ISSN 2582 - 211X

LEX RESEARCH HUB JOURNAL

On Law & Multidiciplinary Issues

Email - journal@lexresearchhub.com

VOLUME I, ISSUE III

JUNE, 2020

https://journal.lexresearchhub.com

Lex Research Hub Publications

 ISSN : 2582– 211X

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CONSTITUTIONALITYOF BANDHS AND HARTALS IN INDIA

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ISSN : 2582– 211X

ABBREVIATIONS

ABBREVIATION	FULL FORM
&	And
SC	SC
HC	High Court
SCC	SC Cases
Anr.	Another
Ors.	Others
Acc.	According
UOI	UOI
v.	Versus
AIR	All India Report
Art.	Article
Govt.	Government
Ltd.	Limited

 ISSN : 2582– 211X

The force of public opinion cannot be resisted when permitted freely to be expressed. The agitation it produces must be submitted to. – *Thomas Jefferson*

ABSTRACT

The idea of *bandhs* can be traced back to the concept of *Hartals* which was primarily propounded by Father of our Nation- Mahatma Gandhi to raise voice against any sort of injustice being inflicted upon innocent Indians by Britishers. According to liberal political scientists *Bandhs* can be defined as lawful political protest against arbitrary and unlawful activities of government. But in todays' fast paced opportunistic world *Bandhs and Hartals* are primarily used by political stakeholders to meet their own political interests in the veil of public interests. This shows that it has no longer remained as a mode of expression but is primarily concerned with the activities which results into massive destruction.In this context, there are catena of judicial pronouncements which discusses the constitutional validity of the *Hartals* and *Bandhs* which are stated in the subsequent part of research paper.

INTRODUCTION

Freedom is my birth right and I shall have it, were the words of Bal Gangadhar Tilak. Since 17th century human thinking is primarily working on a pre conceived notion that man has certain essential, basic, natural and inalienable rights or freedoms and it is the function of the state to ensure the protection of human liberty so that the ideals of democratic life can be promoted. According to John Locke, man is born with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law to Nature and he has by nature a power to preserve his property- that is, his life, liberty, and estate, against the injuries and attempts of other men.[1] Since, ages individuals have fought for the attainment of the very notion of liberty. The Declaration of the French Revolution, 1789, was inspired by the Lockeian's philosophy of natural and inalienable rights of man which later became the concrete political statement on Human Rights.

[1]Extracts from Locke, Two Treaties of Government

The modern trend of guaranteeing FR to the people may be traced to Constitution of USA drafted in 1787. The original constitution did not contain any Fundamental right. There was trenchant criticism of the constitution on this score. Consequently, the Bill of Rights came tobe incorporated in the Constitution in 1791 in the form of ten amendments which embody the Lockeian ideas about the protection of life, liberty and property.[2] The concept of FR as enforceable rights have been internationally recognized in Charter of Human Rights. The Indian constitution guarantees essential human rights in the form of FR under Part III from Article 12 to Article 35. The freedoms enshrined in part III have been liberally construed by the Indian judiciary in the last half of a century. References may be made in this connection *inter alia* to landmark SC cases as Maneka Gandhi[3], Indra Sawhney[4], Asiad[5] cases. In **Ajay Hasia v. Khalid Mujib[6], Bhagwati J**, has observed

It must be remembered that the FR are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by narrow and constricted judicial interpretation.

Article 19 confers six fundamental freedoms to its citizen. The most important of it is enshrined in Article 19(1)(a) which deals with freedom of speech and expression. It was quoted in **Prof. Manubhai D Shah**[7] that

Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feelings to others. Freedom of Speech and Expression is thus a natural right which a human being acquires on birth. It is, therefore, a basic human right. Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers.

In long more than hundred years of struggle for independence Indians used the techniques of *Hartals, Dharna* and *Chaka Jam* to show their dissent, protest and resentment against British rule.

[2] B Bailyn, Ideological Origins of the American Revolution, (1967)
[3] Maneka Gandhi v. UOI, AIR 1978 SC 597
[4] Indra Sawhney v. UOI, AIR 1993 SC 477
[5] People's Union for Democratic Rights v. UOI, AIR 1982 SC 1473
[6] Ajay Hasia v. Khalid Mujib, AIR 1981 SC 487 at 493
[7] LIC v. Prof Manubhai D Shah, 1992 SCR (3) 595

But in modern fast paced world certain so-called stake holders of the society have used these techniques to spread distress against the lawful government which at times may hampers the lawful functioning of the society *per se.* Consequently, the Indian judiciary in catena of case laws have discussed the constitutionality of *Bandhs* and *Hartals*.

LITERATURE REVIEW & METHODOLOGY

For the purpose of research, doctrinal methodology of analysis is adopted wherein utmost importance is given to primary sources of law having authoritative value. Meaning to say, law laid down in catena of judicial pronouncements and the provisions of constitution are adhered to. This systematic study will look into the constitutional validity of *hartals* and *bandhs.*

HYPOTHESIS

Through this paper the researcher want to analyse that whether imposition of *hartals and bandhs* which are violent and take aggressive turn are infringing the FR of the citizens. Secondly, whether *hartals and bandhs* be justified as a medium of expression. In order to seek the solutions of above stated issues an assumption is made that *bandhs* and *hartals* are unconstitutional. This assumption is justified in the later part of research paper.

HARTALS AND BANDHS

The strike tactic has a very long history. Towards the end of 20th dynasty under Pharaoh Ramses III in ancient Egypt in the 12th Century BC, the workers of the royal necropolis organized the first known strike or worker's uprising in history. The use of the word "strike" in this sense that it is how understood first appeared in 1768, when sailors, in support of demonstrations in London, "struck" or removed the topgallant sails of merchant ships at port, thus crippling the ship[8].Similarly, Indian freedom fighters used the tactics of 'dissent', 'protest' and 'resentment'

[8]Journal of the National Human Rights Commission Vol. 7, 2008, 11-22

against the Britishers to show their dissatisfaction against the colonial rule. In the century long struggle for independence in India, several non-violent and even violent protests by Indians against their foreign rulers were organized, deemed necessary and considered legitimate today. In industrial relationship, resort to strike was recognized as a legitimate tool in the hands of workers against their employers. It was held to be a legitimate right of workers for a 'collective bargaining'. Violence during strikes in industry has always been treated to be an offence which is held to be punishable.*Hartals* were once organised by Mahatma Gandhi ji to protest against the atrocities in the name of excessive taxes or discriminatory laws by the British government. But in today's environment *Bandhs* (sharing the same origins as Hartals) are often exploited by several parties to meet their political or social ends/ideologies, more than often taking a violent turn for worse, leading to physical, economic and social losses. Widespread destruction and coercion makes us ponder and puts forward a question whether such *Bandhs and Hartals* be permitted in the name of medium of expressions?

HARTALS

The expression *Hartal* is of Indian origin and according to Chambers 20th Century Dictionary, it means 'a temporary cessation of commercial activity especially as a type of organised passive resistance'. A *Hartal,* can be understood as a legitimate form of protest, express dissent, signification of mourning or expressing solidarity. But one must not forget that it should be peaceful and should not propagate or instigate violence. In late 19th century when Irish tenants oppressed with the rent collection policies of Captain Charles Boycott (a British land agent) isolating him socially and economically by refusing to work on his land, it was then the term 'Boycott' finds its origin. Boycott can be understood as a form of protest or punishment against an individual, organisation or a country by withdrawing trade, commercial or social relations. When employees stop or slow down the work as a form of protest, thus setting in motion a boycott against their employer it is referred to as a strike. As per the law in England a boycott is legal as long as it is not accompanied with violence. As per the ruling by the Supreme Court of USA, a boycott is deemed illegal if it results in restraint of trade.

CONSTITUTIONALITY OF HARTALS

According to Abraham Lincoln, "Democracy is the rule of the people by the people and for the people". Thereby, it can be conferred that in democratic society, sovereignty lies in the hands of people and therefore peaceful strikes or *hartals* are the legitimate weapons with unarmed people against their own elected government. From this it can be construed that peaceful demonstrations can be used as a medium of exhibition of feelings for or against the individual or a group. It is thus a communication of one's ideas to whom it is intended to be conveyed. It is in effect therefore a form of speech and expression because speech need not be vocal since signs made by a dumb person also be a form of speech[9]. Howbeit, freedom of speech and expression do not confer any absolute or unconditional right. Each right is subjected to reasonable restriction which the government may impose in public interest. Consequently, in order to avoid arbitrariness certain restrictions are imposed with the intent to achieve the indispensable objective of social welfare. The word restriction includes prohibition. Under certain circumstance, therefore, a law depriving a citizen of his fundamental right may be regarded as reasonable.[10]

As early as 1960s the Constitution Bench of the Apex Court in **Kameshwar Prasad v. State of Bihar**[11]had occasion to consider the ambit and scope of Arts. 19(1)(a) and (b) with respect to right to carry on demonstrations and strikes. Before the Apex Court, the validity of Rule 4-A introduced into the Bihar Government Servants' Conduct Rules, 1986 was under challenge. Rule 4-A which came for consideration is to the followingeffect:

4-A. - Demonstrations and strikes- No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions ofservice.

The Apex Court in the above context examined whether demonstration is covered by Art.19(1)(a) or (b) of the Constitution. The Apex Court in para13 laid down that*demonstration is a means of communication and so long it is demonstration which*

[9]Kameshwar Prasad v. State of Bihar (1962) Supp 3 SCR 369
[10]Papnasam Labour Union v. Madura Coats Ltd. (1995) 1 SCC 501
Narendra Kumar v. UOI, AIR 1960 SC 430
[11]AIR 1962 SC 1166

is the form of speech and expression, the same is protected by Art.19(1)(a) or (b). However, it was laid down in the same judgment that when demonstration becomes disorderly and violent, the same shall not be within Art.19(1)(a) or (b). In **Himat Lal K Shah v. Commissioner of Police**[12]it was observed that *government has power to regulate but it doesn't mean that government can close all the streets or open areas for public meeting. The right to assembly and peaceful agitations are basic features of democratic system*[13]. Later, in **All India Bank Employees Association v. National Industrial Tribunal**[14] the SC rejected the contention that right to 'form associations' guaranteed by Article 19(1)(c) carried with it a concomitant right to strike. The SC observed that*to read each guaranteed right as involving the concomitant right necessary to achieve the object which might be supposed to underline the grant of each of such rights for such a concomitant would, by ever expanding circles in the shape of rights concomitant to concomitant right and so on lead to an almost grotesque result.* In **Kerala Vyapari Vavasayi Ekopana Samithi v. State of Kerala**[15]while dealing with the issue that whether the calling for a *hartal* and the holding of it constitute infringes the fundamental right of the petitioners therein under Article 19 and 21 of the Constitution of India along with DPSP and Fundamental Duties enshrined in Article 51A of the Constitution and whether the declaration of *Hartals* and closure of establishments is taking the shape of *Bandhs.*

Justice Balasubramanyan, observed that

(i) *Mere calling of a hartal or advocating it as understood in the strict sense, cannot be held to be objectionable. But the moment it comes out of the concept of hartal, strictly so-called and seeks to impinge on the rights of others, it ceases to be a hartal in the real sense of the term and actually becomes a violent demonstration affecting the rights of others.*

(ii) *Indulging in destruction of public and private property and causing loss of production and holding the society to ransom in the name of staging a hartal cannot be considered to be a constitutional act based on rights conferred by the very Constitution. The expenditure to be incurred by the executive to mobilize sufficient force to meet every hartal call cannot also be ignored. No party or organization can have a right to compel*

[12]1973 AIR 87
[13]Ramlila Maidan Incident, 2012
[14]AIR 1962 SC 171
[15] AIR 2000 Ker 389

incurring of such non-productive expenditure merely because they feel like calling for a hartal. There is no such freedom in anyone guaranteed by the Constitution.

(iii) Therefore the stand of respondents that they can continue to call for and enforce hartals as part of their right either to demonstrate support or for achievement of their objects, cannot be accepted in that form especially in the context where the enforcement of it or calling of it, involves impairment of the rights of others similarly situated.

(iv) There cannot be any doubt that forcibly compelling an individual or a group of individuals to participate in a general strike or to join a hartal would amount to interference with the rights of those persons equally safeguarded by the Constitution. It is therefore clear that those who call for hartal cannot take shelter behind the plea that hartal was only a legitimate weapon of mass protest and at the same time create an atmosphere of physical and psychological fear so as to compel others to toe the line or to prevent them from exercising their rights

(v) Further, no political party or organization has a right to create a blockade of municipal office so as to prevent people from going to these offices for attending their business. Even not allowing private vehicles to ply on the roads on the day of hartal by the political party or organization would also be improper.

Members of Legislative bodies (no matter their political affiliation) have the responsibility to uphold the law and safeguard it under any given circumstances. Enforcing this belief, in the same case Kerala HC observed that complaints can be registered against such political parties which are proprietor of violence in the name of *hartals, bandhs or chaka jams.* Such complaints are to be registered by Election Commission of India under Section 29 A (5) of Representation of the Peoples Act. After following the due process and a fair trial if found guilty the Election Commission is authorized to take a decision to cancellation of registration of the guilty political party. It is pertinent to note that *hartals or bandhs* are voluntary in nature, thus the organization calling for *hartals, bandhs or chaka jams* has no right to enforce it and any use of force or intimidation (physical/ mental) is deemed unconstitutional.

DIFFERENT FACETS OF HARTAL

HARTAL BY GOVERNMENT OFFICIALS

As regards government servants, the judicial view appears to be that while banning demonstrations by them is not valid, a strike by them can be validly prohibited. In the instant case of **Kameshwar Prasad** the government justified the rule as being in the interests of 'public order'. Nevertheless, the *Court declared the rule bad as it banned every type of demonstration howsoever innocent and didn't confine itself to those forms of demonstrations only which might lead to a breach of public tranquillity, or would fall under the other limiting criteria specified in Article 19(2). However, the rule was not held bad in so far as it prohibited a strike, for there was no fundamental right to resort to strike*[16]. In **OK Ghosh v. EX Joseph**[17], a disciplinary rule prohibited government servants from participating in any demonstrations was declared invalid. The court emphasized that the rule could be valid if it imposed a "reasonable restriction" in the interests of public order. The court did however emphasize that government servants are subject to the rules of discipline which are intended to maintain discipline among them and to lead to an efficient discharge of their duties. The above stated principle has been reiterated by court in **Radhey Shyam v. PMG**[18] wherein it was observed that going on prohibited strikes is illegal and punishable with imprisonment. The provision (authorizing central government to prohibit any strike in any essential service in the public interest) was declared valid as it didn't curtail freedom of speech and there was no fundamental right to go on strike. In the case of **T. K. Rangarajan v. Government of Tamil Nadu**[19] the two-judge bench of the SC, while pronouncing on legality of the mass strike of government employees in Tamil Nadu, which resulted in almost paralyzing the government, went to the extent of saying that there is no legal, moral or equitable right with the government employees to go on strike.

The decisions in T. K. Rangarajan's case gave rise to a lot of debate and criticism of the views expressed by the SC. Lawyers, jurists and former judges criticized the decision and sought its

[16] *Supra* note 11
[17] AIR 1963 SC 812
[18] AIR 1965 SC 311
[19] AIR 2003 Vol. 6 SCC 581

review by a larger bench, saying that the right to resort to non-violent strike is a valuable right not only in an industrial or master and servant relationship but is the only legitimate and effective weapon in democracy for people without arms against unjust decisions or actions of the government and its various organs. The critics contend no doubt that during strikes, others who are not party to it have to suffer and many times right to strike is being misused, but for that reason non-violent strikes cannot be condemned as unethical or immoral. Critics also say that in the earlier decisions of the SC in industrial disputes and industrial matters, the right to strike has been recognized in these words:- *In the struggle between the capital and labour, the weapon of strike is available to labour and is often used, as is the weapon of lock out available to the employer and can be used by him.*

HARTAL BY ADVOCATES

The SC of India, rather the entire judiciary is probably the strongest in the world and it has an impressive index of delivering verdicts that display a rare jurisprudential vision irrespective of the fact whether such pronouncements have mass appeal or not. This is the uniqueness of the Indian judicialsystem. The question of strikes by advocates was discussed by SC in number of cases.

In **Ex-Capt. Harish Uppal v. UOI**[20] the SC in para 20 very lucidly *per curiam* held that - *It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. He cannot refuse to attend court because a boycott call is given by the Bar Association. It is unprofessional as well as unbecoming for him to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. The courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. It is the duty and obligation of courts to go. If the lawyers participate in a boycott or a strike, their action is ex facie bad in view of the decision in **Mahabir Prasad Singh case**[21]*. The advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on ground of a strike call. Thus, they have no liberty to jeopardise the welfare of their clients. On such an embargo being put upon the advocates to go on strikes, the question arises that how can they show a

[20]2003 (2) SCC 45
[21] Mahabir Prasad Singh v. Jacks Aviation (P) Ltd. (1999) 1 SCC 37

dissatisfaction towards a particular act. Then it has been suggested that protest if any required can only be given by press statements, TV interviews etc.In this context the statement made by **Hon'ble RP Sethi, J**. in **RD Saxena v. Balram Prasad Sharma**[22] on legal profession is worth noting,*A social duty is cast upon the legal profession to show the people beckon light by their conduct and actions. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional. An advocate is expected at all times to conduct himself in a manner befitting his status as an officer. Creation of such a faith and confidence would not only Strengthen the Rule of Law but also result in reaching excellence in the profession.*

HARTAL BY COLLEGE STUDENTS

In the case of **Kerala Student Union v. Sojan Francis**[23]the issue which was of utmost importance was, whether educational Institution or the Principal, as the case may be, lay down Code of Conduct by which they could prohibit activities indulged in by various students organizations like SFI, ABVP, KSU etc. within the campus and whether such prohibition would amount to violation of Art. 19(1)(a) and 19(1)(c) of the Constitution of India, so far as those students organizations and their member students are concerned. Thus, the legality of prohibiting all sorts of strike, dharna, gheraos, hartal etc. within the campus is to bedecided. (para 17)

While dealing with the above stated issues **K.S. Radhakrishnan, J.** observed thatArt. 19 of the Constitution of India is not a *carte blanche* enabling any citizen to exercise a fundamental right so as to encroach upon similar rights guaranteed to othercitizen. While interpreting the guidelines with respect to constitutional provision the court reproduced an excerpt from *Sojan Francis's case*[24]

We are of the view, guideline (9) banning political activities within the campus and forbidding the students from organizing or attending meetings other than the official ones within the campus is not designed to prohibit any of the FR of the students guaranteed under Art. 19(1)(a) or 19(1)(c). It is not a total prohibition of any

[22] (2000) 7 SCC 264
[23](2004) 2 KLT 378
[24]Sojan Francis v. M.G. University, 2003 (2) KLT 582

fundamental right, but only a reasonable restriction confined to college campus and the code of conduct cannot be flouted in the name of any other freedom or the rights guaranteed under Art. 19(1)(a) or 19(1)(c). Once students are admitted to an educational institution, they are bound by the code of conduct laid down by the educational institutions through the prospectus or college calendar and it is implicit that they should observe the code of conduct necessary for the proper administration and management of the Institution. Restrictions are only reasonable and designed to promote discipline in the educational institution so that the objectives of the educational institution could be achieved and wisdom of laying down those restrictions cannot be challenged by the student after getting admitted to the educationalinstitution. (para 18)

Therefore, it can be inferred that administrative department of educational institutions have the authority to issue certain rules and regulations which can act as reasonable restrictions on the activities of the students so much so that their welfare can be ensured. Hence, such restriction is not violative of Art. 19(1)(a) or (c) of the Constitution of India.

INTERNATIONAL PERSPECTIVE ON RIGHT TO STRIKE

Article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that States party to the Covenant shall undertake to ensure

The right to strike, provided that it is exercised in conformity with the laws of a particular country

India is a signatory to the Covenant and is therefore bound to provide Right to strike as enshrined in Article 8(1) (d) of ICESCR, through legislative measures or by other appropriate means. Thus, the Industrial Disputes Act regulating relationships of management with labour is a democratic law fully in tune with ICESCR. Non-violent strikes in democratic country by various sections of people against the action of government, their departments or wings or limbs should be allowed but such a right needs to be regulated by suitable law in a way as to allow people to adopt non-violent

methods of expressing protest, dissent, criticism or opposition to the unjust and illegal acts of those in power and at the same time save common man from being coerced or harassed by the strikers.

In the case of **Proper Channel, Ekm & Ors v. Managing Director, KSRTC Bhavan Anr.**[25]Kerala State Road Transport Corporation (KSRTC) requested for the compensation of Rs.8,21,41,445/- from government of Kerala, which the former alleged to lose by way of loss of revenue due to the four days long *hartal* organized by political parties. After scrutinizing the facts of the case, **A.M. Shaffique, J**was of view,*there cannot be any doubt that any person suffering a loss on account of an illegal act is liable to be compensated for the loss suffered on account of such action or inaction.*Howbeit, in the present case KSRTC didn't made much efforts to demand compensation from concerned authorities and the court under article 226 does not have the jurisdiction to issue appropriate writ/order/judgement directing the organizers of *hartal* to pay compensation.

BANDH

Bandh having its roots of origin in Hindi, literally means to close or to stop. It is in wider context considered as a form of protest in which businesses, schools, institutions etc are closed for a duration of time. Though it might also be an act of solidarity or show of respect. *Bandhs* played a crucial role in the Indian freedom struggle in the form of civil disobedience, eventually helping India gain its freedom.

In order to understand the validity of imposition of *bandhs* there is a need to understand the distinction between *bundh* and *hartal*. The apex court had pointed out that a *bundh* involved coercion of others into toeing the line of those who called for the bundh and usually involves the violation of the rights of others. While *hartal* is viewed as a peaceful act of non-co-operation or a passive resistance movement and a call for it do not involve coercion of a person who did not want to join the *hartal*.

[25](2014) 4 KLJ 291

BANDHS ANDINFRINGEMNT OF FUNDAMENTAL RIGHTS

Though *Bandhs* are supposed to be nonviolent and a silent form of dissent but more often than not they take a violent form, with chaos in the area, hooligans and vandals forcefully closing down establishments and destruction of both public and private property. Leaving the common citizens in the state of exasperation and horror, fearing for their lives and property only to fulfil the ulterior motives of the parties organising *Bandhs.*Thus, leading to complete close and inconvenience. Thereby, infringement of indispensable rights of the citizens. In this context reference can be made to the case of **A.K. Gopalan v. State**[26] wherein it was stated that theright to move about, of free locomotion, is a fundamental right protected by Art. 19 ofthe Constitution. As in case of *bandhs* no individualis allowed to move freely thus infringing Article 19.

Also, right to use the public roads as a fundamental right was recognised in **Saghir Ahamad v. State**[27]. Since, during *bandhs* the entire life comes to a stand-still and no individual is allowed to use roads in this sense it can be said that imposition of *bandhs* is violation of the above stated judgement. In **Rupinder Singh v. UOI**[28] , ***Satwant Singh*** **v.** ***A.P.O.*****, New Delhi**[29]and**Maneka Gandhi v. UOI**[30] the hon'ble court upheld the right to travel abroad andtherighttolocomotionasFRguaranteedunderArticles19and 21 of the Constitution. Due to the imposition of *bandhs* an individual cannot go to airport to travel abroad thus violation of rights safeguarded by constitution.

When a 'bundh' is called no locomotion is possible and consequently no student can go to school therefore right to education, at least at the elementary level is violated. Right to medical treatment is protected by Art. 21 of the Constitution as held in **Parmanand Katara v. UOI**[31], and in **Paschimbanga Khet Mazdoor Samiti v. State**

[26]AIR 1950 SC 27
[27]AIR 1954 SC 728
[28]AIR 1983 SC 65
[29]AIR 1967 SC 1836
[30]AIR 1978 SC 597
[31]AIR 1989 SC 2039

of West Bengal[32]. Due to *bandhs* no vehicle can be put on the road, no patient can go to his doctor thus violation of Article 21 of Indian Constitution.Hooligans and vandals attack and damage both public and private vehicles and properties. These conditions also act as an opportunity for anti-social elements, who indulge in looting and destruction. Even in the case when there is no direct violence or destruction, people have a bigger psychological turmoil/fear of the consequences of non-participation in *bandhs*. Violations of Article 19 and 21 of the Indian Constitution also takes place as transportation is stopped, business establishments are closed, citizens fear for their life and property among other hardships.With reference to **Kharak Singh v. State of U.P.**[33] it can be said that not merely physical prevention but even a psychological restriction would be a restriction of the fundamental right of a citizen. In this decision, hon'ble court at pp.1305-06 observed -

So also, creation of conditions which necessarily endanger exhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachment on his private life. We would therefore, define the right of personal liberty in Art. 21 asa right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are already imposed or indirectly brought about by calculated measures.

In this context it is worth noting the judgement of **James Martin v. State of Kerala**[34] wherein the apex court in para 19 observed that

It needs to be noted that in the name of hartal or bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty, property of any citizen or destruction of life and property, and the least any Government or public property. Those who at times

[32](1996)4 SCC 37: 1996 AIR SCW 2964
[33]AIR 1963 SC 1295
[34]2004 [1]KLT 513

may have even genuine demands to make should not lose sight of the overall situation eluding control andreaching unmanageable bounds endangering life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all around destruction with counter-productive results at the expense of public order and public peace. No person has any right to destroy another's property in the guise of bandh or hartal or strike.

Thus, from the above series of judgements it can be conferred that imposition of *bandhs* violate the cardinal rights of the citizens. Since, these violent demonstrations tend to jeopardize the life, liberty and property of individuals it is essential to take strict actions which can act as a deterrent and are not practiced under the veil of freedom of speech and expression.

CONSTITUTIONALITY OF BANDHS

The first landmark decision on constitutionality of *bandhs* was given by full bench of Kerala HC comprising of **K.G. Balakrishnan, P.K. Balasubramanyan and J.B. Koshy,JJ**in the case of **Bharat Kumar K. Palicha v. State of Kerala**[35].

The full bench decision of Kerala HC in the case of Bharat Kumar was affirmed *in toto* by SC in **Communist Party of India v. Bharati Kumar anrs.**[36]which had **JS Verma, CJ and BN Kirpal and VN Khare, JJ** as judges.

The full bench judgement of the Kerala HC which was subsequently affirmed by the SC laid down the law in the para 12, 13, 17 and 18

12. It is true that there is no legislative definition of the expression 'bundh' andsuch a definition could not be tested in the crucible of constitutionality. But, doesthe

[35] AIR 1997 Ker 291
[36] 1998 (1) SCC 202

absence of a definition deprive the citizen of a right to approach this Court to seek relief against the bundh if he is able to establish before the Court that his FR are curtailed or destroyed by the calling of and the holding of a bundh? When Article 19(1) of the Constitution guarantees to a citizen the fundamental rights referred to therein and when Article 21 confers a right on any person — not necessarily a citizen — not to be deprived of his life or personal liberty except according to procedure established by law, would it be proper for the Court to throw up its hands in despair on the ground that in the absence of any law curtailing such rights, it cannot test the constitutionality of the action? We think not.When properly understood, the calling of a bundh entails the restriction of the free movement or the citizen and his right to carry on his avocation and if the Legislature does not make any law either prohibiting it or curtailing it or regulating it, we think that it is the duty of the Court to step into protect the rights of the citizen so as to ensure that the freedoms available to him are not curtailed by any person or any political organisation. The way in this respect to the Courts has been shown by the SC in Bandhua Mukti Morcha v. UOI[37].

13. It is contended that the Court cannot presume or generalise that the calling of a bundh always entails actual violence or the threat of violence in not participating in the bundh. The decision in Kameshwar Prasad v. State of Bihar, is referred to in that context. This theoretical aspect expounded by counsel for the respondents does not appeal to us especially since as understood in our country and certainly in our State, the calling for a bundh is clearly different from a call for a general strike or a hartal. We have already noticed that a call for a bundh holds out a warning to the citizen that if he were to go out for his work or to open his shop, he would be prevented and his attempt to take his vehicle on to the road will also be dealt with. It is true that theoretically it is for the State to control any possible violence or to ensure that a bundh is not accompanied by violence. But our present set up the reluctance and sometimes the political subservience of the law- enforcing agencies and the absence of political will exhibited by those in power at the relevant time, has really led to a

[37]AIR 1984 SC 802

situation where there is no effective attempt made by the law-enforcing agencies either to prevent violence or to ensure that those citizens who do not want to participate in the bundh are given the opportunity to exercise their right to work, their right to trade or their right to study.

17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent the citizens not in sympathy with its view point from exercising their FR or from performing their duties for their own benefit or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted asa legitimate exercise of a fundamental right by a political party or those comprising it.

18. The contention that no relief can be granted against the political parties in these proceedings under Art. 226 of the Constitution cannot be accepted in its entirely. Asindicated already, this Court has ample jurisdiction to grant a declaratoryrelief to the petitioners in the presence of the political party respondents. This is all the more so since the case of the petitioners is based on their FR guaranteed by the Constitution. The State has not taken any steps to control or regulate the bundhs. We are of the view that this Court has sufficient jurisdiction to declare that the calling of a 'bundh' and the holding of it is unconstitutional especially since, it is undoubted, that the holding of 'bundhs' are not in the interests of the Nation, but tend to retard the progress of the Nation by leading tonationallossofproduction.Wecannotalsoignorethedestructionofpublicand private property when a bundh is enforced by the political parties or other organisations. We are inclined to the view that the political parties and the organisations which call for such bundhs and enforce them are really liable to compensate the Government, the public and the private citizen for the loss suffered by them for such destruction. The State cannot shirk its responsibility of taking steps to recoup and of recouping the loss from the sponsors and organisers of such bundhs.

Therefore, as per the judgment given by Hon'ble SC it can be stated that declaration *bandhs* which lead to violent and mass destruction is unconstitutional and illegitimate. Somewhat similar opinion was also given by Patna HC in the case of **Ranchi Bar**

Association v. State of Bihar[38]where it wasruled that no party has a right to organize a bandh causing/compelling the people by force to stop them from exercising their lawful activities. The government is duty bound to prevent unlawful activities like bandh which invades people's life, liberty and property. The government is bound to pay compensation to those who suffer loss of life, liberty or property as a result of a bandh because of the failure of the government to discharge its public duty to protect them.

BROADCASTING OF NEWS RELATING TO BANDHS BY MEDIA HOUSES

The preconceived notion towards the imposition of *hartals and bandhs* is that they are constituted primarily to disseminate and for imposing the ideologies of organizers. Media is considered as the fourth pillar of democracy thereby, are duty bound to convey true and fair facts of any event which can affect the society *in rem.* However, media houses when get deviated from the very idea of "responsible journalism" they by covering the event in an unethical way tend to play an integral role in achieving the ideological objectives of so-called stake holders of the society (organizers of *hartals and bandhs).*

The question relating to non-publishing of news relating to *bandhs and hartals* was dealt by judiciary in the case of **S. Sudin v. UOI**[39] before **Ashok Bhushan, A.C.J. and A.M. Shaffique and A.K. Jayasankaran Nambiar, JJ**. wherein under para 38 and 39 it was observed

The media now-a-days is all pervasive and covering all aspects of life, good or bad. The object of media has been and is to bring to the notice of the people in generalinformationornews,whichmayhelpthesocietytoeducateandtousethe information to unearth any offence, crime or illegality. It is common knowledge that any call for bandh or hartal widespread violence and destruction of property, both

[38]AIR 1999 Pat 169
[39]AIR 2015 Ker 49 (FB)

public and private, takes place, which facts and figures have been brought on record before us by both the parties. Now after amendments are made in the Indian Evidence Act, evidence in electronic form is also admissible. Media can be utilised to book those culprits who indulge in destruction of public and private properties and cause physical harm to the members of the society.

The court in order to arrive at the above stated legal position reproduced para 9 and 10 of **Harijai Singh, Re.**[40] wherein it was stated

9. It is needless to emphasize that a free and healthy press is indispensable to the functioning of a true democracy. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people, need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action.

10. But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by court of law.

The role of the media is to provide to the readers and the public in general with information and views tested and found as true and correct. This power must be carefully regulated and must reconcile with a person's fundamental right to privacy. Any wrong or biased information that is put forth can potentially damage the otherwise clean and good reputation of the person or institution against whom

[40](1996) 6 SCC 466

something adverse is reported. Pre-judging the issues and rushing to conclusions must beavoided[41].

CONTROL MECHANISM FOR BANDHS AND HARTALS

The SC had taken *suo motu* notice regarding various instances, where large scale destruction of private and public properties in the name of agitation/bandh/hartal was done. While initiating *suo motu* proceedings, the Apex Court constituted two Committees to look into all aspects of the matter. One of the Committees was headed by retired SC Judge, **Justice K.T. Thomas (K.T. Thomas Committee)**. Another Committee was headed by **Mr. F.S. Nariman**, a senior member of the legal profession **(Nariman Committee)**. Both the Committees went through all the aspects of the matter and submitted its reports to the Apex Court. The recommendations of the Committee have been reproduced by the Apex Court in its judgment reported in **Destruction of Public and Private Properties, in Re v. State of Andhra Pradesh[42]**. In paragraphs 6, 7, 8 and 9 of the judgment following wasstated:

6. The recommendations of the Justice Thomas Committee have been made on the basis of the following conclusions after taking into consideration the materials.

7. According to this Committee the prosecution should be required to prove, first that public property has been damaged in a direct action called by an organisation and that the accused also participated in such direct action. From that stage the burden can be shifted to the accused to prove his innocence. Hence we are of the view that in situations where prosecution succeeds in proving that public property has been damaged in direct actions in which the accused also participated, the court should be given the power to draw a presumption that the accused is guilty of destroying public property and that it is open to the accused to rebut such presumption. The PDPP Act may be amended to contain provisions to thateffect."

8.Next we considered how far the leaders of the organizations can also be caught

[41]Hindustan Times v. High Court Allahabad [(2011) 13 SCC155]
[42](2009) 5 SCC 212

andbroughttotrial,whenpublicpropertyisdamagedinthedirectactionscalledat the behest of such organizations. Destruction of public property has become so rampant during such direct actions called by organizations. In almost all such cases the top leaders of such organizations who really instigate such direct actions will keep themselves in the background and only the ordinary or common members or grass root level followers of the organization would directly participate in such direct actions and they alone would be vulnerable to prosecution proceedings. This flaw can be remedied to a great extent by making an additional provision in PDPP Act to the effect that specified categories of leaders of the organization which make the call for direct actions resulting in damage to public property, shall be deemed to be guilty of abetment of the offence. At the same time, no innocent person, in spite of his being a leader of the organization shall be made to suffer for the actions done by others. This requires the inclusion of a safeguard to protect such innocentleaders."

9. After considering various aspects to this question we decided to recommend that prosecution should be required to prove (i) that those accused were the leaders or office-bearers of the organisation which called out for the direct actions and (ii) that public property has been damaged in or during or in the aftermath of such direct actions. At that stage of trial, it should be open to the court to draw a presumption against such persons who are arraigned in the case that they have abetted the commission of offence. However, the accused in such case shall not be liable to conviction if he proves that (i) he was in no way connected with the action called by his political party or that (ii) he has taken all reasonable measures to prevent causing damage to public property in the direct action called by hisorganisation.

The Apex Court accepted the report of K.T. Thomas Committee and issued certain directions in paragraph 12[43].

12. To effectuate the modalities for preventive action and adding teeth to the enquiry/investigation, the following guidelines are to be observed:

(I) The organizer shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march orprotest;

[43] *Supra* at pt. 61

(II) Allweapons,includingknives,lathisandthelikeshallbeprohibited;

(III) An undertaking is to be provided by the organizers to ensure a peaceful march with marshals at each relevantjunction;

(IV) The police and the State Government shall ensure videography of such protests to the maximum extentpossible;

(V) The person-in-charge to supervise the demonstration shall be SP (if the situation is confined to the district) and the highest police officer in the State, where the situation stretches beyond onedistrict;

(VI) In the event that demonstrations turn violent, the officer-in-charge shall ensure that the events are videographed through private operators and also request suchfurtherinformationfromthemediaandothersontheincidentsinquestion;

(VII) The police shall immediately inform the State Government with reports on the events, including damage, if any, caused by the police;and

(VIII) *The State Government shall prepare a report on the police reports and other information that may be available to it and shall file a petition including its report in the High Court or the SC as the case may be for the Court in question to take suo motuaction.*

CRITICAL ANALYSIS

The Court, by declaring that *bandhs* violate FR and are hence unconstitutional, has apparently accepted the argument that FR are enforceable not only against the 'State', but also against private citizens. This is indirect contravention of the SC ruling in**Vidya Verma v. Dr. Shiv NarainVerma**[44] where the Court declared that the FR guaranteed in PartIII of the Constitution serves protection only against State action. It was the contention of the petitioners that a *bandh* called for and enforced by a political party violates their FR enshrined under Articles 19 and 21. It is submitted that the Courts, by upholding the contention of the petitioners, has ignored past decisions of the SC which have held that the rights guaranteed under Part III of the

[44]AIR 1956 SC 108

Constitution are available only against 'stateaction'. Since political parties, which consist of private citizens, are not 'state' for the purposes of Article 12, their actions do not constitute 'State Action' for the purposes of Part III of the Constitution and thereby, cannot violate the FR of citizens enshrined in the same. The Court, in arriving at its decision, made a fundamentally flawed assumption that all *bandhs and hartals* imply a threat to all citizens, that any failure on their part to honour the call would result in damage to life or property.The Court has passed a blanket ban on all *bandhs and hartals*, disregarding the fact that *bandhs and hartals*areessentially an expression of discontentment and protest, and that violence is neither inherent nor always pre-planned. In failing to distinguish between justified and unjustified *bandhs and hartals*, the Court has effectively destroyed a perfectly legal method of political protest, so essential in a democraticsociety.

CONCLUSION

During the century long struggle for independence of India, freedom fighters used both violent and non-violent methods to show their disaffection against British rule. Among all these methods, *hartals and bandhs* are considered to be the most effective. Various materials including the work on Gandhiji, "Rashtrapithavu" by Sri. K.P. Kesava Menon and published by Mathrubhumi Printing and Publishing Company recognize hartal as a weapon that was continuously used during the independence struggle. But in independent India, we must notice that it may have no place when the result of it is destruction of national property and loss of national production, national income and individual and national loss.

While it is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place certain curbs on this freedom for maintenance of social and public order. Accordingly, founding fathers of Indian Constitution under Article 19(2) mentioned certain restrictions which are required to be adhered to in the "interests of the security of the State", "friendly relations with foreign States", "public order", "decency", "morality", "sovereignty and integrity of India" or "incitement to an offence". The expression "in the interest of" used in Article

19(2) can be interpreted in the widest way possible so much so that there exists a harmonious balance between the rights granted to an individual under article 19(1)(a) and welfare of the society.A glance at the grounds contained in Article 19(2) goes to show that they are all conceived in national interest or in the interest of society[45]. Therefore, in the name of hartal or bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty, property[46].

[45]Farooq Ahmad Bhat v. State of J&K 2018 SCC J&K 609, Tashi Rabstan, J
[46]*Supra* pt. 52