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RIGHT TO PROTEST IN INDIA

Author –

Preet Lakhera

Student (BBA LLB)

Fairfield Institute Of Management And Technology, Affiliated to GGSIPU

ABSTRACT

This paper basically analyses on the emerging issue of right to protest and its norms. From 1972 Andhra movement to, anti-corruption protest by Anna Hazare in 2011, to 2012 Nirbhaya protest to ensure women safety and the current protest by the farmers. Protest is a fundamental right which can be exercised by any Indian citizen within the limit. Right to protest is a key element of democracy to bring the change and lead to development to country. Although there is a mass control by the digital world on the protest to provoke many people in wrong direction and fake news is the main reason for it. It is our as well as duty of the government to control the exercise of right and not to ensure that it is abused in the hand of wrong peoples.

INTRODUCTION

In any of the democratic nation, their people are the top most priority of the government just like in India, each and every person have fundamental right to peacefully protest. *Protest is basically a way of expressing disapproval or objection to any action*, statement or policy of government or any organization. It is to publically interrogate the government or organization about an action or policy. It gives people the right to raise their voices and express their feeling on any issue of social and national interest. The background of the Indians is formed by its anti-colonial struggle within which the seeds of political public sphere and democratic constitution were shown. Almost 75 year back when Britisher used to rule Indian citizens, general public have no right to raise their voices against them, and so after the independence Indians got their right by which citizens can raise their demands and voices. Just like after Independence we have witnessed Andhra movement in which people demanded new state for Telgu speaking people which result the formation of Andhra Pradesh or the anti- corruption protest by Anna Hazare in 2011, 2012 Nirbhaya protest to ensure women safety, 2019 protest against Citizen Amendment act or the current Farmers protest. Protests in India have continued and erupted amid social inequality, widespread poverty and crime, a state of neglect and a slow-moving legal system. In the absence of alternatives, protests have become a way of resolving grievances, a way of ensuring demand, a function of multicultural democracy and a form of freedom of speech and expression. Protests can be seen as the expression of a national conscience. They are alive and well, changing their forms, scales and sometimes, agendas. Clashes between these protests between police and protesters are not as common in a populous

country as India. Conflict is also expected when judicial and administrative procedures fail, people often take to the streets to administer some form of vigilant justice and punishment. A protest can be within a specific territory but it can affect the whole nation and sometimes even it can become an international topic. Just like protest across the united nation due to the death of George Floyd's by a police officer which somehow affected the whole world. People were angry due to which the protest didn't take time to convert into unlawful protest. It is critical to remember that all the protest are legal only if they are non-violent and carried out with appropriate permission. So that's how in every democracy, citizens can prevail some right so that they can raise their voice.

PROTEST- A FUNDAMENTAL RIGHT

Although the term protest is not written in the fundamental rights of the Constitution of India, it is based entirely on an in-depth reading of Article 19. Article 19 of the Indian constitution provides protection of certain right regarding freedom of speech under which article 19(1)(a) gives freedom to speech and expression, 19(1)(b) gives freedom to assemble peacefully without arms and 19(1)(c) gives freedom to form association or unions. Through these fundamental rights any Indian citizen can *protect, encourage and respect the protest* but cannot lead to an unlawful or illegal protest. Article 19 in itself is not an absolute right there are some of the restrictions on it, These reasonable restrictions are imposed 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. Article 51A also impose fundamental duty to the citizens to safeguard public property and to abjure violence. In ***Ramlila Maidan Incident v. Home Secretary, Union Of India & Ors***¹ the Supreme Court had stated, “*Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action.*”

In ***Maneka Gandhi v. The Union of India***², Justice *Bhagwati* stated that, ‘*if democracy means the govt. of the people, on the part of the people, it's obvious that every citizen must have the right*

¹ SUO MOTU WRIT PETITION (CRL.) NO. 122 OF 2011

² 1978 AIR 597, 1978 SCR (2) 621

to participate in the democratic process & allow him to intelligently exercise his rights to make a choice, a free & general discussion of public issues is absolutely essential.'

The protests help to strengthen India's democracy and allow for a peaceful assembly, which not only protects the rights of citizens, but also helps to bridge the gap. According to the court's view, the right to protest is an essential element of a free democracy to protect the interests of citizens.

WHY RIGHT TO PROTEST IS IMPORTANT?

Protests play an important role in the social, political, economic and cultural life of all communities. Historically, protests have often promoted positive social change and the advancement of human rights, and they continue to help define and protect the public sphere in all parts of the world. The protests promote the development of an engaged and knowledgeable citizen. They strengthen representative democracy by allowing for direct participation in public affairs. They enable individuals and groups to voice their grievances, to share their views and opinions, to expose flaws in governance and to demand that the authorities and other powerful organizations address problems and respond to their actions. This is especially important for those with well-represented or marginalized interests. The right to protest involves the exercise of many basic human rights, and it is essential for the protection of all fundamental rights. *Protest also somewhere helps to uphold the democracy.* It is natural for the government to come up with a number of policies from time to time for the benefit of citizens and for the betterment of the entire country. These policies are monitored by the people of the country and it may be possible for them to make suggestions for these policies. As a citizen is like a guardian of these policies, any error or omission of these policies can be remedied by them and can be resolved by peaceful demonstration. Even during the colonial period, various communities organized public rallies, dharnas, protests, etc. which marked the protests over the overthrow of the British Empire and the demand for independent India. On the other hand, the state needs to respect and deal with protests because the Constitution also requires that the state guarantee the fundamental right to freedom of speech and expression. However, the motive for the protest should not be encouraged by deliberately disrupting the normal functioning of the state. These protests help to strengthen India's democracy and allow for a peaceful crisis, which not only protects the rights of citizens, but also

helps to bridge the gap. According to the court's view, the right to protest is an essential element of a free democracy to protect the interests of citizens. The government must respect and, in fact, promote the exercise of these rights. It is the responsibility of the state to assist in exercising the right to freedom of expression as it is understood in its entirety and not to interfere with the exercise of that right by exercising its jurisdiction or the legislature or by adopting directives or taking measures to reduce that. Therefore, the right to protest is a key element of democracy to bring the change and lead to the development of the country.

LEGAL PROVISIONS AND AVENUE AVAILABLE TO POLICE RELATED TO PROTEST

Legal provisions available to police for handling agitations, protests and unlawful assemblies are covered under- Code of criminal procedure, Indian penal code and the police act 1861.

❖ **Section 129-132** of code of criminal procedure deals with-

- Dispersal of assembly by use of civil force
- Use of armed force in situation of civil unrest
- Protection against prosecution for act done under these sections

❖ **Section 141- 158** of Indian penal code, 1860 deals with-

- Unlawful assemblies
- Rioting, armed with deadly weapon
- Every member will be guilty of offence committed in prosecution of common object

*In Karam Singh v. Hardayal Singh*³, the Hon'ble Punjab & Haryana High Court held that three prerequisites must be satisfied before a Magistrate can order use of force to disperse a crowd:

- *First, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace.*
- *Second, an Executive Magistrate should order the assembly to disperse.*
- *Third, in spite of such orders, the people do not move away.*

³ 1979 CriLJ 1211

However in many of the cases we have seen police using their power beyond reasonableness. In *Superintendent Central Prison, Fatehgarh v. Ram Manohar Lohia*⁴, the Supreme Court held that *'public order' is synonymous with public peace, safety and tranquility*. The human reaction to the use of force is compelling and surprising given the current situation and the hype created by the media. More often than not, police have been accused of willful misconduct for known reasons, such as the Haryana Jaat reservation protest, the Gujjar riots in Rajasthan, and the 2012 Assam Violence, etc. When they use force at all, they tend to overuse it.

However there is no provisions in which it is stated that how much force can be used by police. In the case of *Commissioner Of Police And Ors. vs Manoj Sharma And Anr.*⁵, the Delhi high court ruled, *"Once law enjoins a duty upon an officer and gives him power to perform the duty, it gives enough discretion to the officer to take decisions necessary for the performance of his duty... Neither there is a golden scale of quantum of force to be used, nor can such a yardstick be laid down by the Courts. The quantum of force to be used has to be determined by the officer concerned, the Court cannot substitute its own opinion or decision about the quantum of force, which should have been used."* On the contrary, the Calcutta high court, in the case of *Association for Protection of Democratic Rights v. The State of West Bengal & Others*⁶ held *the police firing to be 'indiscriminate' even as, in terms of procedures, the police had fully complied with Regulations 150 to 154 of the Police Regulations, Bengal, 1943. The court held that the police firing could not be justified even under the provisions of the Criminal Procedure Code; the Police Act, 1861 or the Police Regulations, Bengal, 1943. In Anuradha Bhasin vs Union Of India*⁷, the Supreme Court reiterated that *power under Section 144 should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind so as to enable a judicial review of the same. While exercising the power under Section 144, the magistrate is duty-bound to balance the rights and restrictions based on the principles of proportionality and thereafter, apply the least intrusive measure. Repetitive orders under Section 144 would be an abuse of power. We must keep in mind that locking people up is, at best a temporary measure, and but not a solution of any problem. If the police have the 'will' to act and*

⁴ 1960 AIR 633, 1960 SCR (2) 821

⁵ Writ petition (C) 8533/2011

⁶ 2007 (4) CHN 842

⁷ 2019 SCC SC 1725

fulfill their constitutional obligations to maintain peace in the community, there is enough power in the law to enable them to do so effectively at anytime, anywhere. Yes, there are some areas in the law; however, with a good plan, in the worst cases, they can be blamed for a judicial error, not a deliberate mistake. All in all, there is no reason for police inefficiency under any circumstances.

RIGHT TO PROTEST IN DIGITAL ERA

In the age of modernization and digitalization social media or digital media plays a vital role. The concept of freedom of speech and expression not only exist through physical presence at the time of protest but can be done throughout digital platform. Gradually but little by little, *social media has become an important and compelling way to express themselves, to promote and, at times, to build public opinion*. A powerful tool for mass access, platforms that provide equal access to public space in the digital world, which is often used by millions of users to express their ideas. This practice, and now it is an obscure practice of expressing one's feelings on social media, has become so ingrained in our system that any inability to reach or express it is no longer tolerated. Digital technologies gives new chance and provocation to protest as a critical platform for enabling protest to take place and a medium for protest. Technological evolution have also reveal the intensify of the government to infringe and potentially violate human right in protest. Social media have tones of power to easily viral some news which can be deliberately use for some unlawful motive especially in today's world where a person can forward the new just by clicking a button. Just like fake news are getting more viral than the real news. During the current farmers we have seen many news related to the protest and some of them were fake and even *Delhi Police has registers 4 FIRs against social media accounts for spreading fake news*.⁸ Fake news not only spread fallacious fact but somehow they also provoke more and more people regarding to the new which can lead to massive riot and destruction during the protest. All the farmer unions taking part in the protest have jointly launched an IT cell to counter the fake, misleading and negative propaganda against them. At Singhu border (current farmers protest), a designated IT cell named as Kisan Ekta Morcha

⁸ Times of India, 3 Feb. 2021 (<https://timesofindia.indiatimes.com/india/farmers-protest-delhi-police-registers-4-firs-against-social-media-accounts-for-spreading-fake-news/articleshow/80673521.cms>)

(KEM) was launched. *The IT cell comprised of over 25 online and 35 offline volunteers. The cell has also created its Twitter, Facebook, Instagram, Snapchat and YouTube handles.*⁹

PROTEST AGAINST CITIZENSHIP AMENDMENT ACT AND NATIONAL REGISTERS OF CITIZENS –

The CAA (Citizenship Amendment Act) is an amendment to Indian national laws that will expedite the process of Indian citizenship for some immigrants. This practice applies only to persons from Pakistan, Afghanistan, and Bangladesh who migrated to India before 2015, and are Hindus, Sikhs, Christians, Buddhists, Jains, or Persians, even if they have entered the country illegally. Of India's major religions, Islam is the only one not to mention this act. The purpose of the bill is to make it easier for refugees and 'countless' people to become Indian citizens, as previously they had to stay in India for more than a decade in order to apply for citizenship and there was no legal process for them to seek asylum or illegal immigration. Whereas (NRC) national registers of citizen is register type format kept by the Indian government of all citizens of India. The main reason of CAA and NRC protests are because is neither secular nor discriminatory, and may be unconstitutional. In addition, people are concerned about the results of the NRC across the country, and how the CAA could play a role in this. *However 12 states including Maharashtra, Kerala, West Bengal, Punjab etc. refuses to bring CAA-NRC*¹⁰. *Even though all the left parties were protesting against the CAA-NRC.*¹¹ Although protest was going through all over the India but Shaheen Bagh was the most controversial area of protest where the masses of women of all age where gathered for more than 50 days till the police vacated the site due to covid-19 outbreak. *Defending the CAA in its counter affidavit, the government called it “a reinstatement of Indian ideals of secularism, equality and fraternity.” It also defended the preparation of an NRC as a “necessary exercise” and a “responsibility” conferred on it through a “combined reading” of the Foreigners Act, The Passport (Entry into India) Act, 1920 and the Citizenship Act 1955.*¹²

⁹ Kapil Kajal, The Federal, 23 Dec. 2020 (<https://thefederal.com/news/protesting-farmers-counter-propaganda-fake-news-with-it-cell-newsletter/>)

¹⁰ The free press, 24th Dec.2019 (<https://www.freepressjournal.in/india/from-bengal-to-punjab-10-states-which-have-refuses-to-implement-caa-nrc>)

¹¹ The Hindu, 24th Dec. 2019 (<https://www.thehindu.com/news/national/left-parties-to-hold-protests-across-country-against-cao-and-nrc-on-december-19/article30340485.ece>)

¹² Sagar, The Caravana, 10th April 2020 (<https://caravanmagazine.in/law/the-governments-disingenuous-defence-of-cao-and-nrc-in-the-supreme-court>)

CURRENT FARMERS PROTEST IN INDIA

Currently, there have been well built protest going on in India and especially at Delhi NCR against three farms bills passed by the parliament. These bills anticipate to bring change in some of the key slant of farm economy-trade in agriculture commodities, price assurance and farm service including contract and stock limit for essential commodities. About 85% of farmers have less than two hectares of land and about 60% of its population of 1.38-billion depend on farm incomes. Rajshri Jayaraman, an associate economics professor at the University of Toronto’s Munk School of Global Affairs & Public Policy said: “In the absence of a general social security net for people who are already on the edge of the brink of poverty, to then take away part of the social safety net is a really bad idea for people who are already precariously placed.”¹³ Farmer leader Rakesh Tikait has already said that *Farmers' agitation will continue till three agriculture laws are withdrawn*.¹⁴ from more than 100 days farmers are protesting against the acts. *With most of their kin protesting in Delhi, Haryana farmers, particularly women, keep farms running, livelihoods alive*.¹⁵ Farmer protest is not only the subject matter of the nation but several influencers from world proclaimed their perspective in favor of the ongoing farmers protest. Supreme Court put a stay on the implementation of new agriculture law and set up a committee to “listen to the grievances” of the protesters. Both sides of the logs outside the government say the law will designate how goods of farms are produced and sold in the country, opening up years of government sector programs to sell all over the private sector and help producers earn more money. The farmer fears that the rules will give companies and the big seller the power to impose a price on small landowners, who make up the majority of producers

As farmers do not comply with their demands and continue to put pressure on the government to repeal these laws, believing that regulatory measures are detrimental to them only for the benefit of big business, the problem could turn into a heated dispute between protesters and the forces. Canadian Prime Minister Justin Trudeau has said that his country will always be there to defend the right of peaceful protest, as he reached out to the Indian community and expressed concern

¹³ Azhar Azam, Mail & Guardian, 17th Dec. 2020 (<https://mg.co.za/opinion/2020-12-17-use-of-force-against-millions-of-protesting-farmers-will-destroy-indian-secularism/>)

¹⁴ Firstpost, 7th march 2021 (<https://www.firstpost.com/india/farmers-agitation-will-continue-till-three-agri-laws-are-withdrawn-says-rakesh-tikait-9388161.html>)

¹⁵ Firstpost, 25th Feb. 2021 (<https://www.firstpost.com/india/with-majority-farmers-protesting-in-delhi-haryanas-agriculturists-particularly-women-keep-farmlands-running-and-livelihoods-alive-9346831.html>)

over the ongoing farmers protest in India against the new farm laws, the first world leader to voice his views on the issue.¹⁶ Although police have used force during the protest like using lathis, tear gas or water cannons which somehow offended the farmers in different ways. Tear gas was also used to disperse the crowd so that they don't return.¹⁷ But after this incident *Supreme Court Bar Association Condemns Use of Force against Protesting Farmers*¹⁸. Since the protests began, the government has proposed amendments to the Laws, but farmers have rejected this, saying they will go in until the laws are gone.

SOME ADMIRABLE JUDGEMENTS BY THE COURTS

- ❖ In the case of **Himat Lal K. Shah vs Commissioner Of Police**¹⁹ supreme court gave two key rulings - *The citizens cannot stage a protest by forming unions and associations at "whatever place they please". At the same time, it held that the government "cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place"*.
- ❖ In the case of **S Rangarajan vs Jagjivan Ram**²⁰, *the Supreme Court said, "Our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered."*
- ❖ In the case of **Anita Thakur & Ors. Vs. State of J & K & Ors.**²¹ the SC categorically laid down in this case that *a significant feature of a democracy is the space offered for legitimate dissent. However, the SC clarified that the right to peaceful protest, like any other fundamental right, is not absolute in nature and can be restricted on the ground of violation of the sovereignty and integrity of India and public order as well as public safety.*

¹⁶ The Hindu, 1st Dec. 2020 (<https://www.thehindu.com/news/international/trudeau-expresses-concern-over-farmerprotest/article33220840.ece>)

¹⁷ Ananya Bhardwaj, The Print, 27th Jan 2021 (<https://theprint.in/india/governance/3-reasons-why-delhi-police-failed-to-stop-farmers-from-storming-the-heart-of-the-capital/592734/>)

¹⁸ NDTV, 10th Dec 2020 (<https://www.ndtv.com/india-news/supreme-court-bar-association-condemns-use-of-force-against-protesting-farmers-2336965>)

¹⁹ 1973 AIR 87, 1973 SCR (2) 266

²⁰ 1989 SCR (2) 204, 1989 SCC (2) 574

²¹ Writ Petition (Criminal) 118 Of 2007, decided on 11TH August 2016

- ❖ In the case of **Mazdoor Kisan Sanghatan vs. Union of India**²² In this case, *the SC directed the police authority to frame rules and proper and appropriate guidelines. for limited use of Jantar Mantar area for protests and laid down a few factors to be considered while considering whether or not to permit protests, such as the likely obstruction to traffic, any likely offences against public tranquility and damage to public safety etc.*
- ❖ The Supreme Court of India, recently held in the case of **Amit Sahni vs. Commissioner of Police**²³ *that public ways and roads are not the places where protests should be carried out as they cause hardships to the general public.*

CONCLUSION

It can be seen that peaceful protests are a fundamental right and a democratic process, and without them, the democratic system cannot function properly, as protests are an indication of a free democratic society in which the voice of the people is heard and decisions are made properly. Citizen's right to protest and to assemble peacefully without arms is a vital element of India's democracy. While it is also the government's responsibility to protect citizens from violent protests, certain basic principles must be considered. While the participation of appropriate restrictions on the conduct of a protest is also a very important and important part of preventing its harassment, it is therefore the Government's duty to control the exercise of that right and not to ensure that it is abused in the hands of the people. Therefore, it is the duty of the state to balance both sides and bring stability to society. The government must accept the legitimate demands and constructive criticism of the people, and yet, the right not to be deprived should not be violated, because protests are a way for the public as a public servant to identify public service or policies that they do not like or want those laws required of them. As of now we are witnessing unforeseen protest in India day by day. Many of crowd carrying on with assembling together to demand rethink or amend the act or rule they have enacted. Such protest are the hallmark of free democracy nation. Most of the time we have seen arbitrary restriction on such public protest and imposing section 144 which not shows the capability of people to agitation but the incapability of government to take it in a positive manner. On the other hand, it is also the duty of the citizens of

²² Writ Petition (Civil) 1153 of 2017, decided on 23rd July 2018

²³ Writ Petition (Criminal) 118 Of 2007, decided on 11TH August 2016

the country to exercise all the rights where necessary and not to oppose the actions and policies of the government at all times unconditionally, which unnecessarily affects the functioning of the whole country and causes instability in society. The right to protest is therefore essential in a democratic country and should be exercised properly when needed, and the government should also help citizens to exercise their basic rights, rather than curtail this fundamental right.