**COMMENTS ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION.**

Constitution of India under Article 19 guarantees to all citizens of India rights *“to assemble peaceably and without arms”*. The Supreme Court of India in judgment dated 12 August 2016 in Anita Thakur and Ors. vs. Government of J&K and Ors. (2016) 15 SCC 525, has held that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country. It was further observed in the judgment that “It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution. Further it was held that aforesaid rights are subject to reasonable restrictions in the interest of the sovereignty and integrity of India, as well as public order. It is for this reason, the State authorities many a time designate particular areas and routes, dedicating them for the purpose of holding public meetings.

2. The above view was reiterated by the Supreme Court of India in the case of MAZDOOR KISAN SHAKTI SANGATHAN vs. Union of India & Anr.(judgment Dated  23 July, 2018).

3. Section 144 of the Code of Criminal Procedure also talks about unlawful assemblies. Section 144(6) gives the government the power to make an assembly of 5 or more people in certain cases an unlawful assembly. Chapter viii of the Indian Penal Code lays down that the conditions when an assembly becomes ‘unlawful’. According to this section, an assembly of five or more persons becomes an unlawful assembly if the common object of the persons comprising the assembly is-

1. to repel and resist the execution of any law or legal process,
2. to commit any sort of mischief or criminal trespass,
3. to obtain the possession of any property using force,
4. to impel and coerce a person to do what  he is not legally bound to do or omit which he is legally entitled to do,
5. to overawe, that is, to appall and astonish the government by means of criminal force or show of criminal force or any public servant in the exercise of his lawful powers.

4. In the case of Anuradha Bhasin Vs. Union of India and Others in the matter of internet shut down and imposition of Section 144 of Cr.PC against public gatherings The Supreme Court vide judgment dated 10.1.2020 has is concluded as under :-

* The power under Section 144, Cr.P.C., being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an “emergency” and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.
* The power under Section 144, Cr.P.C cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.
* An order passed under Section 144, Cr.P.C. should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.
* While exercising the power under Section 144, Cr.P.C., the Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality and thereafter, apply the least intrusive measure.
* Repetitive orders under Section 144, Cr.P.C. would be an abuse of power