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Right to Protest

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First of all the question arises “Is protesting a fundamental right?”

A person, a group or a whole community protests mostly to show their disagreement or objection against some policy, action, etc. of government or state or any organisation, that’s a protest. A protest’s flow is mostly operated via waves in political arena that also exhibit the people’s collective organisation, for pressurizing the state or government to deal with the issues they have and take necessary actions.

We can trace the protest’s history as back as to the Pre-independence period. India was a British colony until 1947. Its people became free citizens in post-independence era as a result of uncountable protests arranged by our freedom fighters. Mahatma Gandhi guided us in the path of peaceful protests. The Swadeshi Movement(1905), Satyagraha(1930) such movements of peaceful and non-violent protests have moulded India’s history of opposition in British Raj. Indians they used non-violent means to strongly express their opinions on British policies and to make their disagreement towards British colonization known clearly. They protested to be able to communicate with them and also to raise their voice against the Britishers.

Constitutional protections on the Right to Protest

- According to Article 51A, it’s a fundamental duty of each citizen to protect public property and to refrain from violence while protesting. It ends up as breach of a citizen's key fundamental duty if they resort to violence during public protests .
- Indian constitution’s Article 19(1)(a) states that the Freedom of speech and expression contains that each individual holds the right to express their own opinions, this is subjected to rational limitations.
- Article 19(1)(b) asserts about the right to gather peaceably but it needs to be in absence of arms. So, the right to protest peacefully is constitutionally granted to citizens of India.
- Article 19(2) enforces reasonable restrictions on the right to assemble peacefully and that is by restricting possession of arms. Also imposing reasonable restrictions on the free speech and expression. No right is absolute here.

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- The reasonable restrictions are inflicted for the Sovereign's benefit, India's integrity, the State's security, cordial international relations, decency/morality, public order, defamation or in relation to contempt of court or incitement to an offence.

Is protesting a constitutional right??

One's right to express grievances without fearing censorship or retribution, is fundamental to the U.S.' democracy.

The First Amendment protects free expression of a person's beliefs, in the Constitution of United States. In general, it guards free speech, freedom of assembly and press.

Protesting is the long-established practice of speaking out publicly against whatever can be considered as wrong and requires rectification. It is a form of public gathering which is under protection of Constitution. Right to peaceful protest is there in the United States but "peaceful" being the operative word, restrictions too exist.

Regulation of Time, Place, and Manner of Peaceful Protests

The governing bodies may preserve one's constitutional right to peacefully protest but they hold regulatory powers that they may exercise in controlling protest's place, time and manner of conduct. A 1989 Supreme Court decision further established this criterion (*Ward v. Rock Against Racism*). It is a case challenging The noise ordinance's constitutionality, of the city of New York, applied to Rock against Racism's concerts that organised in Central Park. Wherein, the court held the decision that the noise-related limitations are constitutional till any restriction of time, place, and manner-

1. Is content-independent which means that the subject matter of the speech/expression may not influence their act of permitting;
2. Is narrowly-tailored to work for a crucial interest of govt. like public's safety and maintenance of order; and
3. Is leaving scope for enough optional medium of communication such as expressive actions may continue to be performed, although its place, time and manner is somehow limited .

The Court necessitates an advance permit for organizing a peaceful protest as constitutional, as are other conditions required for conducting gathering near important landmarks require organizers of the protest to give details about the conduct of the protest in advance.

India has been a nation rooted in ideals of non-violence and civil disobedience guided by father of our nation, Gandhiji. The government and farmer's leaders must sort things out and

make an agreement via talks, eradicating farmers' fears and through mutual consensus arriving on a common ground. The seeds of protest were sown deep during our independence struggle, making protest an important and indelible chapter in India's history. Today, our country is witnessing an extraordinary wave of protests- by farmers, minorities, students, activists against the current regime.

“Maneka Gandhi vs The Union of India (1978)” case, there S.C. stated that each individual must be given the right to take part in the parliamentary procedure. This permits the using of one's rights for making choices, also for having general discussions freely on public matters and they are totally necessary. In the legal perspective, constitutionally citizens are promised the right to peaceful protest under strong protection of Article 19, despite the term “protest” not being mentioned clearly in detail. But Article 19(1)(a) covers Freedom of Speech and Expression, Article 19(1)(b) elucidates Right to protest peacefully without arms, Article 19(1)(c) deals with the Right to form associations and Unions.

Still the said rights enlisted here, apply to peaceful protests only, and any act of violence in the guise of protest is deemed as not constitutional. These S.C. interpretations again confirm the guarantees to peaceful and lawful protests by the Constitution, in judge-ments like “Ramlila Maidan Incident vs. Home Secretary, Union of India & Others, (2012)”. The S.C. stated that citizens have this fundamental right, that is the right to gather and have peaceful protest. This can't be arbitrarily taken out of legislative or executive action.

For the fact, the India's Constitution has itself stated that Fundamental Rights aren't absolute. Also they are subject to some restrictions . If people were given absolutely uncontrolled freedom, that may do more harm than good to the society. So, the rights are made subject to logical limitations under Article 19(2), Part III of the Indian Constitution. Under which, the governing bodies can enforce restrictions for the shake of preserving national security and social stability. They can be imposed on the citizens in the following situations:

1. If it hampers the friendly relations with a adjoining nation.
2. If there is Public order's violence.
3. In case of court's contempt.
4. If integrity and sovereignty of India are endangered.

Of liberties and expressions

The right to have different opinions and express through peaceful agitations is important to any democracy. In “Re-Ramlila Maidan Incident Dt vs Home Secretary and Ors (W.P CrI No 122 of 2011)”, the Supreme Court contextualized freedom of speech and expression as the

soul of a democracy.” No expression could exist without these rights. Attainment of the liberties secured by Preamble, is forever and ever linked with the liberty of expression. That was then and this is now.

But these rights come with terms and conditions. Article 19(2) authorizes the government to frame laws and impose limitations on the freedom of speech in the interest of the integrity and sovereignty of India, friendly relations with foreign Countries, defamation or incitement to an offence, the security of the nation, decency or morality or in relation to court’s contempt and public order.

“S.Rangarajan v. Jagjivan Ram (1989) 2 SCC 574” , wherein the S.C. noted “the problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight.”

“Our commitment of 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.” The possible danger shouldn't be remote or far-fetched or conjectural. It seeks close and straight link with the expression. The thought’s expression should be intrinsically threatening the public interest. Simply put ,the expression should be entangled with the action contemplated like the equivalent of a “ spark in a power keg”, as significantly observed by the top court.

Indian Farmer through tactics of waving black flags, blocking roads, railways and gheraoing (surrounding) facilities of corporations to simply be heard and have their grievances addressed, needs to be pedestalized more than the alleged inconvenience caused to the general public. They fear the privatization of the agricultural sector and the end of the minimum support price guaranteed to them by the Government on certain commodities. They are just putting forward their interests and that too peacefully. Using water cannons against them, sealing borders to limit tactics to agitate, labeling dissenting farmers as non-conformist elements is violative in the spirit of our Constitution, might not be the best method of handling the situation. In various regimes, Government has privatized or planned to privatize sectors for benefitting economy by freeing it from control of government and many a times it rose discontentment of the general public but they were allowed the right to peaceful protests without attempting to form public opinions against the protestors. Government can explain themselves with facts, keeping the sentiments of the agitating farmers in mind and come to an

agreement but it can not take away their right to peaceful protest. What happened on the republic day 2021 though tarnished the term “peaceful” but majority of protestors were still not linked to it.

The Government has also been criticized on the Shaheen Bagh protests, journalists, students and activists who promised peaceful protest and assembled near different regions of the country against the newly amended citizenship law that offers citizenship on the basis of religion and that seemed to the protestors as if unnecessarily discriminatory unlike the necessary discrimination of reservation. People gathered in all parts of the country, read the Preamble out loud, sang, cheered, raised slogans, all intended to be done peacefully.

The devil lies in the details within section 144 of Cr.PC

The pre-emptive steps by the State through imposition of section 144 of the Code of Criminal Procedure, detaining protestors in vans and dropping them off at the outskirts of cities, making arrests, registering false FIRs, resorting to lathi charge, is not only illegal but throttles the exercise of such rights. The reason of which was to curb violence, deaths, riots etc., it became State repressive agent’s tool.

Section 144 of the Cr.PC that empowers the Magistrate to issue orders in 'urgent cases of nuisance', endangers the foundation on which we have built our entire nation if used wrongly. It revolves around the idea of unlawful assembly and prevents people from assembling in a particular place to protest or agitate with an excuse of them risking “danger to human life, health or safety or for preventing a riot or any affray”

This prohibitory order of section 144 found its way in Indian law during the British rule to clamp down nationalist voices during the freedom struggle. Years later, it continues to survive with a very strong presence almost rendering our democracy mute. The wide powers under this sections automatically narrows down the successful exercise of the right to protest. Clearly, a section to be used in times of emergency and immediate threat to the society, it is being exploited as routine.

To fight the political class that enjoys enormous power, collectively pressurizing through mediums of protests and social media is the only way to empower Indians. As T.N Krishna correctly pointed out, "public spaces are crucial to empower people, make them heard and bring some parity into discourse. There is little value in speaking about public inconvenience without addressing the limitations that are placed on our right to protest."

In “Himat Lal K shah vs Commissioner of Police, 1973 AIR 87”, the Supreme Court had observed that even though citizens can not form unions and associations "in whatever place

they please, nevertheless the state cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place."

The Government must make arrangements to ensure that they hear the dissenting voices and also ensure that the common man is not troubled. But, by eradicating peaceful democratic protesters from roads and public places by using force and excessive measures, India will remain a democracy with empty promises.

The Union Government has expressed its dismay with the organized students' protests across the country, much of it that originated from Kanhaiya's campus (JNU) but Bharatiya Janata Party (BJP) too has a students wing. Political stalwarts like Arun Jaitley, who led the Delhi University Student Union on numerous occasions were part of more extreme protests, hitting the streets, damaging government property and clashing with police calling for sampoorna kranti (total revolution) as Jay Prakash Narayan would call it, against some governments especially originating in Bihar and Gujarat and then spreading its tentacles to different regions.

This Constitution Day, one can incorrigibly work to push back the manipulative mechanisms of the State and preserve the rights and values enshrined in it.

Right to Protest or Right to Obstruct: In consideration to the Shaheen Bagh Judgement

The S.C. of India, recently held in a milestone judgment on "Amit Sahni vs. Commissioner of Police (Civil Appeal 3282/2020)" case that public ways and streets aren't the areas where any protest should be organized, as by doing so they inflict sufferings on the common people. The bench consisting of 3 judges agreed that the Right to Protest being fundamental and shouldn't be used in any way which would exhibit the right of others

Being below the protestors' rights. The bench stated that these pre-permitted peaceful protest must be executed in the designated areas for it. Another fact observed by them was that the way in which protests were executed against an tyrannous British regime, that way could never be justifiably applied in democratic system. The Court didn't agree to the argument of the protesting individuals that as right to protest is fundamental then any amount of individuals can gather and that too in whatever type of public place, irrespective of it being a street or some other public place, and occupy it indefinitely in the excuse of protest.

Another notable judgment was in "Anita Thakur & Ors. Vs State of J & K Ors.1" case .The Supreme court stated with certainty in the case that an important aspect of a democracy is the scope for lawful dissent. But the Supreme Court made it clear that like any other fundamental right, the right to peaceful protest is not absolute and on the ground of infringement of India's

integrity, sovereignty, public order and public safety; it can be restricted. The judgment, passed by Justice AK Sikri in this case, expressed that one of the appreciated side of the India's political life is a tradition of expressing grievances via peaceful protest. An Organized, non-violent protest was a key tool in achieving India's freedom, and the Right to Protest is being accepted as a fundamental right granted by the Constitution.

A relevant thought which may trouble the psyche of an individual while talking over or reading about the Right to Protest, is that, what type of protests are to be considered as peaceful ones? If gathering at a place forming a huge crowd but without arms and protesting with just slogans, make the protest peaceful? The answer is, absolutely not. Rights of lakhs of citizens cannot be left at the mercy of the fancies and whims of a small population who want to take over public places as a huge crowd for an uncertain time period. No right can be allowed to be unbridled, absolute and unrestricted. All recognized right are also must be subjugated to lawful limitations to ensure the balance of a democracy. We can not hide behind these rights and escape from our responsibilities.

The Supreme Court also took reference of "Himat Lal K.shah vs. Commissioner of Police, 1972" case's judgement, where the Constitution Bench of 5 judges, Justice SM Sikri, KK Mathew, AN Ray, MH Beg and PJ Reddy annulled the commands made by the Ahmedabad's Police Commissioner on basis of Section 33(3)(o) of the Bombay Police Act of 1951. They stated that while State could inflict only rational limitations, the befitting authority could apply specific limitations on the Right to Protest on public ways, taking into consideration the general public's interest and mainly for the preservation of public order. The rules devised by the Ahmedabad's Police Commissioner, in this case were sans specific provisions with regards to not giving permission to organize the protest and So, were held void, beyond the Constitutionally permissible limits.

The bench also took reference of the case "Mazdoor Kisan Sanghatan vs. Union of India, 2018". Wherein, the Supreme Court instructed the Police to make rules, also enlist proper and fitting guidelines. Also, Jantar Mantar area's limited use for protests along a few factors was to be laid down for consideration while deciding whether to permit protests or not, for instance the likely blocking traffic, any likely offenses of disturbing public peace or harming safety of the public etc.

Madras High court judgement in "Govt. of Tamil Nadu & Ors. Vs P.Ayyakannu" case was also referred, in which a Division Bench of justice K.K. Sashidharan and Justice R. Subramanian didn't grant permission to organize protest at Marina Beach.

TN Govt.'s writ appeal against the permission given to Mr. Ayyakannu to launch peaceful hunger strike at Marina Beach, The Division Bench held that the protestors who claim to support the benefits of the public, often ignore that when other individual's right to free locomotion and 'right to not listen to' begins then their right to protest ends. A citizen doesn't have fundamental right that could force someone who is unwilling to listen to whatever they say. Also, it isn't right to force an individual to observe a procession, without his will.

It is evident from the above stated principles and rulings that the right to protest, even if peaceful requires certain restrictions. So as to protect the interests of non-participant citizens. Democracy gifts us the right to express our dissent and Right to protest, but this doesn't imply that we have the Right to Obstruct in relation to liberties of others.

I would like to conclude by mentioning a quote, "Your right to swing your arms ends just where the other man's nose begins"(Zechariah Chafee Jr., Harvard Law Review in 1919). So, no matter how much urge we feel of being a free citizen, we can not do so by hindering someone else's freedom. We might want to fight for the right causes but it has to be at right places.
