

## VIOLENT PROTEST IN CONSTITUTIONAL DEMOCRACY

\*Devanshi Vyas

### ABSTRACT

*This paper with the violent protest in our democracy. Protest work as a catalyst to shape our nation and is therefore is our constitutional right but whether violent protest is legal? This paper answer many of such questions and also deals with the constitutionality of protest.*

*Protest shaped our nation and will also do in future, it act as a watchdog in our democratic society , it is an alarm to the present government that we the people of India are not happy with your decision .*

*Government just can't impose anything on us , we have very right to keep forward our words its our Constitutional right guaranteed by Article 19 of our law of land, and one of our way to do so is via protesting .*

Keywords: Protest, Violent protest , Constitutional, Democracy

### INTRODUCTION

We need to support any pole, neutrality succor the oppressor and not the victim. Tranquility cheer the tormentor and never the tormented.

We should never be petrified to hoist our voice for uprightness, honesty , truth , and injustice . If mankind all over the globe would do this, it would refashion the globe.”

The protest has shaped our nation as we have today.

We are witnessing loads of protests nowadays, be it for the rights of late actor Shushant Singh Rjput or for Kangana Ranaut but before the outbreak of covid 19 , India was burning under the flames of protest when parliament passed Citizenship Amendment Act, 2019.

These twain are not identical , first one is the peaceful protest while later one is violent protest.

Protests are of prime importance in all civil societies, as they furnish individuals and groups with an efficacious chance to roar in public via any means, example social media.

## **VIOLENT v. NON – VIOLENT PROTEST**

Father of our nation preached non-violence. He termed it as greatest force . Not only he had just said it but had also shown to the world at large its power by using it as a weapon to free India.

We have won many battles via protesting peacefully , this has shaped our country, and therefore our leaders knew its importance and hence gave us the right to protest peacefully by Article 19.

When the people protesting peacefully freaks out ( it may be due to many reasons) and use force protest convert into a violent one which is not legal.

Studies have shown that peaceful protest are more fruitful then the violent.<sup>1</sup>

## **PROTEST AS THE WATCH DOG OF GOVERNMENT**

Protest is done to raise voice against the wrong done of authorities.

This political right even work as watchdog against government unwanted decisions.

Many peaceful protest example chipko movement by Gauri Devi saved our country from wrong decisions of authorities and hence we can by peacefully protesting can save our nation, grow our nation and can even make it golden bird again.

Democracy is based on two important pillar first, to vote and elect our representative ie government and if it is not able to stand as per our expectation then to replace it out in next election . This helps to maintain stability in the society , protest is an alarm to the present government that people are not happy , it's a signal that either you fulfill their legitimate expectation and if not possible give them reasonable restrictions (as they have right to ask you question( to government) and you ( government) are liable to answer,) or they will throw

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\* Banasthali University

<sup>1</sup> EMILY ARNTSEN,Are Peaceful Protest More Effective Then Violent ones? ,News@Northeastern(June 10,2020 , 11:17AM)<https://news.northeastern.edu/2020/06/10/are-peaceful-protests-more-effective-than-violent-ones/>

you out in the next election. The government just can't force its decision on the public, they have to consider us as we make our country and we have given them power to run our country effectively, so that our country can develop and not just its representatives and that too via illegal and unethical means.

## WHAT MAKES A PROTEST VIOLENT?

A violent protest is a rational mode to achieve political aims, welfare, and glory.

Here, use of might is noticed and as a result of which protestors lose their benchmark and it leads to destruction of property usually the government property and often lathi charge is done by the police authority.

Same was happened during protest against CAA, 2019.

## INTERNATIONAL FRAMEWORK<sup>2</sup>

There are many international treaties and conventions that possess and reflect clearly about the right to protest of the right to protest and it also mentions how fruitful is this right in any civil society.

*The European Convention on Human Rights and the International Covenant on Civil and Political Rights, 1966 in its Article 9 and 10 talks about various freedoms including the freedom of speech and expression but this is also limited by certain reasonable restrictions.*

## VIOLENT PROTEST UNDER CONSTITUTIONAL DEMOCRACY

The word democracy has its origin from the Greek word which means "Rule by the People."<sup>3</sup>

India is governed by its Constitution, it makes up the edifice of the government, it is outlined to keep check on the government so that people can freely exercise their rights and liabilities. Here, will of people is the ultimate source of ability, this is made sure by our law of land.

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<sup>2</sup> ABHISHEK KUMAR, *Mazdoor Kisan Shakti Sangathan v UOI*, lawtimejournal, (March 19, 2020) <http://lawtimesjournal.in/mazdoor-kisan-shakti-sangathan-vs-union-of-india/>

<sup>3</sup> Drishti IAS, *Right To Protest In A Free Society*, Drishti IAS (Feb 14, 2020) <https://www.drishtiiias.com/daily-updates/daily-news-editorials/right-to-protest-in-a-free-society>

Under Article 19(1)(a) of the Constitution we have freedom of speech and expressions and Article 19(1)(b) provide us right to assemble peacefully without arms however these rights are not absolute and are restricted by Article 19 itself. Under Article 21, 25(1), 29(2), 30(1), 30(2) also linked with our right to protest freely.

## **Ramlila Maidan Incident v. Home Secretary ,UOI <sup>4</sup>**

In this case the Supreme Court stated that citizens are having right to under Article 19 to assemble and peaceful protest and this right cannot be taken away by an arbitrary executive and legislative machinery.

## **Maneka Gandhi v U.O.I <sup>5</sup>**

Justice Bhagwati in this case held that if the meaning of democracy is that the government is for the people , by the people then it is evident that it is the right of the citizens to take active part in democratic process and to do so he is authorized to discuss upon public matters.

We Indians have right to protest peacefully, any protest which is derogatory to Article 19 doesn't hold good.

The rights given to the citizens under Article 19 (1) and 19(3) are not absolute in nature but are limited by certain reasonable restrictions that are mentioned in Article 19 of the Constitution and also under Indian Penal Code (Sections 107, 144, 145 ), 1860 ; Criminal Procedure Code,1908 (Sections 107, 144, 145 ) and the Police Act of 1861.

If the public is gathered for the protest any way causes threat to sovereignty, public peace it can be asked to disperse.

It's the duty of the Police authorities to administer the protests by public synchronize crowd so that citizens can freely protest with required peace and space. People protesting peacefully may at times due to inside frustration or due to other external factors can turn the peaceful protest to the violent one and this practice is increasing day by day.

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<sup>4</sup>Rm Maidan Incident v Home Secretary, UOI, *Suo Motu Writ Petition (Crl) No 122 of 2011(India)*

<sup>5</sup> Maneka Gandhi v UOI, 1978 AIR 597, 1978 SCR (2) 621(India)

The state have jurisdiction over both public and public order as mentioned in the Article 246 of our law of the land. This Article gives the state government of each state full legislative and administrative authority above the police. In each state there is two kind of police force civil police force and armed police.

The civil police force has the authority to control crime and the other ie armed police force is the special police force designed to deal with exceptional circumstances, they are trained to deal in the emergency situations which can occur in its respective state.

Though it is the duty of the state government to deal with the subject of police but as per the Constitution central government can interfere in some emergent situations. Central government can send Central Armed Forces to aide the police the police authorities at the state level. The central and the state government should in the harmonious manner make the effective strategies to maintain law and order.

## **Mazdoor Kisan Shakti Sangathan v UOI<sup>6</sup>**

In this case SC held that right to protest under Article 19 is restricted by certain limitations which are effective for smooth working of the democracy.

It also mentions the importance to protest .

## **ROLE OF LAW ENFORCEMENT AND SECURITY PERSONNEL**

However it is the duty of state police force to take adequate actions in case of protest in their own state but due to inadequate training and supplies , the as the result of which state government take the help of CAPFs. This is the general practice and hence it is the central government who deals with this civil unrest. <sup>7</sup>For reference during Jat quota protest in Haryana in 2016 , the Haryana government sought help from both CAPFs and Indian Army and both came for the help.

## **PROBLEM FACED BY THEM**

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<sup>6</sup> Mazdoor Shakti Sangathan v. UOI ,AIR 2018 SC 3476(India)

<sup>7</sup>KRITI M. SHAH ,Dealing With Violent Civil Protests IN India,ORF(April7,2017)  
<https://www.orfonline.org/research/dealing-with-violent-civil-protests-in-india/>

When authorities from outside the states are called then there are many major problems which these security personnel have to face as :

- 1) They usually don't know the local language to the state in tension and hence they can have problem with the mob while communicating.
- 2) They take the charge suddenly therefore lot of time fade away in understanding the gravity of situation and proper planning.
- 3) Sometimes there may not be proper coordination from the local police force , they may also have grudges with them and hence this will add further tension.
- 4) The police is trained for every emergent situation and hence various kind of training is given to them which include weapon training but only one percent of the total expenditure to police force is used for their training.<sup>8</sup>
- 5) There are not adequate number of security personnel at both central and state level.

## ACTIONS BY SECURITY OFFICIALS

Many a times the police and security forces may have no other option then to use force.

The Executive Magistrate and the officer in the charge of police station can use force to shatter the unlawful assembly(129 CrPC) If the mob in return do an over act then under various provisions of IPC punishment is mentioned.

Lathi charge is most common used practice at such time however other things like tear gas, smoke balls, water cannons can also be used.<sup>9</sup>

However only required force is to be used, The State Human Rights Commission in 2013 stated that use of pellet guns by Indian government was an excess force and hence was the violation of human rights.<sup>10</sup>

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<sup>8</sup> SAJJAD HUSSAIN, "Data on Police Organisations: As of January 1, 2016", Bureau of Police Research & Development, accessed on February 3 2016, 77 <sup>[10]</sup> "Data on Police Organisations: As of January 1, 2016", Bureau of Police Research & Development, (February 3 2016, 77)

<sup>9</sup> KRITI M. SHAH ,Dealing With Violent Protests,ORF Special Report,(April 7,2017, 6:23PM)

In 2016 our Home Minister Rajnath Singh allowed the use of chilly shells in the Kashmir to take to protestors in controlled.<sup>11</sup>

The United Nation Human Rights Commission also took note of excess force used by security personnel and hence said that only required amount of force should be used.<sup>12</sup>

## CONCLUSION

To protest peacefully is the healthy process as it serve the country in many ways, it develop our country , it helps in proper functioning of our country.

Protest laid the base to form our country and when we read this statement the father of our nation come automatically in our mind , he made us relies the power and importance to protest but to protest peacefully , he was against force , he never permitted to use force while protesting ( chauri chaura movement).

Under the Constitution every citizen has the fundamental right to protest peacefully and in case of violent protest state government with the help of central government which always turn up can take series of action against the unlawful assembly. The problem lies with the count of these authorities which are very less then required and to present officials adequate training should be given. Every state can have special task force to deal with violent protest which will be more fruitful as no outside authority would be needed. We have adequate laws all we need is effective enforcement of same.

We should protest peacefully and not violently as violent protest does no good.

WORDS SPEAK

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<sup>10</sup> RAVI NAIR, “Pellet Guns in Kashmir: The Lethal Use of Non-Lethal Weapons” , *The Wire*, (Jully 21,2016 8:23 PM)

<sup>11</sup> KRITI M. SHAH,“Kashmir unrest: From pellet guns to chilli shells, the full story”, *The Indian Express*, ( January 7 2017,6 , 9:12 PM)

<sup>12</sup> AIZAZ RAH,United Nations, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”(December 23,2019. 9:14PM) <https://www.hrw.org/news/2019/12/23/india-deadly-force-used-against-protesters>