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Reasonable Restriction on the Right to Protest vis a vis the Citizenship Amendment Act, 2019

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The right to protest is a fundamental right envisaged in the Indian constitution and is available to every citizen of India. This right holds its essence in Article 19 of the Indian Constitution. While the judiciary in India has time and again adopted a transformative approach upholding the citizen's right to protest, the right has been undermined at various instances of justice in the history of India and the recent events of rightful protest against the government laws. Law enforces a reasonable restriction on the right to protest, it is important to analyze the scope of such restriction. The recent protest held in the neighbourhood of Shaheen Bagh at Delhi against The Citizenship (Amendment) Act, 2019¹ is a pivotal example to analyze the scope of the reasonable restriction imposed by the government in order to comment upon the diminishing essence of the right to protest in India.

Keywords: *protest, fundamental right, justice, democracy.*

INTRODUCTION

“Democracy thrives on listening, arguing and even dissent”

- Pranab Mukherjee

¹ Citizenship (Amendment) Act 2019

The mechanism of listening, arguing, and showing dissent is part of how a democracy works and the essence of democracy is incomplete if the citizens of the country do not raise their voice against anything they deem unfit. Public protests are the hallmark of a democratic society, and a democratic society insists that the voice of its citizens be heard by those in power and the people at the top of the hierarchy in order for the decisions to be reached collectively and work in favour of both those in power and the common citizens of the country. They hold the right to protest and the government must in fact respect this right to hold the essence of democracy because, in order to induce reforms and aid in the development of the country as well as fix any loopholes in the existing or to be laws or policies, it is important for the citizens of the country to have a say in the government's decisions.

This wave of protest is not a recent development among the citizens of the country. The emergence of India as a republic hails back to years of anti-colonial struggle against the British. The spirit of this struggle lies in the protest attached to it whether it be in the form of the Swadeshi Movement of 1905 or Satyagraha in 1930. **It is to be asserted that the constitution of India gives its citizens the right to protest under Article 19 of the Constitution².** In the Supreme Court case of "**Anita Thakur & Ors. vs State of J&K & Ors, Justice AK Sikri**, reasserted the importance of the right to protest in the political life of India. He opined that peaceful, non-violent, and organized protest has always been a part of the life of the country's citizens to raise their voice and has been a key expression in the struggle for independence and is thus, recognized as a fundamental right guaranteed under the prestigious constitution"³. However, it is diabolically ironic how the leaders of today use arbitrary practices to challenge the very essence of this protest in order to advocate the arbitrary laws and practices established by them or to annihilate the voice of the country's rightful citizens.

Protest on its own is a wide term and **article 19 of the constitution** does not specify it, although a collective reading of all the clauses of the article lays down the right to protest as a fundamental right. This right is a very important component of a democratic country, a democracy allows its citizens to raise their voice and gives them the means to show dissent,

² Constitution of India 1949, art 19

³ *Anita Thakur & Ors v State of J&K & Ors* (2016) 15 SC 525

although it is argued that through the years this very institution which stood as a defensive wall within the state and its citizens has eroded and has emerged as a threat to the basic freedoms guaranteed in the constitution. In order to understand the implications of the right to protest bestowed upon us, it is paramount to read between the lines of **Article 19 of the Indian constitution**. “**Article 19 (1) states that all citizens of the country shall have the right to freedom of speech and expression, to assemble peaceably and without arms and to form associations or unions**”⁴. Additionally, “clause (2), (3) and (4) also lay down certain restrictions in order to govern the rights guaranteed through clause 1 of article 19, these restrictions and reasonably imposed to secure public order, safety, integrity and security of the state and to maintain friendly relations with foreign states and to avoid incitement of any offence”⁵.

From the forerunning, it can be ascertained that article 19 is centred upon the very idea of the right to freedom of speech and expression. Article 19 (1) (a) of the Constitution affirms the right to free speech and expression⁶. It ensures that every person has the right to express their personal opinions but is subjected to reasonable restrictions. Article 19 (1) (b) talks about the right to assemble peaceably and without arms⁷. Thereby, the right to peaceful protest is bestowed to Indian citizens by our Constitution as the right to protest is a form of expressing the disapproval or the dissatisfaction of the citizens towards the state and its decision and activities taken in view of the public welfare. Protest serves as a check and balance between the state and its citizens, in order for the state to pay heed to the needs of its citizens and consult them for the laws and policies made are neither ultra vires nor arbitrary in nature. However, this right does not exist in isolation, Article 19 (3) imposes reasonable restrictions on the right to assemble peaceably and without arms and to freedom of speech and expression as none of these rights are absolute in nature⁸. Additionally, **Article 51A**⁹ makes it a fundamental duty for every person to safeguard public property and to avoid resorting to violence during public protests resulting in infringement of key fundamental duty of citizens. Any protest must be

⁴ Constitution of India 1949, art 19 (1)

⁵ Constitution of India 1949, art 19

⁶ Constitution of India 1949, art 19 (1) (a)

⁷ Constitution of India 1949, art 19 (1) (b)

⁸ Constitution of India 1949, art 19 (3)

⁹ Constitution of India 1949, art 51 (A)

withheld in accordance with the law, it should not have any illegal material attached to it. The clauses of article 19 are to be taken very seriously and should not be altered. The test here lies in the fact that what actually is reasonable when it comes to restriction. Can reasonable restrictions develop to become another instrument of implementing arbitrariness in a society through its government?

Reasonable restriction attached to the right to protest protects the interests of the sovereignty & integrity of India, the security of the State, and friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence all of which have been intimated by the reading of the article itself. For instance, in the case of "*Railways Board v. Niranjan Singh*, the court observed that someone's right to protest cannot undermine another's right to hold their property. As soon as one's right to protest interferes with another's right to property, the said right to protest can be reasonably restricted on this ground. Thus, a restriction is valid when it is reasonable, and exercising one's right must not come at the cost of another's right. Reasonable restrictions are imposed for several reasons, for instance, public order and the security of the state and while exercising one's right to protest, the citizens must adhere to their duties to secure the security of the state, not commit any offence and uphold public order"¹⁰.

It is crucial to note that these restrictions can be imposed only by law enacted by parliament and the restrictions have to be reasonable. "Today, freedom of speech is being eroded and mauled through twisting and turning the law if not abusing it altogether. The law needs to be objectively interpreted but subjective satisfaction has taken over and the consequences are unpalatable: dissent or expression of a different point of view has become an issue to the extent that *bona fide* speech sometimes becomes a security threat"¹¹. The judiciary of our country has time and again delivered transformative judgements upholding the right to freedom of expression and protest as a fundamental right that cannot be tampered with unless in regards to a reasonable reason that poses a threat. It is contested that by using

¹⁰ *Railways Board v. Niranjan Singh* AIR 1969 SC 966

¹¹ Lokur Madan B, 'Our Fundamental Rights to Free Speech and Protest Are Being Eroded and Mauled' (*The Wire*, 12 October 2020) < <https://thewire.in/rights/fundamental-rights-free-speech-protest> > accessed 09 July 2021

prohibitory tools on its people, the Government is limiting democracy and fractionally diluting Article 19.

In the case of “*Ramlila Maidan Incident Dt vs Home Secretary and Ors*, the Supreme Court appraised freedom of speech and expression as the essence of a democratic system. The judgement held that – Freedom of speech, the right to assemble and demonstration by holding dharnas, and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage the exercise of such rights. It must serve the ends of the constitutional rights rather than to subvert them”¹². Drawing on the same lines, in “**Maneka Gandhi v. The Union of India**, Justice Bhagwati opined that, democracy is the government of the people and for the people and hence, every citizen must have an equal right to participate in the democratic process and raise voice for anything they deem unfit or to get their opinion to be accounted for. It is important for the citizens to participate in order to secure their rights and to make a free and rational choice in terms of the public issues in hand which affect the citizens of the country as a whole”¹³. **In either way, it is to be emphasized that the right is not absolute and is guarded by reasonable restriction under Article 19 (3) of the constitution.**

Recently, our country witnessed quite a few public protests among which the protests against the enactment of citizen laws received wide support. Thousands of people pledged their allegiance to each other and collectively demanded the government to reconsider the clauses of **The Citizenship (Amendment) Act, 2019**¹⁴. The protests gained attention all around the country but the peaceful protest lead by women in the capital of Delhi at Shaheen Bagh gained noticeably enormous momentum and became one of the biggest peaceful protests led by the citizens of modern India. The protest took place in the neighbourhood of Shaheen Bagh in Delhi and was prey to many efforts being made in order to lift it in the name of road blockage

¹² *Ramlila Maidan Incident Dt v Home Secretary & Ors* (2012) 5 SCC 1

¹³ *Maneka Gandhi v The Union of India* (1978) 2 SCR 621

¹⁴ Citizenship (Amendment) Act, 2019

and inconvenience the blockage caused to the nearby citizens. The efforts made to lift the protest from the location lead to plea in courts where initially a bench of Delhi High Court led by the Chief Justice DN Patel refused to entertain the plea of shifting the protestors to another site, however, later on, Advocate Amit Sahni filed a petition in the Supreme Court wherein the court upheld the right to peaceful protest but also mentioned that public roads and spaces cannot be occupied indefinitely to conduct a protest. The court ruling in the case of *Amit Sahni vs Commissioner of Police*¹⁵ can be broadly classified into three aspects, the first being that the right to peaceful assembly is subject to reasonable restrictions in the interest of public order, as put forth under article 19 of the Constitution. Secondly, there must be a reliance on the doctrine of the balance of rights where there must exist a balance between the rights of the protestors and the rights of commuters wherein the right to protest in public spaces much be balanced with the right of the general public to occupy and use the said space and thirdly that indefinitely occupying public spaces is not a legitimate form of protest according to article 19 (1) (b) of the Constitution.

For the purpose of the judgement the court relied on the case of “**Himat Lal K. Shah v. Commissioner of Police** where it was held that – the right to hold meetings on public streets was subject to – (a) the control of the appropriate authority regarding the time and place of the meeting; and (b) considerations of public order”¹⁶. Furthermore, the court also relied on the case of “**Mazdoor Kisan Shakti Sangathan v. Union of India**, where, drawing on the same lines, the honourable court held that “In order to strike a balance between the interests of the residents and the right to protest, it directed the police authorities to formulate a mechanism for the limited use of the space for protests. It observed that each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with that of their counterparts.”¹⁷

¹⁵ *Amit Sahni v Commissioner of Police* (Civil Appeal 3282/2020)

¹⁶ *Himat Lal K Shah v Commissioner of Police* AIR 1973 SC 87

¹⁷ *Mazdoor Kisan Shakti Sangathan v Union of India* AIR 2018 SC 3476

However, the Shaheen Bagh case of **Amit Sahni vs Commissioner of Police**¹⁸ is a prime example of the diminishing value of the right to protest in the current era. Although the court mentioned the application of reasonable restriction as an important part of the right to protest in India, it failed to elaborate on the various aspects of such restrictions that were to be applied in the present case. The requirements put forth by article 19 (3) cover three aspects of reasonable restriction, the first of them being the condition that in order to reasonably restrict a protest, there must be a law imposing a restriction on the right and that the restriction imposed must be in the interest of the general public. Lastly, the restriction must be reasonable. In addition to this, the court has also in various cases relied on the doctrine of proportionality which suggests that the restriction imposed on fundamental rights must be in proportion to the purpose they seek to fulfill and should not exceed the requirement.

*However, in the present case, the court failed to meet the requirements of reasonable restriction as envisaged in article 19 (3), as although it followed the principle of reasonable restriction, in its 13-page judgement it failed to mention any law that could impose restrictions on the right of the protestors in the current case. In the present case, the court relied on two very important judgements of **Himat Lal K. Shah v. Commissioner of Police**¹⁹ and **Mazdoor Kisan Shakti Sangathan v. Union of India**²⁰, both of which lay down the laws (Section 33 (1) (o) of the Bombay Police Act, 1951²¹ and Section 144 of the Code of Criminal Procedure, 1973²²) imposing restriction on the right of protestors, but it failed to mention any laws restricting the right to protestors in the current case of Shaheen Bagh. Furthermore, even if the court had relied on a law, say, **Section 144 of the Code of Criminal Procedure**²³ to restrict the protestors, the same could not reasonably restrict them as it defies the doctrine of proportionality wherein section 144 applies only in the situations where public disorder is imminent. Public disorder includes a threat to the law and order in a society and a peaceful protest in a neighbourhood disrupting the traffic does not fulfill the requirements of an imminent threat to*

¹⁸ *Amit Sahni vs Commissioner of Police* (Civil Appeal 3282/2020)

¹⁹ *Himat Lal K Shah v Commissioner of Police*, AIR 1973 SC 87

²⁰ *Mazdoor Kisan Shakti Sangathan v Union of India* AIR 2018 SC 3476

²¹ Bombay Police Act, 1951, s 33 (1) (o)

²² Code of Criminal Procedure, 1973, s 144

²³ Code of Criminal Procedure, 1973, s 144

public disorder in an area. Furthermore, the court, in this case, **relied on the doctrine of balancing of rights** in order to balance the right of the protestors and commuters, however, in the present case wherein the judgment itself has failed to provide appropriate reasoning for restricting the right of the protestors under section 19 (3), it is inappropriate for the court to position its dependence on the doctrine of the balance of rights to restrain the scope of rights of protestors under section 19. Hence, the judgement by the court in the case of Shaheen Bagh does not meet the requirements of reasonable restriction in the interest of public order as envisaged in article 19 (3) of the Indian constitution.

CONCLUSION

Thus, it can be concluded that the cases such as that of Shaheen Bagh wherein the court used a blanket of reasonable restriction to restrict the protestors without dwelling into the requirements of such restriction is an example of the diminishing importance of the right to protest in India, wherein the pretext of public disorder is used to illegitimate peaceful protests to support the arbitrary laws and policies put forth by the government. **This not only undermines the right to protest, but it also fades away the dynamism of democracy and undermines the transformative approach to the dynamic document of the constitution.** Protests are the crux of democracy and play a crucial role in the advancement, reformation, and development of the country. It is a fundamental right bestowed upon our country's citizens under the Indian constitution and actively exercising this right ensures that the citizens of a democracy fulfill their role of being the sentinel who actively scrutinizes and checks upon the measures being taken by the state. This ensures that the government as well as its citizens have a check upon each other and perform the function of check and balance. Protest is one of the primus weapons that the citizens hold with them, especially in order for the state to hear the voice of dissent and during times when the state and the ones in power act unresponsive to the demands and suggestions of the citizens. It should also be very firmly asserted that the voice of dissent is as important as the voice of the people in support of any act of policy of the government and protest acts as a catalyst to transmission such voice to those in power. Hence, the right to protest must not be mauled with unless the restriction imposed

upon it is legitimately lawful and reasonable and the governments across the world must respect this right of their citizens. The right to peaceful protest should be properly utilized when required, and instead of limiting this fundamental right, the government should aid its citizens to exercise their fundamental rights.