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Right to Protest: An Absolute Emblem

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“There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest.” – Elie Wiesel The two founding pillars of any democracy are the right to freely elect the government of their choice and to show disapproval or dissent towards any actions or inactions of the elected government. Nations across the globe whose prime concerns are functioning in the interest of their citizens, protecting human rights, supporting the spirit of democracy, and advocating the integrity and pride of their citizens, will consistently hold an inferred right to protest and to communicate disagreement towards the activities or arrangements by the people in power. It is the right of the citizens of a country to show their dissent or disagreement towards any wrongly designed policy, regulation, or any action or inaction of the government freely without the intervention of the State. This enables the citizens to keep an eye on the functioning of the government and take an action wherever they think the government is not acting in the best interest of the people. To secure this right, the Constitution of India has implicitly provided for the right to protest under various fundamental rights that have been laid down therein. In this modern era, we are living in the age of global protests. In fact, both nationally and internationally, there have been several instances of protests in history as well. Time and again, people have come forward to show their disagreement or disapproval with any of the actions or inactions of the government in various ways. The largest democracy in the world, i.e., India is a result of a mass protest against the British Rule in pre-colonial times. In this paper, I have used the descriptive manner of research and have tried to throw light on the essence of the Right to protest. I have given a detailed explanation of the significance of the right to protest and also the various laws that back it. Further, I have also incorporated some of the famous protests in global history to understand how it is not a new concept and that it has been in existence for ages now.

Keywords: *right to protest, democracy, pre-colonial era, constitution of India.*

INTRODUCTION

Each citizen of a country is an integral part of it. For the smooth functioning of a country, it is incumbent upon the State to ensure that the rights and freedoms of the citizens are being taken due care of. The Constitution of India tries to protect the rights and liberties of each citizen through the various Fundamental Rights mentioned in Part III of the Constitution. It also provides distinct Constitutional rights to preserve the interests of the citizens of India. Thus, if it appears to any citizen that his or her rights are being violated by the government, he or she is entitled to protest against the State. History is evident of how Indians used the medium of peaceful protest to stand and show their dissent against the British Rule during the struggle for freedom. All the freedom fighters stood together against British Rule and won the fight against them by protesting peacefully. It's believed that peaceful protest is seen to be one of the most effective ways to show your disagreement with any of the policies or legislation laid down by the government. Countries across the globe whose prime concerns are the welfare of their citizens, protecting human rights, sustaining the soul of democracy and advocating the integrity and dignity of their people, will always hold an implied right to protest and to express dissent towards the actions or policies by the government. India is known to be the largest democracy in the world and it is no hidden fact that India aims to protect the interests of its citizens through the Fundamental Rights provided in Part III of the Indian Constitution. The right to Protest is also granted the status of a Fundamental Right through Article 19 of the Indian Constitution. In a country of such vast regional and cultural diversity as India, it is normal that many communities or groups of people tend to disagree with certain rules or actions, or inactions of the government. So, the Right to Protest provides them with an opportunity to show their disagreement with the government by protesting peacefully. Provided, the right has been granted only till the protest is peaceful. If at any time, it turns out to be violent, then the government has absolute authority to take necessary actions in order to maintain the decorum of the State. It has been rightly said that with any right comes a duty. Similarly, with the Right to Protest also comes certain duties.

Quoting Mohandas Karamchand Gandhi, popularly known as Mahatma Gandhi, *“Silence becomes cowardice when occasion demands speaking out the whole truth and acting accordingly.”*

In recent years, India has seen the general public of the nation coming forward and protesting against the actions or inactions of the government. It has witnessed people from distinct backgrounds come together and protest against the government of the country. A few of the landmark examples are the people coming together as one and protesting against the Citizenship Amendment Act, 2019 in India, the farmers protesting against the new farming laws in India, the black lives matter movement in the United States of America, students and activists also protesting against the cruel actions of the government, etc. According to Karl Marx, the socio-political history of human existence has been of struggles, confrontations, protests, and dissents.¹ It has been noted that the right to peaceful protest is an integral part of a democracy and hence should be protected by the State to ensure that the citizens are not deprived of their fundamental right of right to protest. Also, it is said that in a democracy, people’s participation politically is not restricted to elections.

WHAT IS A PROTEST?

A protest is a demonstration to influence public opinion, voice displeasure, draw attention to injustice, or share information about something happening around you.² Mostly, a protest is political in nature. Protests are major of two types, i.e., a non-violent protest and a violent protest. Non-violent protests are also called peaceful protests. A protest, in simple words, is a way of expressing your disagreement or objection to any action, rule, or policy of the government. With evolving times, it has been seen that people all across the globe have come out to protest in order to show their disapproval of the policies or regulations made by the government. The purpose behind organizing a protest is to publicly interrogate the government about an action or policy and to have them systematically answer the raised questions.

¹ Karl Marx & Frederick Engels, *The Communist Manifesto* (Oxford University Press 1992) 34-35; Karl Marx & Frederick Engles, *The German Ideology* (Lawrence & Wishart 1974) 48-49

² Jennifer Betts, ‘What Is a Protest? Understanding the Types & Reasons’ (*Your Dictionary*)

<<https://examples.yourdictionary.com/what-is-protest-understanding-types-reasons>> accessed 25 May 2022

A protest also helps the government officials to identify the loopholes in their actions which further leads to improvement in their actions. A protest is an essential part of a democracy and gives the citizens of the country to show their dissent or disapproval towards the actions of the government.

SIGNIFICANCE OF PROTESTS

In a democracy, protests serve as an essential voice for the minority communities giving them a stance to put their concerns or disapproval towards the actions or inactions of the government forward. Protests are a vital corrective to majority rule³ and they give a voice to those who lack a platform or privilege. They concretize the horizon of democratic practice. Sarah J. Jackson, an assistant professor of communication studies in the States vehemently expressed that *“what is certain is that they are playing an important role in the democratic process and will likely push both politicians and citizens to think about solutions that can bring those agitating for various causes together”*.⁴ The objective behind organizing a protest can vary from criticizing a group/ party/ government or a poorly designed policy or regulation by the government. Protests also strengthen a democratic system as it promotes direct participation by the citizens and makes the government stand accountable for all its actions and inactions.

Martin Luther King, Jr. once said, *“He who passively accepts evil is as much involved in it as he who helps to perpetrate it. He who accepts evil without protesting against it is really cooperating with it.”*⁵

Protests empower the people by making them realize that they are not alone in fighting this battle against something and there are thousands of people who are upholding the same thinking which makes them feel united. Further, protests also put pressure on the officials and that is how the debate starts. It further helps in maintaining transparency between the governments and the citizens.

³ Richard Norman, ‘Six reasons why protest is so important for democracy’ (*Open Democracy*, 4 December 2017) <<https://www.opendemocracy.net/en/six-reasons-why-protest-is-so-important/>> accessed 25 May 2022

⁴ Molly Callahan, ‘Recent Protest ‘Playing an Important Role in the Democratic Process’ (*News@Northeastern*, 18 November 2016) <<https://news.northeastern.edu/2016/11/18/recent-protests-playing-an-important-role-in-the-democratic-process/>> accessed 25 May 2022

⁵ Christopher Ponzi, ‘The Power of Protest: 15 Methods to Make Yourself Heard’ (*High Existence*) <<https://highexistence.com/the-power-of-protest-methods-for-modern-protest>> accessed 25 May 2022

Howard Zinn expressed, *“Protest beyond the law is not a departure of democracy; it is absolutely essential to it”*.

Lastly, protests make the government accountable for their actions or inactions to the general public and put them in a position to be answerable to the general public or the protestors’ concerns.

WHY IS THE RIGHT TO PROTEST ESSENTIAL?

Any democratic system is established on two core political rights granted to the citizens of India. One is to elect the government of their own choice without any hassle and the second is to show their dissent or disapproval when dissatisfied by any of its actions or inactions. It is no doubt that by the medium of the Right to protest the citizens are empowered to act as the watchdogs and keep an eye on the functioning of the government in power to hold it accountable for any of its actions or inactions. It is important for the citizens to regularly monitor the acts of the governments so that the one in power does not misuse its power and act as an evil to the general public. The right to protest acts as a helping tool for the citizens to monitor and if dissatisfied with any of the acts of the government show their disapproval or dissatisfaction by freely expressing it. Thus, it plays an imperative role in correcting the acts of the government in power. In India and abroad, protests have been widely seen in order to stand against the policies or acts of the government. In pre-colonial times, this was the only way through which people could put their views forward. Tim Hughes said, *“right to protest is fundamental to a healthy and vibrant democracy- the government must not undermine it”*.⁶ Dr. Leena Koni Hoffmann, Associate Fellow, Africa Programme expressed, *“civic engagement must become an expected part of democracy; it is not a threat to democratic governments”*.⁷

The right to protest is an effective way through which the citizens can show their disapproval or dissatisfaction against any of the actions or inactions of the government in a legitimate

⁶ Tim Hughes, ‘The Right to Protest is a Fundamental to a Healthy and Vibrant Democracy-The Government must not Undermine it’ (*Involve*, 16 March 2021) <<https://www.involve.org.uk/resources/blog/opinion/right-protest-fundamental-healthy-and-vibrant-democracy-government-must-not>> accessed 25 May 2022

⁷ Leah de Haan, et al., ‘What Makes a Successful Protest?’ (*Chatham House*, 16 December 2020)

<<https://www.chathamhouse.org/2020/12/what-makes-successful-protest>> accessed 25 May 2022

manner. These types of rights should be encouraged by the governments to uphold the foundation of democracy as they strengthen the relationship and increase the participation of the general public. But, it is seen as a threat to the government and is often criticized and tried to be restricted.

WHAT MAKES A PROTEST EFFECTIVE OR SUCCESSFUL?

"Peaceful, lawful protest - if it is effective - is innately disruptive of 'business as usual.' That is why it is effective"

Naomi Wolf.⁸

For any protest to be effective and powerful, it is vital that the demands of the citizens must be communicated clearly. The government should have a clear idea of why the protestors have gathered and what are their demands from the government, i.e, the issues and the problems should be clearly put forward by the citizens in order to avoid misunderstandings. It is important for them to hit the right button and not make vague demands. An important example with respect to this takes us back to the year 2014 when the Kenyan women had protested and had named the movement "#MyDressMyChoice"⁹. The Kenyan women had expressed their demands in a crystal clear way and it lead to the positive change by the authorities.

Further, it is imperative that the protest is peaceful and does not create a nuisance. The citizens should express their demands peaceably because when a protest turns violent, it impacts the movement adversely. When a protest is peaceful, it is harder to be criticized. In these modern times of technological advancement and growing social media, a protest by a minority group can be turned into a mass movement just by gathering the support of the people on social media. It helps the movement spread quickly and creates pressure on the government. One of

⁸ Dr. Joshua Weiss, 'The purpose of protest and what makes a protest effective' (*Bay Path*, 4 October 2017) <<https://www.baypath.edu/news/bay-path-university-blogs/post/the-purpose-of-protest-and-what-makes-a-protest-effective/>> accessed 25 May 2022

⁹ '#MyDressMyChoice: How Women Fought Harassment in Kenya' (*ITDP*, 2 May 2018) <<https://www.itdp.org/2018/05/02/st-mag-mydressmychoice/>> accessed 25 May 2022

the most effective examples of this is the #BlackLivesMatter or the #BLM movement which started in the United States of America but gathered the support of people across the globe. Furthermore, a protest can be made successful and powerful when the intentions of the protestors are made clear and there are no hidden demands and conditions. It is important for any protest to have a crystal clear objective and not let anybody interpret it in a way that can turn out to be mala fide. Providing a strategic plan to sort the issue out and meet the demands and expectations of the general public can turn out to be an effective way as it will make it harder for the government to turn the offer down.

THE CONSTITUTIONAL STATUS OF THE RIGHT TO PROTEST IN INDIA

Protests, in India, are not a new concept or a new term. People have time and again expressed their disapproval or dissent towards the actions or inactions of the government through protesting. In pre-colonial times, the father of the nation, Mahatma Gandhi had called for a civil disobedience movement and a non-cooperation movement which are important examples of a protest and have also played a significant role in the struggle for freedom against the British rule. The Right to protest is a vital element of a democracy. It has been believed that if a citizen cannot show his or her dissent towards an action or inaction of the State freely, then the democracy has failed. India is known to be the largest democracy in the world but it has had its fair share of difficulties while incorporating the right to protest as a part of the Indian constitution. As discussed above, according to Article 326¹⁰ of the Indian Constitution, democracy is founded on two core political rights. One is the right of every citizen to freely elect their government and when dissatisfied with its performance, to vote it out of power in a legitimately held election. The right to protest is not explained directly but falls under the ambit of “freedom of speech and expression and the freedom of assembly” granted by the Constitution of India. Our constitution makers conceded that one of India’s cherished and valuable aspects of political life is its tradition of expressing grievances through direct action or peaceful protest.¹¹ According to them, ‘democracy’ was, in essence, a government by

¹⁰ Constitution of India, 1950, art.326

¹¹ *Anita Thakur v State of J&K* (2016) 15 SCC 525

popular public opinion. Hence, they took due care of the citizens' right to show dissent towards the government. In lieu of this, the constitution-makers ensured that the right to protest has been incorporated in our constitution indirectly if not directly. It was not explicitly expressed but was made a part of the right to freedom of speech and expression and right to freedom of assembly enshrined under Article 19(1)(a) and Article 19(1)(b)¹² of the Indian Constitution. Thus, these two abovementioned rights paved a path for the right to assemble and freely protest against the actions or the inactions of the State. Additional to this, Article 19(1)(c) and Article 19(1)(d)¹³ provide for the right to form an association or union and to move freely throughout the territory of India, respectively. These four articles have played a vital role and have helped the citizens of India to exercise their right to protest. Thus, the Right to protest is a fundamental right guaranteed under Article 19¹⁴ of the Indian constitution which makes it a part of the basic structure of the Constitution and hence cannot be violated in any case. All these rights empower a citizen of India to show his or her disapproval towards any action or inaction of the government by protesting peacefully without any arms or weapons. It is important to note that Article 19 of the Constitution of India only extends to a peaceful protest and if at any time, the protest turns into a violent one, then, in that case, the scope of Article 19 fails. As long as a protest is peaceful, it is backed by Article 19 of the Indian Constitution. However, with every right comes sizeable restrictions so that the citizens do not take undue advantage of the rights vested with them. Therefore, there are certain reasonable restrictions that have been laid down in clauses (2) to (6) of Article 19¹⁵.

Article 19(1) says:

"19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;

¹² Constitution of India, 1950, art.19(1) (a) and art.19(1) (b)

¹³ Constitution of India, 1950, art.19(1) (c) and art.19(1) (d)

¹⁴ Constitution of India, 1950, art.19

¹⁵ Constitution of India, 1950, art.19(2) (6)

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practice any profession, or to carry on any occupation, trade or business”

In simple words, the Right to freedom of speech and expression means that each citizen is granted the right to freely express his or her views by word of mouth or in writing, etc, right to freedom of assembly means to hold peaceful meetings or form peaceful assemblies without arms or weapons. Further, the right to form associations means to form associations or trade unions for a common interest.

When clubbed together, all the four aforementioned sub-clauses of Article 19(1) of the Constitution of India, grant the right to peacefully protest to the citizens of India. All these Articles, in short, mean that when the government is functioning properly, it is the duty of the citizens to act as watchdogs and monitor the acts of the government so as to ensure that the government is accountable to its citizens for its acts. It was in the landmark case of *Kameshwar Prasad v State of Bihar*¹⁶ where the highest Court of India, i.e, the Supreme Court recognised the right to demonstrate which is a form of the right to protest, as freedom guaranteed under Article 19(1)(a) and Article 19(1)(b) of the Indian Constitution. The Court observed:

“...a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus communication of one’s ideas to others to whom it is intended to be conveyed. It is in effect, therefore, a form of speech or of expression...”

¹⁶ *Kameshwar Prasad v State of Bihar* AIR 1962, SC 1166

One of the landmark cases with regard to the Right to protest is the *Re-Ramlila Maidan Incident Dt v Home Secretary And Ors* wherein Justice. Swatanter Kumar, favouring the idea of the Right to protest to be a fundamental right, expressed:

*“Freedom of speech, right to assemble and demonstrate by holding dharnas, and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the government or even to express their resentment over the actions of the government on any subject of social or national importance.”*¹⁷

In this case, the Apex Court of India also opined that the State must respect and encourage such rights. Hence, it is the duty of the State to promote and aid the right to freedom of speech and expression. Thus, to realize this right completely, the State must not frustrate the exercise of such rights by abusing executive and legislative powers in the name of reasonable restrictions. In the famous case of *Romesh Thappar v State of Madras*¹⁸, Justice S. Fazal Ali held that “until it’s not hampering the security of the State, it would be unconstitutional to restrain an individual from its rights under Article 19(1)(a)”.

Further, we can also trace a relationship between the right to protest and Article 21 of the Indian Constitution. Article 21 of the Indian constitution says:

*“21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law”*¹⁹ To support this contention, it is important to read the judgment of the famous case of *Maneka Gandhi v Union of India*.²⁰In this case, the Court vehemently said the term ‘life’ in Article 21 of the Indian Constitution does not mean merely ‘animal existence’ but living with human dignity.²¹ Thus, in order to show disapproval or dissent towards an oppressive regime or injustices or the policies or regulations of the State, the Right to protest is to live with dignity. Thus, it can be said that the right to protest falls under the ambit of the right to life and personal liberty. Furthermore, it has been said in the

¹⁷ *Re-Ramlila Maidan Incident Dt v Home Secretary And Ors*. (2012) Suo Moto Writ Petition (Criminal) No. 122/2011

¹⁸ *Romesh Thappar v the State of Madras* (1950), AIR 124

¹⁹ Constitution of India, 1950, art.21

²⁰ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

²¹ M.P. Jain, *Indian Constitutional Law* (8th ed., Lexis Nexis 2018) 1209

case of *Unni Krishnan v State of Andhra Pradesh*²² that it has often been opined by the several Indian Courts that through judicial activism, they can always discover the 'implied fundamental rights. Many a time, these 'implied fundamental rights have been unearthed by reading Article 21 with some Directive Principles of State Policy (DPSPs) enshrined under Part IV of the Indian Constitution. To support this, one has to read Article 38²³ with Article 21 which gives effect to the right to protest. Article 38(1)²⁴ of the Indian Constitution provides an obligation upon the State to aid the citizenry to create a social order that shall promote social, economic, and political justice.

Lastly, under Article 51-A²⁵ of the Indian Constitution, a fundamental duty has been prescribed which says:

"51A. Fundamental duties It shall be the duty of every citizen of India (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity, and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism, and the spirit of inquiry and reform;

²² *Unni Krishnan v State of Andhra Pradesh* (1993) 1 SCC 645

²³ Constitution of India, 1950, art.38

²⁴ Constitution of India, 1950, art.38(1)

²⁵ Constitution of India, 1950, art.51-A

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement PART V THE UNION CHAPTER I THE EXECUTIVE *The President and Vice President*”

In simple words, it says that it is the duty of every citizen of India to protect public property, and take due care of the environment and composite culture. One thing that is to be noted here is that the provisions of the Indian Constitution do not highlight the term “sub-judice matters” anywhere as a restriction on the right to protest. This means that sub-judice matters are not a restriction on right to protest and hence, the citizens have a right to protest even in sub-judice matters.

REASONABLE RESTRICTIONS

It is imperative to note that a protest is legal and the right to protest under Article 19(1) can be enjoyed only till a protest is peaceful and non-violent. The moment any protest turns into a violent one, Article 19(1) ceases to be in effect. It is also important to seek the permission of the concerned authorities before carrying out a protest. In a country like India which is known to be the largest democracy in the world, protests are evidently effective and essential. But at the same time, it is vital that the protests should be attached with peace, patience, ahimsa (non-violence), and tolerance, otherwise, they leave their importance and effect behind and become meaningless.

While the Right to protest has been recognized as a fundamental right granted under Part III of the Indian constitution, it is important to note that it is not an absolute right. With every right comes sizeable restrictions so that the citizens do not take undue advantage of the rights vested with them. As mentioned above, the right to protest is not an absolute right, therefore, there are certain reasonable restrictions that have been laid down in clauses (2) to (6) of Article 19 of the Constitution of India.

Article 19(2) to (6) are:

“(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

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

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

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) *the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise*²⁶

In simple words, the reasonable restrictions are:

1. When the security of the State is in a position of danger.
2. If the friendly relations with the neighbouring countries are threatened.
3. If there has been a violation of public order
4. In a case where there is a contempt of court.
5. If India's sovereignty and integrity are threatened.
6. If there is defamation or incitement to an offence

The most important restriction amongst these is the security of the State and public order. This is the most popular ground for limitations used in India. Many a time, protests turn violent and take the form of riots and affrays detrimental to the State and public order security.²⁷ In such cases, the State steps in and invokes Section 144²⁸ of the Criminal procedural code, 1973. This section is enforced to prevent violent assemblies, annoyances, etc to maintain the public peace and order.

In the case of the *Railways Board v Niranjan Singh*²⁹, a limitation was observed. The restriction indicates that the right to protest or the right to assembly does not apply to the right to someone else's property. All reasonable restrictions are imposed in accordance with India's sovereignty and integrity, State security, friendly relations with foreign countries, and public order and cannot be arbitrary in nature. So, it is important that they perform their duties while exercising their rights.

It has been said that when it comes to the right to protest, "the devil lies in Section 144 of the Criminal Procedural Code, 1973". The said section empowers the Magistrate to issue orders in 'urgent cases of nuisance'. It says that:

²⁶ Constitution of India, 1950, art.19(2) (6)

²⁷ *The Superintendent v Ram Manohar Lohia* (1960), AIR 633

²⁸ Code of Criminal Procedure, 1973, s 144

²⁹ *Railways Board v Niranjan Singh* (1969) 1 SCC 502

“144. Power to issue an order in urgent cases of the nuisance of apprehended danger.

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

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

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

(4) No order under this section shall remain in force for more than two months from the making thereof: Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health, or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor- in office.

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

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

In simple words, Section 144 of the Criminal Procedural Code, 1973 authorizes executive magistrates to pass "prohibitory orders" that aid in restricting people from assembling at particular places to prevent a breach of public order or the triggering of violence. The language of the said section is vague and hence, it empowers the magistrate to impose it anywhere in order to prevent the expression of disapproval through public assemblies, demonstrations, and protests. Recently under the NDA government led by Shri Narendra Modi, it was observed that whenever people came forward to show their disapproval towards any policy or action taken by the Central government, Section 144 of the Criminal Procedural Code, 1973 was imposed restricting the protestors to organizing protests. It has been said that the imposition of Section 144 of the Criminal Procedural Code, 1973 makes it evident that the Central government is not equipped to handle the dissent or disapproval shown by the citizens.

In the case of *Himmat Lal K Shah v Commissioner of Police, Ahmedabad*³⁰, the Apex Court of India had held that "the State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interests of public order. It cannot impose any unreasonable restrictions, a right to hold meetings on public streets was subject to the control of the appropriate authority."

Further, in the case of *MazdoorKisan Shakti Sangathan (MKSS) v Union of India(2018)*, the Supreme Court of India observed, "holding peaceful demonstrations by the citizenry in order to air its grievances and ensure that these grievances are heard in the relevant quarters, is its fundamental right. This right is specifically enshrined under Articles 19(1)(a) & 19(1)(b) of the Constitution of

³⁰ *Himmat Lal K Shah v Commissioner of Police, Ahmedabad* (1973), AIR 87

*India.*³¹ In other words, the Supreme Court of India upheld the fundamental right to assembly and conduct peaceful protests but imposed a condition that it is to be regulated in a way that they do not cause inconvenience to the residents or anyone located there.

RIGHT TO PROTEST: A HUMAN RIGHT

It is said that the protests lead to the advancement of human rights. The right to protest is perceived as a human right arising out of several recognized human rights. Violation of the Right to protest by the government or any official leads to a violation of the human rights of an individual. There are various international human rights guidelines with respect to the right to protest under human rights laws. A few of the recognized international human rights statutes are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights; of regional human rights standards. According to Article 20³² of the Universal Declaration on Human Rights, every individual has the right to freedom of peaceful assembly and association.

Further, according to Articles 21 and 22 of the International Covenant on Civil and Political rights which were signed and ratified by India, every citizen shall be vested with the right to form assemblies and freedom of association peacefully, respectively. They say that:

“Article 21- The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”³³

“Article 22-

- 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*

³¹ *Mazdoor Kisan Shakti Sangathan (MKSS) v Union of India* (2018) Writ Petition (Civil) No. 1153/2017

³² Constitution of India, 1950, art.20

³³ Constitution of India, 1950, art.21

2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health, or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*
3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*³⁴

Furthermore, Articles 10 and 11 of the Human Rights Act, 1998³⁵ talk about the Right to protest freely. Article 10³⁶ provides that every individual is empowered to hold their own opinions and express them freely without the interference of the government. Article 11 lays down the right to protest by organising meetings and demonstrations with other people with the same intentions.³⁷ Both these Articles have been laid down in favour of the citizens to put their opinion forward without any interference by the government. It is majorly done for the journalists and the people working in the media sector so as to provide raw and non-biased information to the citizens without the fear of any additional force.

MOST POWERFUL PROTESTS ACROSS THE GLOBE

1. Protests against The Citizenship (Amendment) Act, 2019:

One of the largest protests in the history of India is that of the one against the Citizenship (Amendment) Act, 2019 passed by the Shri Narendra Modi-led NDA government in the year 2019. The disapproval of this Bill amongst the citizens of India was so prevalent that it resulted in massive protests across the nation.³⁸ This bill or the Act was perceived to be discriminatory to one of the minority communities of India, i.e, the Muslims. Opposing this new law, people

³⁴ Constitution of India, 1950, art.22

³⁵ Human Rights Act, 1998, art.10 and art.11

³⁶ Human Rights Act, 1998, art.10

³⁷ Human Rights Act, 1998, art.11

³⁸ Human Rights Act, 1998, art.11

across India came down on the streets to show their dissent towards the government and demanded non-passing of the bill. Several students, human rights activists, and celebrities came forward and it turned out to be a nationwide movement. It turned out to be so controversial when the Central government gave it an angle of a terrorist-funded protest and named it an anti-national protest which led to the detention of many activists, student leaders, and celebrities. The Union government had also cut-down internet services in various regions and ultimately, the demands of the people were not met. This was the first time in Indian history where Muslim women had come forward willingly and led the movement by sitting on a dharna at the ShaheenBagh in New Delhi. This protest even though could not be successful in getting the demands fulfilled, certainly led to the union of many communities together as one. It has been known as one of the most influential and powerful protests in history. Various International organizations also had come forward and held the act to be discriminatory and supported the protestors.

2. Protests against the new farm laws in India:

Another example of a mass protest is the protest going on against the new contentious agricultural laws passed by the Shri Narendra Modi-led NDA government in the year 2020. This protest did not restrict to India but Non- Resident Indians led movements in their respective countries to show their dissatisfaction with the actions of the Union government of India while introducing the new farm laws. The most powerful sites of mass participation were the Singhu border and Tikri in West Delhi. Many celebrities and social activists came forward showing their support for the framers' agitations. This protest has been known to be the largest one in the history of mankind. The farmers are very uncertain of their future based on these three new laws and they vehemently feel that these three laws will not bring fruition to their labour. The main contention made by the farmers is that they want the Minimum Support Price (MSP) to remain in place as it has been for ages and removing it will have a negative impact on their earnings. This protest caught an eye when the Canadian Prime Minister, Justin Trudeau condemned the actions of the government of India and came to support the farmers. This movement gained the support of people across the world and the

case still stands pending in the Supreme Court of India. It has been more than a year that the farmers are protesting on the streets of India and making their voices heard. After more than a year of battling against the Union government, the farmers finally won the battle, and the farm laws were repealed in November 2021 on the auspicious occasion of “gurupurab”.

3. Black Lives Matter³⁹ or BLM:

One of the largest movements in the United States of India is the Black Lives Matter movement. It was started back in the year 2013 but gained popularity recently in the year 2020 when the case of George Floyd took place. It got spread massively when the hashtag “BlackLivesMatter” took a toll on social media and people across the globe came in support of the movement. In May 2020 George Floyd, an unarmed Black man, was articulated dead after Derek Chauvin, a white cop, stooped on Floyd's neck for over nine minutes, in spite of Floyd's rehashed fights that he was unable to relax. People came down the streets of New York City and protested against President Donald Trump. The main objective behind the Black Lives Matter or the BLM movement is to fight against the racism that has been faced by the Black people since time immemorial. It seeks to combat police brutality and the unfair treatment of the Black people, especially by the White people. This movement was so influential that it turned out to be affecting the United States Presidential Elections and is ultimately perceived as a major reason for the defeat of then-President Donald Trump.

4. Nirbhaya movement in the year 2012:

After the draconian case of gang rape in the year 2012, popularly known as the Delhi gang-rape case, there was a huge outrage in the public of the National Capital and thousands of people came out to protest in several parts of the country. Six men committed the heinous crime of gang rape on a girl on a moving bus in the National Capital. After the pendency of the case for seven long years, justice was served and ultimately, four out of the six accused were hanged as one was a juvenile and one died in the pre-trial stage. It has been observed that the

³⁹ ‘Subsequent protests: George Floyd, Ahmaud Arbery, and Breonna Taylor’ (*Britannica*) <<https://www.britannica.com/topic/Black-Lives-Matter/Subsequent-protests-George-Floyd-Ahmaud-Arbery-and-Breonna-Taylor>> accessed 25 May 2022

mass protest made a huge impact on the government and the judiciary in delivering the judgment in favour of the victim who died back in 2012.

5. The Hong Kong protest in 2019:

A massive protest in Hong Kong broke out in the month of June 2019 against the extradition law which is imposed by China.⁴⁰ Hong Kong gained independence from British Rule in the year 1997 but it eventually returned to China. The protestors came out protesting against them as they feared that the new extradition laws imposed by China would oppress and result in the coercion of their rights to the fair judicial process and bring danger to dissidents.⁴¹ Considering the outrage in the public, the Bill was struck down in the month of September but the demonstrations continued as the citizens now demand full democracy in the country. Instances of clashes between the police officers and the protestors have been seen time and again which has led to the protests turning violent. Protestors were seen holding placards that said “Stop killing us”. Five major demands were put up by the citizens and they were seen holding many movements regarding the same. Protestors even urged the then President of the United States, Donald Trump to intervene and help the citizens of Hong Kong. Even though the future of this still stands unclear, the protest had gained a lot of popularity across the globe.

CONCLUSION

After analysing the Right to protest in detail, it can evidently be seen that a peaceful protest is a fundamental right of each citizen and the lifesaver of democracy, and in its absence, the democratic system fails to serve the purpose it originally holds as protests are evidence of a free and democratic society where the voice of individuals who are heard from power and settle on choices as needs are. The right to protest is an essential element of India’s democracy as in every democracy, the right to freely elect the government of one’s choice and if dissatisfied with the actions or inactions of the government, the right to show their dissent or

⁴⁰ ‘Summary of Hong Kong Protests’ (*Truth of China*, 1 December 2019)

<<https://www.truthcn.org/2019/12/01/summary-of-hong-kong-protests/>> accessed 25 May 2022

⁴¹ *Ibid*

disagreement plays a vital role. It is believed that if in any democratic country, an individual cannot voice their opinion against the government in power, then, in that case, the democracy has failed. It is not merely a political fundamental right, but it is also a moral duty of every citizen to ensure that he or she does not suffer from injustice in any case whatsoever. As mentioned above, the right to protest is not an absolute right and comes with certain reasonable restrictions. Article 19 of the Indian Constitution grants the right to protest to every citizen of the country and it also lays down the reasonable restrictions that can be imposed on the same. Every citizen of India has the right to freely voice their dissatisfaction towards any action or inaction of the government in power provided, it has to be done peacefully and non-violent. The moment any protest or demonstration is turned into a violent one, Article 19(1) of the Indian constitution loses its scope and the police have the right to arrest the participants. So, it is the responsibility of the State to maintain a balance between letting the citizens exercise their right to protest and ensuring that it is not used in an excessive manner. By now, we are in a clear position to understand that right to protest is not merely a right granted by the Indian constitution but also plays a vital role as a part of human rights. It has been recognized not only in India but globally. The right to protest is an effective element to serve the duty of a responsible citizen if exercised in the correct way.