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Right to Protest - Hindrance in the Public Functioning

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In India, the "Right to protest peacefully without arms" is a fundamental right as per the Indian constitution, Article 19 (a) and (b). The right is exercised under the right to speech and to assemble, but it can often be seen that these protests somehow get out of hand. A peaceful protest can become harmful, and lots of people get harmed; some even die if any unwanted intruder will interrupt the functioning and tries to create furious agitation. Furthermore, protests are seen most of the time for heinous crimes against humanity or for any new act or bill passed around that time. Protests in India often become ugly and, evidently, have major consequences. We will be discussing some of the scenarios under which people, as well as our entire system, have suffered from such assemblies, due to which even the unbothered bodies were also convinced to comment on such happenings.

- *Supreme Court in a judgement said that "There is no question of holding the protests when you have come to the courts. You have strangulated the entire city, and now you want to enter the city and hold a protest." When the Kisan Mahapanchayat was protesting regarding the three farm laws on the roads of Delhi.*
- *Justice Lokur said in an interview, "When you have already challenged the law, why should you be allowed to protest? You choose only one option: either you appeal to parliament or you come to the court. You cannot be doing everything."*

Keywords: *right to protest, peaceful protest, public harmony, agitation, democracy.*

INTRODUCTION

The protests are conducted only if the police feels that in a democratic country like India, people

have the right to protest. The Indian constitution provides the right to protest peacefully under freedom of speech and the right to assemble and demonstrate by holding strikes, but we still witness various violent protests. Contrary to that, in a country where policymaking is done at a 3-tier level for a population of 1.39 billion people, the policies so formed cannot be perfectly acceptable to the whole country.

A protest may not lead to public harm. Permission can be denied if the police feel like the protest may lead to savagery. On that count, people somehow manage to get permission to hold such demonstrations. It is therefore obvious that the protests are conducted by people who are indirectly related to political parties. Hence, we can say that people protest to get political attention. Moving to the protests that are held for crimes against humanity that the country witnesses, they are too often held by political parties, and they raise questions about the efficacy of police forces even when the investigations are often transparent. Questions and protests only catch fire when there are lots of controversies, which are the result of the media. If they are influenced by some powerful people in society who never give up any chance to create their image in society among the people, the media often becomes a pile of incomplete information.

These types of rallies only prove to be a burden on the primary investigators, affecting their work efficiency because, either way or the other, protests do require the presence of certain police authorities in order to maintain a code of conduct among protestors and for the protection of the protestors too. Even though it is the constitutional right of the people, the protests can be avoided, by the aforementioned provisions of law, also there have been various judgements and controversies that are mentioned for reference.

WHY PROTESTS?

Why do people protest?

Protests are the demonstrations that people organise in order to express their emotions, objections, disapproval, or dissent towards an idea or action, typically a political one. Protests are organised in order to make their opinions heard in an attempt that may influence other people's opinions or directly affect government policy. Even though the entire structure of India

is based on protest, movements such as the Quite India movement, Swadeshi movement, and Satyagraha movement were some of the assisting hands in making the country independent. In a democracy, the people of the country are the most important element. Almost 70 years ago, the Britishers ruled India. At that time, people did not have any rights. After independence, people were given fundamental rights so that they could raise their voices and demands.

Why are right to protest important for democracy?

The government brings up new policies from time to time. People monitor and analyse loopholes in the policies. The only way to address these policies is through peaceful demonstrations but only peaceful protests are lawful; if any protest means to outrage social regular functioning, then they are not lawful. The importance of the Right to protest can be understood from India's past.

HISTORY

During the era when the constitution was at its primary level the framer bench for the constitution kept in mind that India was under the rule of Britisher for approximately 200 years during that time there were no such fundamental rights provided to citizens, so during the time when specifically, particulars of Article 19¹ were being discussed H.V Kamath proposed that as U.S Indians should also have right to possess arms. So, we can say that the entire *Article 19*² has been taken from U.S.A fundamental rights. Then on the 26th of June 1975 national emergency was announced by PM Indira Gandhi, during that time the only mass communication medium, newspapers were banned from publishing any type of domestic and political news without taking permission from the government. During that time along with *Article 21*³, all fundamental rights were banned.

¹ Constitution of India, art 19

² *Ibid*

³ Constitution of India, art 21

ARTICLE 19(1)⁴

This article is only available to citizens and can only be practised against the state and not against the nation, it provides citizens various liberties.

1. *Article 19(1)(a)⁵ - Freedom of speech and expression*

It provides citizens with the right to receive any information, the right to express any certain ideology, and the right to keep secrets.

2. *Article 19(1) (b)⁶ Right to protest peacefully without arms*

Every citizen has the right to form a union without arms in a very peaceful manner without arms, but if citizen blocks any kind of legal procedure, commits any criminal trespass, or uses any kind of force on a public servant or within any government office premise than such assemblies or such union is considered unlawful.

3. *Article 19(1)(c)⁷ Right to form associations and trade unions.*

It avails citizens to assemble or form an association in order to discuss any common interest matter be it a meeting of partnership, company, or an NGO. These altogether provide Indian citizens with the Right to protest peacefully without arms. In a democracy, citizens' free speech and protest without arms are protected and are encouraged by these rights are not absolute in nature.⁸ Let us look at some of the landmark Supreme Court judgement, which state to what extent citizens can use their rights to protest-

⁴ Nidhi Bajaj, 'Article 19 of Indian Constitution' (*iPleaders*, 20 January 2022) <https://blog.iplayers.in/article-19-indian-constitution/#6_fundamental_freedom> accessed 01 August 2022

⁵ Constitution of India, art 19(1)(a)

⁶ Constitution of India, art 19(1)(b)

⁷ Constitution of India, art 19(1)(c)

⁸ *Ibid*

CASE LAWS

Ramlila Maidan Incident v Home Secretary, Union of India, (2012)⁹

Baba Ramdev took occupation of Ramlila maidan for yoga camp but when people assembled, they started protesting against corruption due to which local police administration had to impose section 144, as a result of which police raided the protest, and the protesters were cast out of the ground. In the judgement,¹⁰ the Hon'ble Supreme Court said that "Citizens have a fundamental right to assemble and peacefully protest which cannot be taken away by an arbitrary executive or legislative action." due to which the local police were held liable and hence were wrong with their actions.

CAA Protest Shaheen Bagh Amit Sahni v Commissioner of Police¹¹

In the judgement, the court said that "Protestors do not have any right to occupy a certain public space for an indefinite time, so the police authorities do have the right to get that area cleared." Due to this, the roadways were getting blocked and the general public was getting disturbed, so as per the judgement, the administration has the right to clear such areas which are made for daily public use.

Mazdoor Kisan Shakti Sangathan v Union of India and Anr. (2018)¹²

Protestors were protesting on *Jantar Mantar* due to which the local residents were getting disturbed with their daily household chores. Hence, the Supreme Court directed the administration to assign protestors a limited area using a proper mechanism and advised police to develop proper protest guidelines. In both the last two cases, the court balanced the citizen's Right to commute and the protestor's Right to hold a demonstration. Even now the judge themselves have argued that protest can only take place after the amendments are made even when the bill is sent into all of the public to go through change people still stay after the protest,

⁹ *Ramlila Maidan Incident v Home Secretary, Union of India & Ors* (2018) Writ Petition (Criminal) No 122/2011

¹⁰ *Ibid*

¹¹ *Amit Sahni v Commissioner of Police* (2020) Writ Petition (Civil) No 3282/2020

¹² *Majdoor Kisan Shakti Sangathan v Union of India* (2018) Writ Petition (Civil) No 1153/2017

even when the amendments have already been challenged the law, then why are people still allowed to protest.

Now let us have look at some recent protests¹³-

AGNIPATH SCHEME

The *Agnipath scheme* was introduced in 2020 and was proposed by the *late Chief of Defence Staff, General Bipin Rawat*. In this scheme, young Indians were required to serve in the borderline forces, namely the *Air Force, Armed Forces, and Navy Force*, for a period of four years, known as *the engagement period*. The people employed under this scheme will be considered right off the bat and will be called "Agniveers" and will get special recognition. Under this scheme, 50000 candidates will be hired each year and will serve the country for four years; however, only 25% of the candidates will be given a permanent position in the cadre and will serve in the armed forces for approximately 15 years. The main aim of this scheme is to make young and fit soldiers serve the frontline troops and to make the armed forces technocrats. From this, the average age of soldiers will become 4-5 years younger, and also the pension burden will get lower.

Why were there people protesting?

There were two reasons why people were protesting. They were:

- **Job Insecurity:** As people from 17–21 are the age groups that will be participating under the *Agnipath scheme*, at that time they will be in these jobs, which will also be the time they will be eligible to pursue their Bachelor's degree. Since the scheme will only provide 25% of people with permanent placement and 75% of people will become unemployed, after losing their jobs they neither have the potential to work nor employment.
- **Wastage of training:** The Agniveers who will be serving for 4 years will be trained, but when they reach their peak of training, they will be removed. This is due to the fact that

¹³ *Ibid*

the technical training that they received during the time of their job will be wasted, and also the strength of the armed forces will be affected.

The pros of this act:

- The government is claiming that after people join this scheme, these will be the benefits they will be receiving.
- There will be no job insecurity following such training; rather, opportunities will increase as employees gain special skills, experience, and discipline that will give them a whole new level of recognition.
- 75% of the people who will lose their jobs after 4 years will get qualitative as well as quantitative benefits in schemes for loans, be it business loans or education loans, from the expenditure that the government will save from the extra pension that they are planning to save from this scheme.
- They can also apply for *CAPF*, *state forces*, and other forces in that they will be given 10% of the reservation.
- Also, there are various companies which are claiming that they will be giving extra preference to the trained *Agniveers*.

KISAN ANDOLAN

The three farm laws:

- The farmers can get out of *APMC* and sell their crops tax-free.
- Contract farming and direct farming will be introduced, and it is clearly stated that the related risk will be borne by the company itself.
- Production, storage, and movement of essential commodities such as oil, pulses, and grains will be regulated, providing incentives for cold storage. This particular law is related to the *Essential commodities act*.

The laws were formed after 20 years of consultation, and if these laws are enacted, then all of the farmers will have new opportunities. The Delhi Road was blocked from people's protests

due to the 3 farm laws brought in by the government. The protestors claim that no consultation was done with them throughout the time. Even though the law may prove to be fruitful during its initial years, this will only make the situation worse in the long run. Land and protection such as APMC and MSP can all get lost.

The government argued as follows:

Since APMC could not satisfy the needs of poor farmers, the *Arthiyas* charged 1.5-3% of the commission. All these acts were introduced to replace all such middlemen and claim to establish a new market that will provide better prices.

Pros of this act -

- The farmers will get an advanced opportunity to contract huge companies, even if they lose their crops they will stay covered for certain losses.
- The government has established new law that is “Empowerment has established new law” section 8, which states that there will not be any transfer or mortgage of any land.
- There will be special provisions for farmers if they want to take their grievances to civil court.

CITIZENSHIP AMENDMENT ACT PROTESTS, 2020

In the 12th -20th century, due to large-scale persecution in Iran, a large number of people from the Parsi community migrated to India. In 1947, the partition between India and Pakistan took place, due to which 1 crore of people migrated to India, and due to the same partition in 1960, about 71 lakh Bangladeshi people moved to India. In 1959-60, due to the China-Tibet war, lots of Tibetans moved to India. Then, in 1979, due to the Soviet-Afghan war and religious persecution, Afghanis migrated to India. Similarly, in 1980, due to Sri Lanka's civil war, Sri Lankan Tamils moved to India. Finally, in 2015, Rohingyas from Myanmar migrated to India. As per the 2021 census, a large group of people from Bangladesh and Pakistan moved to India. The issue of citizenship has been discussed in the Constitution of India, in the Citizenship Act, 1955.

The Constitution explains who Indians are as of the date of 1950, which was applicable only to ancestral Indians. But provisions for people after 1950 elucidated who will become Indian citizens after 1950, how a person can now get citizenship of India and how a person can later acquire citizenship are all discussed in the Citizenship Act of India, 1955.

Purposes of the Citizenship Amendment Bill, 2019.

The Citizenship Amendment Bill amends the procedure of acquiring citizenship in India.

Firstly, it changes the definition of illegal immigrants.

- Previously, it defined an illegal immigrant as a foreigner who:
 - i) enters the country without valid travel documents;
 - ii) stays beyond the permitted time period.

But the act is amended by the Citizenship Amendment Bill, 2019. Anyone who has migrated from Afghanistan, Pakistan, or Bangladesh and is a member of the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community is no longer an illegal immigrant. The process of acquiring citizenship has been defined. *Previously*, according to the Citizenship Amendment Bill, a person who migrated from any country had to stay in India for 11 years before becoming a citizen. But the act is amended by the Citizenship Amendment bill, 2019 and says anyone who is from Afghanistan, Pakistan, or Bangladesh and belongs to the community of Hindus, Sikhs, Buddhists, Jain, Parsi, and Christians has to stay in India for 5 years in order to get citizenship, and as per this act, the date of December 31st, 2014 is given.

PROBLEM # 1

Why only 3 countries were chosen and why these particular 6 communities?

These three countries' constitutions declare their countries to be Islamic states, and these six communities are the minorities in these countries who are being prosecuted as a result. People who migrated from Bangladesh migrated to Assam. People who migrated from these countries

started creating fixed assets. Gradually, the refugee population became higher than the original residents. From the time of 1948, that is, the partition of India and Pakistan, till the 1971 formation of Bangladesh, lakhs of people migrated. At that time of state reorganisation, the North-Eastern people were very much concerned about their culture, ethnicity, and tribal due to which, like Jammu and Kashmir, North-Eastern states have also been provided special status like Schedule 6 and Inner line passes, etc.

Assam's MP, *Hira Lal Patwari*, died due to which re-elections had to take place. It was noticed that Assam's voter's list had hiked up, meaning the number of refugees had numerously increased. Elections were cancelled. Student unions started protesting and asked the government to tackle the problem by detaining and deporting them to their original country. This *Assam Andolan* lasted from 1979-1985 and hence resulted in the *Assam Accord in 1985*. According to the *Assam Accord, 1985*, any person who migrated to Assam after March 24th, 1971, will not be considered a citizen and will remain an illegal immigrant. To fulfill this Accord, the NRC was implemented, and 19 million immigrants were discovered. The Citizenship Amendment bill, 2019, says any person who has migrated from Afghanistan, Pakistan, and Bangladesh and belongs to the community of Hindus, Sikhs, Buddhists, Jain, Parsi, and Christians will be considered a citizen and will not be listed as an illegal immigrant.

CONCLUSION

Protest is the only way for people to express themselves, and it can never be avoided because people are diverse in nature and hold different ideologies. However, if we focus on the pros of the acts, we can avoid protests. Also, if we see the dark side of violent protest, we can completely avoid such ugly scenarios, even the Supreme Court in the judgement argued with the farmers who were asking Jantar Mantar to protest, there are also some simpler ways to resolve such issues. These all measures can be taken to resolve such unnecessary protests and hence, the peace and harmony of the country as a whole can be maintained.

- Since protests are lawful only when they take place peacefully and without arms as per Article 19(1) (a)(b)(c) of the Indian constitution, where on one hand the constitution gives

the right to Indians to protest, on the other hand, Article 19(2)(3) (4) also put the bar on public protests which can be used to hinder protests which violate the integrity and peace of the nation.

- As per *Article 19(2)(3)(4)*, nothing in *Article(19)(1)(a)(b) or (c)* should affect the operation of existing laws as well as should not hinder in making of any new law.
- *Article 51(a)* which is the fundamental duty can also be used as a tool to avoid violent protests.
- The right to protest is a fundamental right but it does not mean that malpractice does not have any punishment. There are certain acts and provisions which penalise unlawful protests.
- Any act of citizen acting on behalf of *Article 19(1)* if violates beyond the article itself such that the integrity, sovereignty, or international relations of a nation gets affected then that act is unlawful and hence is punishable.
- The provisions from *Criminal procedure code section 190(a), Police act 1861, and Indian penal code 1861 section 141-149*, can be used to hinder or avoid such dissent kind scenarios in India.
- If the government puts effort into elaborating their new amendments then maybe the protests can be avoided also people should be made more aware of their fundamental duties like they are aware of their rights.