

STRIKING A BALANCE BETWEEN RIGHT TO PROTEST AND OTHER FUNDAMENTAL RIGHTS

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ABSTRACT

Your right to swing your arms ends just where the other man's nose begins.¹ Protests are deep-rooted in our nation's culture and history, right from the Revolution of 1857 to Gandhian Satyagraha, from the protest for the rape victims and against the hanging of rape convicts, from reservation to citizenship, from students to farmers India has seen it all. India has seen a rapid increase in the number of protests in the past couple of years. People are now more than ever vocal their rights and are ready to question the authorities' policies and decisions. The increase in literacy levels have increased awareness, which is a good thing for a democracy. Right to protest comes under the ambit of Article 19 of the Constitution, which allows freedom of speech and expression. But this right is not absolute; it comes with some reasonable restrictions in order to maintain public order. The problem lies in implementing these rights as it sometimes starts to interfere with other fundamental rights and causes problem to general public. The protestors argue that in order to get their voices heard they do the necessary, like blocking highways, railways use loudspeakers etc. These acts affect the lives of the ordinary people who are not involved in the cause. An equilibrium is needed to be maintained where the protestors' voices are heard without interfering with ordinary people's day-to-day lives. Therefore, in this article, we will analyze the ambit of article 19(2) and 19(3) in the present circumstances and try to provide a solution to make it more effective without interfering with other fundamental rights.

The Problem

In recent years India is experiencing a chain of protest ranging from Jat reservation agitation², Kashmir unrest caused by the death of the Militant leader Burhan Wani³, CAA-NRC⁴. Now

¹ QUOTE INVESTIGATOR, <https://quoteinvestigator.com/2011/10/15/liberty-fist-nose/> (last visited Feb. 9, 2021).

² JAT RESERVATION AGITATION, https://en.wikipedia.org/wiki/Jat_reservation_agitation, (last visited Feb. 9, 2021).

the Farmers protest⁵ and many more. On one hand, all these protests talked about grave concerns of the people that are needed to be addressed, but on the other hand, the method of carrying these protests was unacceptable which was affecting the life of the ordinary people who were not supporting the cause. In an era of social media, any news spreads like wildfire, especially the false ones. The Supreme Court passes a judgement, and there is a breaking news protest happening because of that judgement in some corner of the country just within a few hours. The reach of social media has increased the number of organized protests happening in India.

Now the question arises how are these protests affecting the rights of the ordinary people who are not there supporting the cause. It has been seen in most of the demonstration the protestors resort to violent methods to get their voices heard. Here are a few examples of what is the trend of protests in India.

The Jat agitation in the year 2016 started as a non-violent protest for the demand of reservation for the Jat Community but soon turned violent. They blocked the roads and railways⁶, burned the shops (especially of peoples from non-Jat communities), damaged public transport, stone-pelting at police when they came to disperse the mob and did what not just to fulfil their demands.⁷ They also blocked the water canals, which led to a shortage of water in various neighboring cities like Gurugram and Delhi.⁸ The damage conferred on public property was valued around Rs. 200 (around \$2.8 billion)⁹. Around 30 people were reported to have been killed in this agitation.¹⁰

³2016–2017 KASHMIR UNREST, https://en.wikipedia.org/wiki/2016–2017_Kashmir_unrest, (last visited Feb. 9, 2021).

⁴CITIZENSHIP AMENDMENT ACT PROTESTS, https://en.wikipedia.org/wiki/Citizenship_Amendment_Act_protests, (last visited Feb. 9, 2021).

⁵2020–2021 INDIAN FARMERS' PROTEST, https://en.wikipedia.org/wiki/2020–2021_Indian_farmers%27_protest (last visited Feb. 9, 2021).

⁶*Id.* at 2.

⁷*Anumeha Yadav, Jat violence: What exactly happened in Haryana (and why)*, SCROLL.IN (Feb 9, 2021, 9:00 PM), <https://scroll.in/article/804313/jat-violence-what-exactly-happened-in-haryana-and-why>.

⁸*Sandeep Phukan and Anand Kumar Patel, Haryana Government Promises Reservation, Jats Lift Blockade Partially*, NDTV (Feb 9, 2021, 9:00 PM), <https://www.ndtv.com/cheat-sheet/haryana-quota-protests-8-killed-in-violence-jat-leaders-refuse-to-end-stir-1279602>.

⁹JAT AGITATION: GOVT BLINKS, SAYS HARYANA JATS WILL GET OBC QUOTA, <https://www.dnaindia.com/india/report-jat-agitation-govt-blinks-says-haryana-jats-will-get-obc-quota-2180622>, (last visited Feb. 9, 2021).

¹⁰*Indo-Asian News Service, Haryana Jat Agitation Death Toll Rises To 30*, NDTV (Feb 9, 2021, 9:00 PM), <https://www.ndtv.com/india-news/haryana-jat-agitation-death-toll-rises-to-30-1281690>.

The 2017 Northern Indian riots that broke out after the arrest of Gurmeet Ram Rahim Singh around 41 people were killed in protest among which the police gunfire killed 32. Two railway stations along with two empty coaches of Rewa public express were burnt.¹¹ Considerable damage to public property was done¹². This protest was against the arrest of a convicted rapist.¹³

In the Sabrimala verdict, a protest in which religious sentiments were hurt, because SC allowed women's entry in the temple which led to massive unrest in the Kerala region. Transport services were shut down, schools were closed, universities exams were postponed, shops and hotels were closed down, public transports like buses and auto-rickshaws were also damaged, the daily business was affected all in the name of religion.¹⁴

One of the biggest protests of the decade, the CAA-NRC protest, affected people from all over the country. It was a nationwide protest and had a significant impact on the economy, communication, transport and tourism. The economic sector saw a decline in the sales of cars, bikes, watches and other commodities because of the protest¹⁵. It was on record that around 700 flights were delayed and the 20 were cancelled.¹⁶ The Railways lost property worth Rs. 90 crores. Highways connecting Delhi- Gurgaon were shut down, metro services were also put on hold in the light of the protest¹⁷. Internet services were also shut down in the various regions in order to mitigate the spread of fake news in the country.¹⁸ The tourism

¹¹India Today Web Desk, *Ram Rahim guilty of rape: What happened through the day*, INDIA TODAY (Feb 9, 2021, 9:00 PM), <http://indiatoday.intoday.in/story/live-updates-gurmeet-ram-rahim-dera-sacha-sauda-panchkula-sirsa/1/1033540.html>.

¹²2017 NORTHERN INDIA RIOTS, https://en.wikipedia.org/wiki/2017_Northern_India_riots#Violence, (last visited Feb. 9, 2021).

¹³GURMEET RAM RAHIM SINGH, https://en.wikipedia.org/wiki/Gurmeet_Ram_Rahim_Singh, (last visited Feb. 9, 2021).

¹⁴India Today Web Desk, *Sabarimala row: 1 dead, normal life disrupted as violence grips Kerala*, INDIA TODAY, (Feb 9, 2021, 9:00 PM), <https://www.indiatoday.in/india/story/sabarimala-row-updates-one-dead-life-disrupted-1422899-2019-01-03>.

¹⁵Sandeep Singh, *From cars to watches, protests hit India Inc: 'Decline in customers visiting showrooms'* (Feb 9, 2021, 9:00 PM), <https://indianexpress.com/article/india/citizenship-amendment-act-caa-protests-india-inc-decline-in-customers-6213438/>.

¹⁶CITIZENSHIP BILL PROTESTS AFFECT ASSAM; FLIGHTS SUSPENDED, TRAIN SERVICES HIT, <https://www.deccanchronicle.com/nation/current-affairs/121219/citizenship-bill-protests-affect-assam-flights-suspended-train-servi.html>, (last visited Feb. 9, 2021).

¹⁷PROTESTS ACROSS DELHI, GURGAON HIGHWAY SEALED, <https://www.telegraphindia.com/india/protest-marches-across-delhi/cid/1728522>, (last visited Feb. 9, 2021).

¹⁸CITIZENSHIP AMENDMENT ACT PROTESTS, https://en.wikipedia.org/wiki/Citizenship_Act_protests#Communication, (last visited Feb. 9, 2021).

sector was also affected badly, for example, countries like U.K., U.S., France and Israel issued travel advisories for the tourist travelling to northeast India. There was a 60% decline in the number of tourists visiting Taj Mahal and 90% decline in the number of tourists visiting the northeast region, especially in Assam.¹⁹ Shaheen Bagh protest was an outcome of the CAA-NRC protest in the public place was occupied by the protesters so that it caused great inconvenience for the commuters. CBSE also postponed the exams of class 10th and 12th in the Northeast Delhi because of the protest happening at Shaheen Bagh.²⁰

The latest in the list of protest is the farmer's protest. Amidst the Coronavirus pandemic, the Government of India passed three farms laws that received large scale demonstration from the farmers union all across the country, especially in Punjab and Haryana region. In this case, the protestors also started a campaign by the name of "Rail Roko" which affected the Punjab region's train services²¹. A number of borders and highways were blocked in the areas affected²². In one incident on 26th January 2021, a farmer tried to run over tractor over police,²³ and a total of 300 cops were injured in the tractor rally.²⁴ Many experts say that the farmer's protest will slow down the rate of economic recovery caused by the pandemic.²⁵

These were the examples of a few of the major protests that happened in India in the past few years. One thing that was common in all the protest was that ordinary life was disrupted significantly. Shutting down of schools and colleges, postponement of Board exams, blocking

¹⁹Nupur Anand, *CAA protests: Tourism worst hit, 7 countries issue travel warnings*, LIVE MINT (Feb 9, 2021, 9:00 PM), <https://www.livemint.com/news/india/caa-protests-tourism-worst-hit-by-protests-7-countries-issue-travel-warnings-11577602257782.html>.

²⁰BS Web Team & Agencies, *CAA violence: CBSE postpones board exams in northeast Delhi*, BUSINESS STANDARD (Feb 9, 2021, 9:00 PM), https://www.business-standard.com/article/current-affairs/shah-holds-high-level-meet-over-cao-stir-discusses-ways-to-curb-violence-120022500978_1.html.

²¹2020–2021 INDIAN FARMERS' PROTEST, https://en.wikipedia.org/wiki/2020–2021_Indian_farmers%27_protest#Rail_Roko (last visited Feb. 9, 2021).

²²Express Web Desk, *Farmers' Protest HIGHLIGHTS: Protesting farmers refuse to budge, say 'demands are non-negotiable'* THE INDIAN EXPRESS (Feb 9, 2021, 9:00 PM), <https://indianexpress.com/article/india/farmers-protest-delhi-chalo-march-live-updates-farm-bills-amit-shah-7072422/>.

²³ANI, *Farmers rally: Violent protestors trying to run tractor over police personnel*, THE ECONOMIC TIMES (Feb 9, 2021, 9:00 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/farmers-rally-violent-protestors-trying-to-run-tractor-over-police-personnel/videoshow/80464619.cms>.

²⁴Mukesh Singh Sengar, *Over 300 Cops Injured, 200 Detained Over Tractor Rally Violence: Police*, NDTV (Feb 9, 2021, 9:00 PM), <https://www.ndtv.com/india-news/86-cops-injured-4-cases-filed-over-tractor-rally-violence-say-police-2358510>.

²⁵FARMERS' PROTEST MAY IMPACT ECONOMIC RECOVERY: CII <https://www.thehindubusinessline.com/news/national/farmers-protest-may-impact-economic-recovery-cii/article33333639.ece>, (last visited Feb. 9, 2021).

or railways and highways, damage to public property, burning of shops, constant use of loudspeakers, etc. All of these collectively infringed a number of fundamental rights of the common people.

Every protest has its own issues, leaders, objectives and their way of achieving it. Therefore, it is complicated to classify all protest under one umbrella. Still, one thing that makes them common is how they resort to violence to fulfil their objectives and the problem faced by the common public. Protestors also face a lot of inconvenience because of a lack of infrastructure to conduct a protest. A protest is not a one-day affair its continuous process. They face problems like poor medical facilities, fooding and lodging issues, sanitation etc. which makes it difficult for the protestors to maintain their calm and maybe it can act as one of the reasons in aggravating the protest.

After analyzing the problem and its consequences, a few questions arise:

- What are the principles of peaceful protest?
- Should there be a designated place for protest and will it nullify the parties' concerns and make the cause weak?
- If the protest is peaceful, will the voice of the protestors be heard?
- If your right to protest peacefully is interfering with other fundamental rights is, is it justified to give more weightage to one fundamental right over the other?
- What can be the course of action taken up by to maintain a balance between the right to protest and other fundamental rights?

What does the law say?

In order to find the solution for maintaining a balance between Right to Protest and other fundamental rights we have to first understand the concept of peaceful protest and at the same time we also need to know the principles of peaceful protest.

In this context, Madras High Court in the case of **Govt. of Tamil Nadu &Ors. Vs. P. Ayyakannu**²⁶ laid down some principles of peaceful protest in public-

²⁶INDIAN KANOON, <https://indiankanoon.org/doc/183428196/>, (last visited Feb. 9, 2021).

1. The right to protest peacefully has been acknowledged as a fundamental right guaranteed under Article 19(1)(b) of the Constitution of India.
2. Fasting has also been recognized as a form of peaceful protest.
3. Such a right to protest cannot be unrestricted.
4. The State always has the power to impose reasonable restrictions concerning the time, the place and how the protest should be held.
5. The Authority in whom such power is conferred is expected to balance the right of the protesters and the right of the common man.
6. In the act of balancing the Authority should also bear in mind that one freedom ends where others' start.
7. The right to not to listen to should also be taken into account.

In the **Mazdoor Kisan Shakti Sangathan v. Union of India**²⁷ it was pointed out that when there is a conflict between two fundamental right, the court has to examine where the larger public interest lies while creating a balance between those two fundamental rights. The court's decision should be in favour of larger public interest. Balancing means curtailing the rights of one class so that the rights of others are protected. In the present case, the petitioners argued that if the site of the protest is changed from the Jantar Mantar to Ramlila Maidan, the protest will have little or no effect because the "concentration of power" lies in the Jantar Mantar as it is very high-profile neighbourhood and more heed will be paid to the demands of the protestors if they are protesting in that area. The Supreme Court rebutted this argument by saying that even though the statement is partially correct but in the digital era there are a number of ways by which you can get your concerns can reach the right people in no time by using social media platforms such as "WhatsApp, Twitter, Instagram, etc." Secondly, though the right to protest is the fundamental right, nobody can claim that right to protest at one particular area only. Jantar Mantar was the designated site for protest for quite some time, there the balancing of fundamental rights can be done by permitting only a limited portion of

²⁷Mazdoor Kisan Shakti Sangathan v. Union of India,(2018) 17 Supreme Court Cases 324: 2018 SCC OnLine SC 724.

this area for holding out demonstrations in such a way that no inconvenience or disturbance of any kind is caused to the residents of that area.

In the case of **Asha Ranjan v. State of Bihar**²⁸ Supreme Court held that "...there can be a conflict between two individuals qua their right under Article 21 of the Constitution and in such a situation, to weigh the balance the test that is required to be applied is the test of larger public interest and further that would, in certain circumstances, advance public morality of the day. To put it differently, the "greater community interest" or "interest of the collective or social order" would be the principle to recognize and accept the right of one which has to be protected."

In the landmark judgement given in the case of **Ramlila Maidan Incident v. Home Secretary, Union of India & Others**²⁹ the SC held that right to sleep as a fundamental right under article 21 of the constitution.

In the case of **Anita Thakur & Ors. Vs. State of J & K & Ors**³⁰ the S.C. categorically held that space offered for a legitimate protest is a distinguishing feature of any democracy, it is for the same reason that state government many a times has designated particular area and route for holding out public meeting. SC also held that no fundamental right is absolute in nature and is subject to reasonable restrictions if it is violating the integrity and sovereignty India and is causing threat to public order and safety.

In another case of **Railway Board v. Niranjan Singh**,³¹ the court observed that "The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form- associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the 'right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those 'rights.'"

In the landmark judgement given by the constitutional bench in the case of **Himat Lal K. Shah v. Commissioner of Police**³² it was held restrictions can be imposed on the right to

²⁸ *Asha Ranjan v. State of Bihar*, (2017) 4 SCC 397; (2017) 2 SCC (Cri) 376.

²⁹ *In re Ramlila Maidan Incident v. Home Secretary, Union of India & Others*, (2012) 5 SCC 1.

³⁰ *Anita Thakur v. State of J&K*, (2016) 15 SCC 525 : (2016) 4 SCC (Cri) 695 : 2016 SCC Online SC 814.

³¹ *Railway Board v. Niranjan Singh*, (1969) 1 SCC 502.

³² *Himat Lal K. Shah v. Commissioner of Police*, AIR 1973 SC 87.

protest on public roads by the designated authorities in the interest of the general public and for maintenance of public order. Justice K.K. Mathew, in this case, had observed that "Streets and public parks exist primarily for other purposes and the social interest promoted by the untrammled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion."

The latest judgement regarding right to protest was given in the case of **Amit Sahni V. Commissioner of Police & ors.**³³ The reasoning that was laid down in the judgement was that democracy and dissent are closely associated together. People are sovereign in a democracy, and they should appreciate the existence of the right to peaceful protest, but it cannot be absolute. The public space in this present case was blocked in such a manner that it caused tremendous amount of inconvenience to the commuters and people living nearby. The public area's occupation as it was done in Shaheen Bagh's case was totally unacceptable; moreover, the protest was in an undesignated area. Therefore, the plea of the applicants is unmaintainable and disposed of.

One of the cornerstones of any democracy is freedom of speech. People in a democracy are both sovereign and subjects. They have the freedom to express their dissent and organize a peaceful protest. These non-violent methods of protest also known as "satyagraha" was one of the key weapons in the freedom struggle of our country and on the similar line, this method is now recognized as one of the fundamental rights of our constitution.

Now a pertinent question arises: what kind of protest can be considered a peaceful one. Like for example, assembling at a particular place in a huge number for an indefinite period without arms and raising slogans can amount to peaceful protest or not?

The answer would be NO because the fundamental rights of people cannot be subject whims and fancies of the few thousand protestors. No fundamental right can be unrestricted, unbridled and absolute, and there must be some reasonable restriction in order to maintain a balance between fundamental rights of two different sections. Responsibilities also come along with fundamental right, which cannot be ignored.

³³Amit Sahni V. Commissioner of Police & ors., (2020) 10 SCC 439 : 2020 SCC Online SC 808.

From the above case laws, we can conclude that right to protest enshrined under article 19 of the constitution comes with certain reasonable restriction even if it is a non-violent way of protest. In the interest of justice and equality, it is essential to protect the interests of the protesters and the non-protestors. The rights of the protestors are only up to that extent where it is not interfering with common people's privileges.

THE SOLUTION

Even after so many directions and guidelines issued by the court on the right to protest violent protest are bound to happen in India. The power of social media has allowed the protestors to organize a leaderless protest efficiently. The executive's undefined and ambiguous role can be attributed to one of the main reasons behind any peaceful protest turning violent. The Court and the policymakers must formulate a mechanism for the executive for controlling a protest.

Whenever a protest is announced in prior, the security officials are able to formulate a plan for crowd control. On the apprehension that the protest may turn violent, they are prepared for the same. The problem lies when there is a spontaneous gathering of people, and there are no preemptive guidelines for the security officials to control the crowd if they turn violent. Therefore, it is important to draft a policy for handling violent civil protest. At the same time, the policymakers should not be oblivious of the ground realities of a typical protest in India. Like in the case of a group of student protesting, any harsh measure from the police side may easily provoke the crowd and turn the protest violent, therefore protest like these should be handled with utmost care and composure. But in the case, where the group of people protesting are political agitators, any kind of clash between security officials and the agitators may prolong the protest and turn it into a violent one.³⁴

Five essential elements should be kept in mind while drafting any policy for handling a protest: information, intention, method, logistic and communication.³⁵ The first thing that can be done by the police is to gather all the possible information about the protest and, people

³⁴P.P.S Sidhu, *Précis on Crowd Control*, BUREAU OF POLICE RESEARCH & DEVELOPMENT (Feb 9, 2021, 9:00 PM), [https://bprd.nic.in/WriteReadData/CMS/Crowd%20Control-All%20chapters\(1-114\)English.pdf](https://bprd.nic.in/WriteReadData/CMS/Crowd%20Control-All%20chapters(1-114)English.pdf).

³⁵Kriti M. Shah, *Dealing With Violent Civil Protest In India*, OBSERVER RESEARCH FOUNDATION (Feb 9, 2021, 9:00 PM), https://www.orfonline.org/research/dealing-with-violent-civil-protests-in-india/#_ednref3.

involved, their leader if any, their demands and other important variables governing the protest and based on this pool of data collected they should formulate their policy accordingly. Secondly, their intention behind organizing the protest should be clearly defined and their method of achieving their objectives. The logistical aspect of any protest should also be considered, like traffic routes, medical facilities, fire trucks, proper equipment, and gear should be prepared well in advance while dealing with a protest. Last but not least is the communication part of a protest, authorities should closely monitor the spread of any misinformation that may create a sense of insecurity or incite violence among the general public. Media briefings should be done at a regular interval, in order to keep the normal public updated about protest and develop a sense of security.

In most of the protest, it is observed that the state police's ability to deal with such violent protest is not adequate and ineffective. In most of the instances, they try to seek help from the Center for deployment CAPFs in handling a protest. The dependence on the central forces in handling protest has made the state police forces incompetent for handling violent civil protest on their own. In this case, the police's incompetency can be attributed to the Police Act of 1861 that even exists today. Even though many states have passed their legislation changing the structure of police in their respective states, the one thing that remains unchanged till date is the lack of accountability of the police to the public. Except in the case of union territories, the police department is controlled by the state and therefore they have their own local political biases. The politicization of the police organization and over interference of the government in the police department's working has made it dysfunctional in handling a violent civil protest.³⁶

It is pertinent to note here that the police forces should be provided with proper theoretical knowledge along with practical training in their academy. According to the data given by the Bureau of Police Research and development, only one per cent of the total police expenditure is spent on their training. The method used by the police official should also be proportionate to the reaction of the protesting crowd. Any disproportionate reaction from the police authority could worsen the situation instead of controlling them.

³⁶*Id.* at 35.

Lessons can be taken from foreign jurisdictions and can be implemented for handling violent protests. For example, in Sweden's case, a parliament appointed ombudsmen acts as an intermediary between the protestors and the authorities. He also investigates the actions of the police in handling the protest and also issues critiques against the police on the grounds of denial and permit given to any particular protest.³⁷ In Spain the authorities while handling a protest apply the principle of proportionality which answers three questions- whether the authorities' restrictions would achieve the legitimate goal?, whether that goal could be achieved by a less restrictive means? And whether the cost of restriction outweigh the benefits?³⁸

In order to formulate long term solutions the authorities should not ignore the realities of life. There should be some prior preparation from the state's side for the smooth conduct of the protest and also dealing with the aftermath of the protest. For example, there should be a designated place for protest or "*Dharna Sthal*" in each district, which should have facilities like proper sanitation, fooding and lodging, medical facilities etc. Blocking of railways and highways, destruction of public and private properties should not be tolerated at any cost and should be dealt with accordingly. Proper compensation should be provided to the common people who have suffered damage due to the protest. If the authorities and the protestors cannot reach the consensus, a third-party mediator should be appointed to facilitate the dialogue and reach a consensus. The loquacious may silence the meek. It is the duty of the state to protect the rights of the meek. Unrestricted and absolute right for one section can lead to the state of anarchy where there is no liberty. Freedom and public order are not compatible, but they are complementary in the state of democracy. The state should maintain a balance between the two otherwise acorns of today will grow into tomorrow's oaks.

WORDS SPEAK

³⁷RIKSDAGENS OMBUDSMAN, <http://www.jo.se/en/About-JO/Legal-basis/Instructions/>, (last visited Feb. 9, 2021).

³⁸RIGHT TO PEACEFUL ASSEMBLY: SELECTED FOREIGN JURISDICTIONS, https://www.loc.gov/law/help/peaceful-assembly/foreign.php#_ftn4, (last visited Feb. 9, 2021).