

## UNRAVELING THE NATURE OF THE RIGHT TO PROTEST IN INDIA

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### ABSTRACT

*The Right to protest, contrary to the perception of the layman, is a combination of several fundamental rights enshrined within the Constitution of India, 1950 and from the perspective of a Democratic Government like ours, is an “evil necessity”. Although the modern concept of a “protest” is largely derived from the French Revolution, today, the world accepts only peaceful ones, as observed during the glorious revolution in the United Kingdom. Undoubtedly, several administrative efforts goes in effectuating and achieving a successful protest and those not complying with the expected standards of peace and order are usually declared unlawful – consequently, a curfew is imposed under Section 144 of Cr.P.C., 19573 for maintaining public tranquility. This sufficiently implies that the right to protest is not an absolute right, despite being an inseparable facet of Article 21 of the Constitution. However, it appears that the Indian citizenry isn’t aware of the limitations upon their fundamental right to protest and their duty to preserve public property and the environment and while exercising the former, resulting in a great damage to one and all. In the light of several incidences of outrage on the public against the State that have manifested till date, the Author through the medium of this paper seek to shed light on the efforts of both the Indian and Foreign Judiciaries for expounding upon the aforesaid right for ensuring compliance of the masses with the same in public interest, thereby hoping to enlighten people about the reasonable restrictions they must bear in mind while engaging in protests for preserving and upholding the principles of democracy herein.*

### INTRODUCTION

A Comparative study of the political entity of “State” reveals that in the Ancient times, a King was authorized to rule over a particular territory and its people on behalf of the Gods. Irrespective of the differences in the lessons imparted by the religious scriptures or the mandates of the customs, literally every human back then was convinced that the Right to Rule was bestowed by some Supreme Body, which, we are incapable of realizing. Rationality

was practically surrendered, which allowed the State and even the Religious Heads to exploit the masses in the name of “faith”. However, history records that the Medieval English were the first people to challenge this “Divinity” by securing their rights to actively take part in governance – the Parliament was practically established for ensuring that representatives of the people played a part in making decisions for their welfare and that of their Kingdom. The struggle of Oliver Cromwell for asserting the importance of the Parliament against a despotic monarchy had set the base for a mild “Glorious Revolution”, which paved the path for the Bill of Rights<sup>725</sup>. This incident, contrary to several philosophers, was the first times the citizens had achieved their goals against their State without taking up arms –rather, this revolution ensured that the Ruler of their choice sat on the throne, in return for their Fundamental Rights. Such form of peaceful yet compelling protest was not idealized as a precedent by other nations, such as the French, which restored to rampant killings and the execution of King Louis XVI for securing their freedoms<sup>726</sup>. The American Revolution, which later escalated to a War, witnessed several major European powers take fight side by side for defeating the British<sup>727</sup>. What led to the independence of the United States of America was violence, but, the framers of the Constitution saw to it, that the citizens were provided with all the rights for curbing a protest and hence a revolution from the people, against the state. Unlike their British ancestors, the Americans introduced the idea of an Independent Judiciary, thereby allowing people aggrieved with the actions of the state to be challenged before this Court of Law. And contrary to skeptics, this forum has, since its inception, has balanced the rights and duties of the citizens and often undertaken a humanitarian approach for catering the interests of the Law. After carefully viewing protests from the members of the Black community, the Apex Court of the United States of America, after convinced with the blatant violation of the rights of this section of the society, directed the elimination of all forms of segregation therein<sup>728</sup>. This set a precedent for other oppressed persons of the society, such as women and in the modern context, trans-genders to draw the attention of the masses and the concerned authorities to their plight and approaching the

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<sup>725</sup> The Bill of Rights British Library, as retrieved from: (<https://www.bl.uk/collection-items/the-bill-of-rights>).

<sup>726</sup> French Revolution History.com Nov. 9 2020. As retrieved from: (<https://www.history.com/topics/france/french-revolution>).

<sup>727</sup> Willard M. Wallace American Revolution Britannica Aug 27, 2020. As retrieved from: (<https://www.britannica.com/event/American-Revolution>).

<sup>728</sup> The Civil Rights Cases [109 U.S. 3 (1883)].

Judiciary for enforcing their rights. It won't be wrong to say that the American Constitution actually "civilized" people, in the sense that they started approaching fair and tranquil means and trusting the Government machinery for seeking justice. However, the mannerism and ethics of the art of protesting were radically introduced to the world by M.K. Gandhi, whose hunger strikes, civil disobedience and even non-cooperation threatened the British Rule in the country. The idea of Satyagraha was to demand to the Government without taking up arms which could extend to compelling and even blackmailing the State if the need be. This was subsequently adopted by Potti Shri Ramulu for recognizing independent statehood for the State of Andhra Pradesh, Anna Hazare for passing the Lokpal Bill for ensuring transparency and accountability of governance and even by several luminaries demanding the revocation of the Citizenship Amendment Act, 2019. It is pertinent to note that the Aam Aadmi Party, which was a mere protest against the growing corruption and failing policies in the State today, has transformed in one of the leading political parties of India.

*"The "right to assemble" is beautifully captured in an eloquent statement that "an unarmed, peaceful protest procession in the land of "Salt Satyagraha", fast-unto- death and "do or die" is no jurial anathema". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organized, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognized as a fundamental right in the Constitution."*<sup>729</sup>

From the aforesaid, it is inferable that every time the Rulers turn exploitative, people, irrespective of the origin of such authority, resort to some of the other means for ensuring sustenance. This right to protest emerged before all the other freedoms – the feeling of freeing themselves from the clutches of cruel authoritarianism compelled people to express their ideas and later, circulate them, which led to the growth of freedom of speech. This is precisely why the Indian Judiciary, on several instances has held the right to protest as an inherent part of speech and even declared it on one instance, as an inherent facet of Right to Life under Article 21 of the Constitution<sup>730</sup>.

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<sup>729</sup> *Bimal Gurung v. Union of India* (2018) SCC OnLine SC 233.

<sup>730</sup> *Iftexhar Zakee Shaikh v. State of Maharashtra* (2020) SCC OnLine Bom 244.

However, several forms of restrictions have been imposed by all the 3 organs of the Government on this right in the name of Public Order, compelling the Authors to divulge the same in a lucid form for the perusal of the masses.

## CONSTITUTIONAL JURISPRUDENCE ON THE RIGHT TO PROTEST IN INDIA

*“.... Truth and Non-violence which, without arms and armaments has won for us the invaluable prim of Swaraj at a price which, when the history of these times comes to be written, will be regarded as incredible for a vast country of our size and for the teeming millions of our population.”<sup>731</sup>*

In every democratic society, holding peaceful and orderly demonstrations through protests are privileges so assured to the citizens<sup>732</sup>, since they are a visible manifestation of the feelings or sentiments of an individual or a group<sup>733</sup>. Holding peaceful demonstrations for conveying grievances is a fundamental right<sup>734</sup>, so is the right to assemble for organizing dharnas or peaceful agitations<sup>735</sup>. Mass peaceful protest is a symbol of people having common issues exercising this freedom<sup>736</sup> and even the right to civil disobedience is recognized<sup>737</sup>.

The Right to Protest, although the defining factor for securing independence in India, is allowed only in the following instances today:

1. *Hunger Strike*
2. *Dharnas*
3. *Peaceful Agitations including the right to raise slogans.*

One can reasonably infer that any violent protest or those causing public nuisance even in the “remote sense” are excluded from the same, implying the power of the state to halt the same for safeguarding public order. It is the duty of the state to ensure that such “mob” violence does not manifest and effectively clamp down upon the same if such grave situation arises<sup>738</sup>. Protests, which paralyze the society, are impermissible since the right to carry out public

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<sup>731</sup> CAD 5.36.3 (14<sup>th</sup> August, 1947).

<sup>732</sup> *Maneka Gandhi v. Union of India* (1975) 1 SCR 778.

<sup>733</sup> *Kameshwar Prasad and Others v. The State Of Bihar* AIR (1959) Pat 187.

<sup>734</sup> *State of Rajasthan v. Shri G. Chawla and Dr Pohumal* (1959) AIR 544.

<sup>735</sup> *Ramlila Maidan Incident* (2012) 5 SCC 1.

<sup>736</sup> *Shantanu Kumar and Ors. v. Union of India* [WRIT PETITION (CIVIL) NO. 234 OF 2018].

<sup>737</sup> *Bharat Kumar Palicha v. State of Kerala* AIR (1997) Ker 2911.

<sup>738</sup> *Tehseen S. Poonawalla v. Union of India* (2018) 9 SCC 501.

demonstrations does not protect protests which threaten the lives of people<sup>739</sup>. Individuals can exercise this right until they do not turn violent<sup>740</sup>. Vandalism and aggressive agitation tarnish the core of the Constitution<sup>741</sup>. While dialogue, dissent and deliberation are imperative in a democracy, other aspects like public order and safety are equally significant and cannot be suppressed<sup>742</sup>. The masses, so bestowed with the right to protest also have a Constitutional obligation of abjuring violence and upholding and protecting the sovereignty, unity and integrity of the country<sup>743</sup> - one who seeks the enforceability of his or her Constitutional rights must surrender and fulfill the Constitutional duties which accompany it<sup>744</sup>. Unlawful protests of all forms showcase intolerance and invite rapid and stringent action on the part of the State for curbing the same since no one has the right forcibly administer his or her interpretation of the law, especially not aggressively<sup>745</sup>. Any protest of violent character which threatens the sovereignty of the nation is punishable by Law<sup>746</sup>. The legitimate aim of the reasonable restrictions herein is to prevent unlawful assemblies from exercising this right, since, the same is capable of engendering riots in the country – these offences being punishable by Law compel the state to undertake measures for halting them. And therefore, the executive has the right and the duty to decide the place which could be used for carrying out protests and it has the authority to disperse the same in accordance with the Law if they conflict with the general well-being of the people<sup>747</sup>. Section 144 of Cr.P.C, 1973 allows the State Governments to exercise this power in apprehension, provided it is not remote, fanciful or far-fetched<sup>748</sup>. The Orders must however not be repetitive or for an indefinite period lest, they shall amount to a blatant violation of Fundamental Rights so enshrined in Part III of the Constitution. This provision has also been utilized for banning internet services in certain areas to prevent the spread of rumors and other content, which could hamper public disorder<sup>749</sup>. Associating Police for holding meetings, dharnas and protests, on such large

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<sup>739</sup> Supra.

<sup>740</sup> *Ciraklar v. Turkey* [Application no. 19601/92, 80 DR 46].

<sup>741</sup> *Lucknow University Vandalism v. State of U.P.* [P.I.L. CIVIL No. - 19390 of 2018].

<sup>742</sup> *P.Ayyakannu v. The Government of Tamil Nadu* [W.P.No.8652 of 2018].

<sup>743</sup> *Re Ramlila Maidan Incident* (2012) 5 SCC 126.

<sup>744</sup> *L.Cheziyan @ Sakthivel v. Commissioner of Police, Trichy and Others* (2019) (2) CTC 135.

<sup>745</sup> *Kodungallur Film Society v Union of India* (2018) 10 SCC 713.

<sup>746</sup> *Anita Thakur v. Govt. of J & K* (2016) SCC OnLine SC 814.

<sup>747</sup> *Mazdoor Kisan Shakti Sanghatan v. Union of India* AIR (2018) SC 3476.

<sup>748</sup> *Superintendent, Central Prison v. Ram Manohar Lohia* (1960) AIR 633.

<sup>749</sup> *Anuradha Bhasin v. Union of India* (2020) SCC OnLine SC 25.

scale, would be a reasonable restriction Articles 19(2) and 19(3) of the Constitution<sup>750</sup>. Whenever a demonstration organized, the organizers are expected to meet the Police scrutinize the route for protests and decide upon the conditions for its peaceful culmination<sup>751</sup>.

It must be noted, that during the Constituent Assembly debates, Sardar Vallabh Bhai Patel, the 1<sup>st</sup> Home Minister of India, asserted on empowering the Legislature for making laws to prevent or control meetings which are likely to cause a breach of peace or nuisance to the general public or prevent the manifestation of such meetings in certain places. While this form the very basis of Article 19(3) today, both the Legislature and the Executive have utilized their powers for severely curtailing this right - prohibiting assemblies and meeting of persons for safeguarding the legal and fundamental rights of the general public is permissible<sup>752</sup>. Being an integral facet of freedom of speech, its scope is confined to Article 19(2) as well. Article 19 of the Constitution does not provide an unfettering right to utilize public roads for demonstrations<sup>753</sup>. Assemblies conveying dissent should not while exercising their rights, cause road blockage<sup>754</sup> since the fundamental rights of the public cannot be deemed to be subservient to rights of an individual or a group<sup>755</sup>. Exercising the right to protest, a private right, on public properties such as footpaths, pavements and even roads, including those in the margins<sup>756</sup> and causing inconvenience thereby is not allowed<sup>757</sup>. An unconditional right of holding a public meeting at every public place much less on a public thoroughfare or street does not exist in India<sup>758</sup>. The Freedom of Movement, under Article 19(1) (d) of the Constitution is not inferior to the right to protest and the latter cannot curtail the former at any point of time<sup>759</sup>. Obstructing public roads for personal gain is criminal mischief under Section 431 of I.P.C., 1860<sup>760</sup> and wrongful restraint under its Section 339<sup>761</sup>. It is globally accepted that the right to protest does not extend to exercising the same in a

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<sup>750</sup> *Supra*.

<sup>751</sup> *Union of India v. Association of Democratic Reforms* (2002) 3 SCC 696.

<sup>752</sup> *Rameshwar Mahton and Anr. v. The State* (1957) CriLJ 648.

<sup>753</sup> *Sankaranarayanan v. State* A.I.R. (1986) Ker. 82.

<sup>754</sup> *Bharath Kumar v. State of Kerala* (1997) 2 K.L.T. 287 (Fb).

<sup>755</sup> *Communist Party of India v. Bharath Kumar* (1997) 2 K.L.T. 1007 (Sc).

<sup>756</sup> *The Chief Secretary to Government v. Khalid Mundappilly* (2010) (3) Klt 757.

<sup>757</sup> *Olga Tellis & Others v. Delhi Municipal Corporation* A.I.R. (1986) SC 180.

<sup>758</sup> *Himat Lal Shah v. Police Commissioner, Ahmadabad* A.I.R. (1973) SC 87.

<sup>759</sup> *Id.*

<sup>760</sup> *Azam Khan v. State of Andhra Pradesh* (1973) CriLJ 508.

<sup>761</sup> *Dejo Kappen v. State of Kerala* [W.P. (C) Nos.32428 & 32429 of 2011].

private property<sup>762</sup> and established precedent of not all government owned property being open to public<sup>763</sup> implies several restrictions for exercising this right in Government buildings etc.

A plain reading of this exegesis by the Author reveals that even the minimum levels of nuisance could be a ground for prohibiting the exercise of this right, which is contrary to the established standards in the West. Particularly in Europe, the term “peaceful” with regards to this right has been interpreted to be inclusive of conduct capable of temporarily hindering or impeding activities of other people<sup>764</sup>. Protests may cause a certain level of disruption to ordinary life<sup>765</sup> and may give rise to blocking roads, occupying public places and even causing annoyance<sup>766</sup>, but the State even in these circumstances becomes obligated to uphold it. This right to protest includes not just the right to be heard, but also to be seen, and therefore, it becomes a necessity to undertake demonstrations at places where the dissent of the people is brought to the attention of the masses<sup>767</sup>. Protesting in public places including streets as far as they do not hamper public safety<sup>768</sup> is valid<sup>769</sup>. Carrying out processions and other forms of assemblies including protests on roads, highways etc. is permissible<sup>770</sup> since the State holding is merely its trustee of all public property and the citizens are entitled as beneficiaries to use them as a matter of right<sup>771</sup>.

## CONCLUSION

It is pertinent to note that the State must not allow the opponents of the protestors in a fashion which would prohibit the demonstrators from protesting peacefully<sup>772</sup>. A demonstration may annoy or even offend persons opposing the claim of the protestors, but, the same cannot be a reason to call for a violent counter-protest, since, it is the Law that demonstrators must be able to protest without having to fear that they will be subject to physical violence by their

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<sup>762</sup> *Appelby v. United Kingdom* [2003] 37 ehrr 38.

<sup>763</sup> *United States v. Kokinda* 497 U.S. 720.

<sup>764</sup> OSCE ODIHR, Guidelines on Freedom of Peaceful Assembly, 2010, §1.3.

<sup>765</sup> *Oya Ataman v. Turkey*, Judgment, 5 December 2006, §38.

<sup>766</sup> IACmHR, ‘Report of the Office of the Special Rapporteur for Freedom of Expression’, Annual Report of the Inter-American Commission on Human Rights 2008, Volume II, OEA/Ser.L/V/II.134, Doc. 5, 25 February 2009, §70.

<sup>767</sup> *Jawaharlal Nehru University v. Geeta Kumari* [CONT.CAS(C)--110/2018].

<sup>768</sup> *Parthasaradiyyangar v. Chinnakrishna Ayyangar* I.L.R. (1882) 5 Mad. 304.

<sup>769</sup> *Himat Lal K. Shah v. Commissioner of Police, Ahmadabad* (1973) 1 SCC 227.

<sup>770</sup> *Chandu Sajan Patil and Ors. v. Nyahalechand Panamchand And Ors.* AIR (1950) Bom 192.

<sup>771</sup> *C.S.S. Motor Service v. State Madras* AIR (1953) Mad 279.

<sup>772</sup> *Ärzte für das Leben v. Austria* [IHRL 79 (ECHR 1988)].

opponents. Such fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community<sup>773</sup>. Demonstrators belonging to minorities, groups that are discriminated against, should be especially protected from groups that seek to threaten or intimidate them for exercising their rights. Moreover, the State is also expected to aid the citizens for exercising their right to protest peacefully as far as they do not cause pollution of any form<sup>774</sup>. At the same time, the citizens must bear in mind, their fundamental duties to not protest in a manner which would endanger public property of the environment, since the same is beyond the scope of their constitutionally guaranteed Fundamental Rights. Allowing the citizenry to exercise this freedom in accordance with the law shall uphold the spirit of democracy and be in consonance with the ethos of the Constitution, as envisaged by the Founding Fathers.

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<sup>773</sup> Id.

<sup>774</sup> Supra 23.