, the Facebook post can be understood to highlight the discrimination against nontribals in the State of Meghalaya. However, the Appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the brutal attack on non-tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non-tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the Appellant to promote class/community hatred. As there is no attempt made by the Appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 153 A and 505(1)(c) have not been made out. Where allegations made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the FIR is liable to be quashed.

14. India is a plural and multicultural society. The promise of liberty, enunciated in the Preamble, manifests itself in various provisions which outline each citizen's rights; they

include the right to free speech, to travel freely and settle (subject to such reasonable restrictions that may be validly enacted) throughout the length and breadth of India. At times, when in the legitimate exercise of such a right, individuals travel, settle down or carry on a vocation in a place where they find conditions conducive, there may be resentments, especially if such citizens prosper, leading to hostility or possibly violence. In such instances, if the victims voice their discontent, and speak out, especially if the state authorities turn a blind eye, or drag their feet, such voicing of discontent is really a cry for anguish, for justice denied - or delayed. This is exactly what appears to have happened in this case.

15. The attack upon six non-locals, carried out by masked individuals, is not denied by the State; its reporting too is not denied. The State in fact issued a press release. There appears to be no headway in the investigations. The complaint made by the Dorbar Shnong, Lawsohtun that the statement of the Appellant would incite communal tension and might instigate a communal conflict in the entire State is only a figment of imagination. The fervent plea made by the Appellant for protection of non-tribals living in the State of Meghalaya and for their equality cannot, by any stretch of imagination, be categorized as hate speech. It was a call for justice - for action according to law, which every citizen has a right to expect and articulate. Disapprobation of governmental inaction cannot be branded as an attempt to promote hatred between different communities. Free speech of the citizens of this country cannot be stifled by implicating them in criminal cases, unless such speech has the tendency to affect public order. The sequitur of above analysis of the Facebook post made by the Appellant is that no case is made out against the Appellant for an offence under Section 153 A and 505(1)(c) IPC.

16. For the aforementioned reasons, the Appeal is allowed and the judgment of the High Court is set aside. FIR PS Case No. 72 (7) 2020 dated 06.07.2020 registered at Police Station Laban is quashed.

- I. **BECAUSE**, this Hon'ble in **Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra, (2010) 5**

SCC 246 has held that the Unlawful Activities (Prevention) Act, 1967, pertains to Defence of India and has been enacted under Entry 1 of the Union List. It therefore cannot be invoked in a situation as that prevailing in Tripura which is strictly speaking a Public Order issue. The relevant paragraph is as under:

"75. A perusal of the Preamble, the Statement of Objects and Reasons and the interpretation clauses of McoCa and UAPA would show that both the Acts operate in different fields and the ambit and scope of each is distinct from the other. So far as McoCa is concerned, it principally deals with prevention and control of criminal activity by organised crime syndicate or gang within India and its purpose is to curb a wide range of criminal activities indulged in by organised syndicate or gang. The aim of UAPA, on the other hand, is to deal with terrorist and certain unlawful activities, which are committed with the intent to threaten the unity, integrity, security or sovereignty of India or with the intent to strike terror in the people or any section of the people in India or in any foreign country or relate to cessation or secession of the territory of India.

XXXX

77. The offence of terrorist act under Section 15 and the offence of unlawful activity under Section 2(1)(o) of UAPA have some elements in commonality. The essential element in both is the challenge or threat or likely threat to the sovereignty, security, integrity and unity of India. While Section 15 requires some physical act like use of bombs and other weapons, etc., Section 2(1)(o) takes in its compass even written or spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and security of India. The said offences are related to the defence of India and are covered by Entry 1 of the Union List."

CONSTITUTIONAL VALIDITY

J. **BECAUSE**, Section 13 of the Unlawful Activities (Prevention) Act, 1967 provides punishment for unlawful activities. Section 2(1)(o) of UAPA, which defines “unlawful activity”, reads as follows:

"2. (1)(o) 'unlawful activity', in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;"

The impugned definition prohibits an innocuous speech by threat of punishment. The impugned definition casts a ‘wide net’ on freedom of speech and expression and makes even ideas, thoughts and discussions which pose no threat to security of India and have no tendency to create public disorder punishable under Section 13 of the Act of 1967. The overbroad language of the section leaves open the possibility that the person criticising measures of government or acts of public officials, might also come within the ambit of the penal section. Therefore the impugned section fails the test of over-breadth and is liable to be struck down. **(Supdt., Central Prison v. Dr Ram Manohar Lohia, (1960) 2 SCR 821; Kameshwar**

Prasad v. State of Bihar [1962 Supp (3) SCR 369; Shreya Singhal v. Union of India, (2015) 5 SCC 1).

K. **BECAUSE**, the definition of 'unlawful activity' is vague and it fails to define criminal offence with sufficient definiteness. The unlawful activities are defined in such a vague manner to make its application solely on the discretion of police machinery. Ordinarily neither the accused would be put on notice as to what exactly is the offence which has been committed nor would the authorities administering the section be clear as to on which side of the draw a particular speech/expression will fall. Further, the terms like "*soveriginity and territorial integrity of India*" and "*disaffection against India*" used in the impugned section are overbroad. Where a legislation creates an offence of this kind and there is no constitutionally fit part to be severed, this Hon'ble Court has held that the whole offence is liable to be struck down as unconstitutional (**Romesh Thappar v. State of Madras, 1950 SCR 594, Supdt., Central Prison v. Dr Ram Manohar Lohia, (1960) 2 SCR 821 and Shreya Singhal v. Union of India, (2015) 5 SCC 1**).

L. **BECAUSE**, the vagueness of the definition of unlawful activity, the 'wide net' that it casts on freedom of speech and expression, it's tendency to bring within it's fold mere criticism of government policies or actions of the day without any affect on security of India, and it's

indiscriminate use by the authorities against those critical of the government in view of the absolute bar on anticipatory bail in Section 45(d)(4) of the act of 1967 and almost impossibility of securing bail under Section 45(d)(5) of the act of 1967 produces a 'chilling effect' on freedom of speech and expression.

M. **BECAUSE**, a law that forces people to self censor their views because of fear of criminal action violates Article 19(1)(a) of Constitution of India. The overhanging threat of criminal prosecution for exercising fundamental rights by virtue of a vaguely worded law is in violation of Article 19(1)(a) of Constitution of India.

N. **BECAUSE**, the section doesn't distinguish between mass dissemination and intimate conversation. The section makes an intimate conversation with a minor or paralytic person as an offence even though there can be no apprehension of any public disorder or threat to security of the India from such a person. The offence under the section is complete if the person supports the claim of cessation or secession of territory or questions the sovereignty and territorial integrity of India or says anything which causes or intends to cause disaffection against India without in any manner impacting public order or security of state. Hence the section doesn't have any proximate relationship with the public order or security of state. In such circumstances, the impugned section does

not fall under "reasonable restriction" under Article 19(2) of Constitution of India. This Hon'ble Court in **Shreya Singhal v. Union of India (2015) 5 SCC 1** while striking down Section 66-A of Information Technology Act, 2000 observed:

"38. This decision lays down the test that has to be formulated in all these cases. We have to ask ourselves the question: does a particular act lead to disturbance of the current life of the community or does it merely affect an individual leaving the tranquility of society undisturbed? Going by this test, it is clear that Section 66-A is intended to punish any person who uses the internet to disseminate any information that falls within the sub-clauses of Section 66-A. It will be immediately noticed that the recipient of the written word that is sent by the person who is accused of the offence is not of any importance so far as this section is concerned. (Save and except where under sub-clause (c) the addressee or recipient is deceived or misled about the origin of a particular message.) It is clear, therefore, that the information that is disseminated may be to one individual or several individuals. The section makes no distinction between mass dissemination and dissemination to one person. Further, the section does not require that such message should have a clear tendency to disrupt public order. Such message need not have any potential which could disturb the community at large. The nexus between the message and action that may be taken based on the message is conspicuously absent—there is no ingredient in this offence of inciting anybody to do anything which a reasonable man would then say would have the tendency of being an immediate threat to public safety or tranquillity. On all these counts, it is clear that the section has no proximate relationship to public order whatsoever. The example of a guest at a hotel "annoying" girls is telling—this Court has held that mere "annoyance" need not cause disturbance of public order. Under Section 66-A, the offence is complete by sending a message for the purpose of causing annoyance, either "persistently" or otherwise without in any manner impacting public order."

- O. **BECAUSE**, in *Superintendent Central Prison v. Dr Ram Manohar Lohia (1960) 2 SCR 821* it was held that (a) only aggravated disturbance of 'public order' as opposed to mere 'law and order' could be used to restrict freedom of speech and expression and (b) there should be direct and proximate connection between the instigation and the aggravated disruption of public order as under:

13.*The restriction made "in the interests of public order" must also have reasonable relation to the object to be achieved i.e. the public order. If the restriction has no proximate relationship to the achievement of public order, it cannot be said that the restriction is a reasonable restriction within the meaning of the said clause.The decision, in our view, lays down the correct test. The limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order.*

14. *We shall now test the impugned section, having regard to the aforesaid principles. Have the acts prohibited under Section 3 any proximate connection with public safety or tranquillity? We have already analysed the provisions of Section 3 of the Act. In an attempt to indicate its wide sweep, we pointed out that any instigation by word or visible representation not to pay or defer payment of any exaction or even contractual dues to Government, authority or a landowner is made an offence. Even innocuous speeches are prohibited by threat of punishment. There is no proximate or even foreseeable connection between such instigation and the public order sought to be protected under this section. We cannot accept the argument of the learned Advocate-General that instigation of a single individual not to pay tax or dues is a spark which may in the long run ignite a revolutionary movement destroying public order. We can only say that fundamental rights cannot be controlled on such hypothetical and imaginary considerations. It is said that in a democratic set up there is no scope for agitational*

approach and that if a law is bad the only course is to get it modified by democratic process and that any instigation to break the law is in itself a disturbance of the public order. If this argument without obvious limitations be accepted, it would destroy the right to freedom of speech which is the very foundation of democratic way of life. Unless there is a proximate connection between the instigation and the public order, the restriction, in our view, neither reasonable nor is it in the interest of public order. In this view, we must strike down Section 3 of the Act as infringing the fundamental right guaranteed under Article 19(1)(a) of the Constitution.

This Hon'ble Court in ***Shreya Singhal v. Union of India (2015) 5 SCC 1*** after relying on the decision of Constitution Bench in *Ram Manohar Lohia v. State of Bihar* (1996) 1 SCR 709 and *Kameshwar Prasad v. State of Bihar* [1962 Supp (3) SCR 369 held that:

"93. The Court further went on to hold that remote disturbances of public order by demonstration would fall outside Article 19(2). The connection with public order has to be intimate, real and rational and should arise directly from the demonstration that is sought to be prohibited..."

In ***Shreya Singhal (supra)*** this Hon'ble court also differentiated between discussion, advocacy and incitement while holding that only incitement can be a ground to curtail the fundamental right of freedom of speech and expression under Article 19(2) of Constitution of India in the following terms:

"11. This last judgment is important in that it refers to the "marketplace of ideas" concept that has permeated American law. This was put in the felicitous words of Holmes, J. in his famous dissent in *Abrams v. United States* [250 US 616 : 63 L Ed 1173 (1919)], thus : (L Ed p. 1180)

"... But when men have realised that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That at any rate, is the theory of our Constitution."

12. Brandeis, J. in his famous concurring judgment in *Whitney v. California* [71 L Ed 1095 : 274 US 357 (1927)] , said : (L Ed pp. 1105-06 "Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that in its Government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American Government. They recognised the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable Government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognising the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed. Fear of serious injury cannot alone justify

suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law-breaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.”(emphasis supplied)

13. *This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in....**It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, etc....***

In ***Kameshwar Prasad v. State of Bihar, 1962 Supp (3) SCR 369*** it was held:

"5.The approach to the question regarding the constitutionality of the rule should be whether the ban that it imposes on demonstrations would be covered by the limitation of the guaranteed rights contained in Article 19(2) and 19(3). In regard to both these clauses the only relevant criteria which has been suggested by the respondent-State is that the rule is framed "in the interest of public order". A demonstration may be defined as "an expression of one's feelings by outward signs". A demonstration such as is prohibited by the rule may be of the most innocent type — peaceful, orderly such as the mere wearing of a badge by a government servant or even by a silent assembly say outside office hours — demonstrations which could in no sense be suggested to involve any breach of tranquillity, or of a type involving incitement to or capable of leading to disorder. If the rule had confined itself to demonstrations of a type which would lead to disorder then the validity of that rule could have been sustained but what the rule does is the imposition of a blanket-ban on all demonstrations of whatever type — innocent as well as otherwise — and in consequence its validity cannot be upheld.

***16.** We find ourselves unable to uphold this submission on behalf of the State. In the first place, we are not here concerned with any rule for ensuring discipline among the police force which is the arm of the law primarily charged with the maintenance of public order. The threat to public order should therefore arise from the nature of the demonstration prohibited. No doubt, if the rule were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquillity or which would fall under the other limiting criteria specified in Article 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration — be the same however innocent and however incapable of causing a breach of public*

tranquillity and does not confine itself to those forms of demonstrations which might lead to that result.

P. **BECAUSE**, the impugned section abridges freedom of speech and expression in absence of tangible harm or proximate harm. This Hon'ble Court in ***S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574*** has held:

'45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".

The impugned section penalises in the absence of damage and draws speech into the net of offence prematurely on the basis of speech itself without any tangible harm. The offence under the section is complete once a person speaks irrespective of the fact that there is a public disorder. As a result even criticism or comments without incitement to violence comes under the purview of such section resulting into prior restraint on speech on matters of public and political importance. In such circumstances, the impugned section does not come under the purview of

reasonable restriction under Article 19(2) of the Constitution of India.

Q. **BECAUSE**, the impugned section makes every speech which *causes or is intended to cause disaffection against India* as an offence. Pertinently, section 124-A of Penal Code, 1860 also makes every speech or expression that *brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India as a criminal offence*. This Hon'ble Court upheld the constitutional validity of Section 124-A in ***Kedar Nath Singh v. State of Bihar, 1962 Supp (2) SCR 769*** by construing it narrowly and stating that the offence would only be complete if the words complained of have a tendency of creating public disorder by violence. It was added that merely creating disaffection or creating feelings of enmity in certain people was not good enough or else it would violate the fundamental right of free speech under Article 19(1)(a). The relevant extract is as follows:

"24. *In this case, we are directly concerned with the question how far the offence, as defined in Section 124-A of the Indian Penal Code, is consistent with the fundamental right guaranteed by Article 19(1)(a) of the Constitution, which is in these terms:*

"19. (1) All citizens shall have the right—

(a) to freedom of speech and expression....

This guaranteed right is subject to the right of the legislature to impose reasonable restrictions, the ambit of which is indicated by clause (2), which, in its amended form, reads as follows;

"(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, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 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."

It has not been questioned before us that the fundamental right guaranteed by Article 19(1)(a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable restrictions as would come within the purview of clause (2), which comprises (a) security of the State, (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc. etc. With reference to the constitutionality of Section 124-A or Section 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Article 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoken or written words or signs or visible representations, etc. which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why "sedition", as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the State. Hence, any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc. which have implicit in them the idea of subverting Government by

violent means, which are compendiously included in the term "revolution", have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

25. *It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of "sedition". What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But in our opinion, such words written or spoken would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine qua non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and*

*condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Article 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order. We have, therefore, to determine how far the Sections 124-A and 505 of the Indian Penal Code could be said to be within the justifiable limits of legislation. If it is held, in consonance with the views expressed by the Federal Court in the case of *Niharendu Dutt Majumdar v. King-Emperor* [(1942) FCR 38] that the gist of the offence of "sedition" is incitement to violence or the tendency or the intention to create public disorder by words spoken or written, which have the tendency or the effect of bringing the Government established by law into hatred or contempt or creating disaffection in the sense of disloyalty to the State, in other words bringing the law into line with the law of sedition in England, as was the intention of the legislators when they introduced Section 124-A into the Indian Penal Code in 1870 as aforesaid, the law will be within the permissible limits laid down in clause (2) of Article 19 of the Constitution. If on the other hand we give a literal meaning to the words of the section, divorced from all the antecedent background in which the law of sedition has grown, as laid down in the several decisions of the Judicial Committee of the Privy Council, it will be true to say that the section is not only within but also very much beyond the limits laid down in clause (2) aforesaid.*

26. *In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of Sections 124-A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept the interpretation of the Federal Court as to the gist of criminality in an*

*alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. There can be no doubt that apart from the provisions of clause (2) of Article 19, Sections 124-A and 505 are clearly violative of Article 19(1)(a) of the Constitution. But then we have to see how far the saving clause, namely, clause (2) of Article 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended clause (2), quoted above, the expression "in the interest of ... public order" are words of great amplitude and are much more comprehensive than the expression "for the maintenance of", as observed by this Court in the case of *Virendra v. State of Punjab* [(1958) SCR 308 at p. 317]. Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Article 19(1)(a) read with clause (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order*

that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (1) Bengal Immunity Company Limited v. State of Bihar [(1955) 2 SCR 603] and (2) R.M.D. Chamarbaugwala v. Union of India [(1957) SCR 930]]. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.”

Pertinently while interpreting section 124-A of Penal Code, 1860 this Hon'ble Court took into consideration the explanation appended with the section which is as follows:

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section to hold that section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. However no such explanation has been added in the impugned section. The offence under the impugned section is complete even when a speech does not have a tendency of creating public disorder by violence or affects the security of state. In addition to the above, the criminalization based on

vague terms like “disaffection against India” is an unwarranted restriction on the fundamental right of freedom of speech and expression Article 19(1)(a) of Constitution of India.

- R. **BECAUSE**, Section 43(d) (5) of UAPA departs from the rule of presumption of innocence and the general rules of bail which are fundamental features of the criminal justice system and flow from Article 21 of the Constitution of India.
- S. **BECAUSE**, this Hon’ble Court in *NIA v Zahoor Ahmad Shah WATALI (2019) 5 SCC 1* held that to satisfy the standard of *prima facie* case no elaborate scrutiny or dissection of the material is required. Simply put, the court merely has to rely on the words of the investigating agency and see whether the allegations fit the offences. Further, it was also held that Court at the stage of bail is not required to examine merits, demerits and credibility of evidence or admissibility and inadmissibility of evidence. Such interpretation restricts the role of court to examine the case of the prosecution and precludes bail if the prosecution’s version without being subject to cross-examination appears true on the face of it. It also makes inadmissible evidence vital for the purpose of bail. By virtue of the judgment even a confession before police officer which is not admissible as per the Constitution and Evidence Act becomes credible ground for refusing bail.

T. **BECAUSE**, of such further and additional grounds that the petitioners have been unable to take due to paucity of time in drafting the pleadings in view of the immediate threat to liberty of petitioners with the leave of this Hon'ble Court.

PRAYER

In these circumstances, it is therefore most respectfully prayed that your Lordships may graciously be pleased to:

- I. Issue writ of Certiorari or any other appropriate writ, order, or direction to quash *qua* the petitioners herein FIR NO. 2021WAG181 registered on 03.11.2021 at the West Agartala Police Station, Tripura, under sections 153a/153b/469/471/503/504/120b of Indian Penal Code and Section 13 of Unlawful Activities (Prevention) Act, 1967, and all subsequent and consequential proceedings arising therefrom including notice to Petitioners No. 1 and 2 herein dated 03.11.2021 returnable on 10.11.2021 under section 41(a) of the Code of Criminal Procedure, and;
- II. Issue writ of Mandamus or any other appropriate writ, order, or direction declaring Sections 2(1)(o) r/w Section 13 of the Unlawful Activities (Prevention) Act, 1967, and Section 45(d)(5) of the Unlawful Activities (Prevention) Act, 1967, as unconstitutional;

III. Pass such other further orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present petition

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IS DUTY BOUND SHALL EVER PRAY

DRAWN BY:

Rahul Gupta (Advocate)

Alice Raj (Advocate)

FILED BY:

PRASHANT BHUSHAN
(ADVOCATE ON RECORD FOR PETITIONER)

DRAWN ON: 09.11.2021

FILED ON 10.11.2021

NEW DELHI