
THE RIGHT TO PROTEST: FUNDAMENTAL RIGHT OR NOT?

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ABSTRACT

This article attempts to explore our Right to Protest and investigate its importance. It will also discuss the position of protest in the Fundamental Rights of the constitution. If viewed positively, protests have many characteristics that can help in the country's improvement. Protests have played a major role in older times. Many citizens of different countries had used protests as a tool for the betterment of society. Apart from it, the government has started looking at protests as a threat to the state and that perspective leads to chaos between the state and the people of the state.

Due to rising disputes, Supreme Court interfered in the matters of Protest and there are also some leading cases related to protest in which Apex Court had given landmark judgment. Executive can use those judgments before taking any actions against protestors. Executive authority can only take measures against unlawful and violent protests.

There is everything in this article that a normal citizen of India should know about their right to question the government.

Protest

Protest is an action or statement to address the loopholes in any policy enacted by the government. Protest occurs when people disapprove of any act or regulation and it is a method of showing their dissatisfaction. People show objection by the way of protest. Only peaceful demonstration is lawful, if any protest outrages and disturbs the people of society then that protest should be unlawful.

There are different kinds of protests, from individual statements to mass remonstrations, all these are protests. Protesters can organize protests so that their opinions should be heard to influence public opinion or any government policy. Protestors can take direct actions to get the desired changes in any act.

Protests that are systematic and nonviolent and that don't include any pressure then that protest would be better called civil resistance or nonviolent resistance. But, if protests involve a violent campaign to achieve a particular objective, and involve the use of force as well as destruction then that would go beyond lawful protest and is known as violent resistance.

People have various ways to express themselves but many forms were restricted by the governments, some of these are media monopoly, religious orthodoxy, or social structure. The state can react against the protest by the use of riot police. Nowadays, we see many incidents of police brutality towards protestors.

There are many different forms of protests that we can see in our society. Nonviolent protest and violent protest are two distinct types of protest. If a protest becomes violent, it may become legal for the government to use any form of force against the protestors. In that circumstance, it is the people's responsibility to hold a nonviolent protest so that their actions stay legal and peaceful.

Several protests have occurred in India in recent years. This practice of questioning the government in cases of confusion or unfairness is not limited to India; in almost every country, people revolt against injustice.

Kinds of Protest

1. Sit In protest

This is a typical type of protest. People sit and occupy a specific place during this protest. It is

considered civil disobedience. Protesters can gain attention, and others can sympathise with them. The most famous sit-in protest occurred in Greensboro, North Carolina in 1960, when African American students refused to move.

In India, numerous women protested the Citizenship (Amendment) Act (CAA) 2019 in the Shaheeh Bagh Protest, which was a nonviolent sit-in.

2. Marches & Rallies

Marches and rallies are held as part of this protest. It is a nonviolent protest in which a large number of people gather for a common cause and utilise placards, posters, and other materials to spread information about that cause. It's possible that a speaker will speak on behalf of the march.

There have been a lot of rallies in the last few years. Several marches against crimes against women have taken place in a number of nations. Many people have protested in 2020, including marches throughout cities and demonstrations against COVID pandemic lockdowns.

It may be possible that a single person or some people come together and protests against any injustice with the help of Posters and banners so this creates another form of Protest which is known as Posters and Banners protest. There are several instances when a family starts protesting objecting an issue. This kind of protest falls under the ambit of sit-in and marches protest. A community can also start protesting against any injustice happening with there community.

3. Hunger Strike

If protesters wish to put pressure on the government, they go on Hunger Strike and stop eating to support their cause. It is a nonviolent form of protest. It's a political protest. Several hunger strikers prefer to drink liquid instead of eating solid meals. Before India's independence, there were numerous hunger strikes. Mahatma Gandhi went on several hunger strikes against the British government.

This method of protest against injustice was also utilised in pre-Christian Ireland. Cesar Chavez, a Mexican-American, was one of the most well-known hunger strikers in support of farmworkers and labour.

4. Flag Burning

Flag burning is another form of protest. It could be carried out by a single person or a group of people who share a common ideology. In many nations, it is a criminal offence. In India, it is a violation of the *Prevention of Insults to National Honour Act, 1971*¹ if someone burns the national flag. If someone breaks the flag laws, he will be subject to the penalties outlined in this code.

It's a violent protest. Paul Hopkins was arrested in New Zealand in 2003 for protesting by burning the flag.

5. Riots, Looting and Vandalism

All of these are violent protests. These kinds of protests can be obstructed by the government because they have the capability to damage humans. Riots, Looting, and vandalism go in hand in hand. A riot happens when a group of individuals shows their disapproval of a community or government by using force.

Riot includes vandalism and loots. In a riot, it may be possible that property may be vandalized and stores may be looted by people.

People have seen many riots in India on the issue of religion. One of the most famous riots has been taken place in the US capital Building during the counting of Electoral College Votes in 2021.

6. Bombing Protest

Protesters have been known to use bombs when they become too aggressive. This is a tactic used by protestors to gain publicity, however it has the potential to hurt a large number of persons and property. Buildings and vehicles may be bombed as a result of the riot. There are deaths and injuries as a result of it.

In 1970, one of the most well-known bombing protests took place at the University of Wisconsin-Madison. The attack was carried out by four anti-Vietnam war protestors with the intention of destroying the Army Mathematics Research Centre.

History of Protest

Movements had been a part of society. The protest was a very old method of showing

¹ https://en.wikipedia.org/wiki/Prevention_of_Insults_to_National_Honour_Act,_1971

dissatisfaction with government action. People can demand any regulation or change in the system or society by using their “right to protest”. Some past examples of protests are:

- **French revolution (1789)**

A French revolution is a historic event in modern European history. It started in 1789 and ended in the late 1790s. It ended with the rise of Napoleon Bonaparte. During this revolution, French citizens destructed their country’s politics and redesigned it. People wanted to remove old institutions like absolute monarchy and the feudal system.

The destruction was caused by the spread of poor economic policies because of King Louis XVI, a French monarch, who died by the guillotine. French Revolution showcases the power of the will of the people that power played a critical role in shaping modern countries.

- **Haiti Revolution (1803)**

Haitian Revolution consists of conflicts from 1791 to 1804. This revolution occurred among Haitian slaves, colonists, the armies of the British and French colonizers, and a number of other parties. Haiti became the first country to be founded by former slaves as through revolution Haitian people got independence from France.

- **Salt March by Mohandas Gandhi (1930)**

The Salt March was an act of Civil Disobedience guided by Mohandas Gandhi to protest against British rule in India. It happened from March to April 1930 in India. Thousands of people were united in the support of the Salt March. Gandhi Ji covered the distance of about 240 miles from Ahmedabad to the Arabian Sea coast. Nearly 60,000 people were arrested including Gandhi Ji himself after the completion of March.

- **Protest against the Vietnam War**

The protest took place in the 1960s and 1970s. The protest occurred in opposition to the United States' involvement in the Vietnam War. The majority of protests in this movement were in the United States.

- **Anti-war Protest (2003)**

Anti-war protests were a part of a series of many protests and political events. It began in 2002

and continued. According to BBC reports, on 15th and 16th February 2003, almost 10 million people took part in the protests that were going on in nearly 60 cities.

Was also mentioned by some researchers that it was “the largest protest event in human history”. The protest in Rome is listed in the, 2004 “Guinness Book of World Records” as the largest anti-war rally in history including three million people.

- **Black Lives Matter (2013)**

Black life matters focus on police brutality and all racially motivated violence against black people. It is a decentralized political and social movement.

Right to protest in Part III of the Constitution

The “Protest” word is not mentioned in the Fundamental Rights of the Indian Constitution. But Article 19 of the Indian Constitution protects our “Right to Protest”. Article 19 is bifurcated into Article 19(1) (a), Article 19(1) (b) and Article 19(1) (c). These three articles collectively secure the “Right to Protest”. Article 19(1) (a) provides Freedom of Speech and Expression. Article 19 (1) (b) talks about the right to assemble peacefully and without arms. Article 19 (1) (c) states that citizens have the right to form associations and trade unions. Citizens can avail their rights according to their will. But, these rights are not absolute which means that people are not completely free to do whatever they wanted to.

In every democratic country, the right of protesters is protected, encouraged, and respected. Citizens have the duty to safeguard public property that is mentioned under Article 51(a)². Article 19 of the Indian Constitution, also provides some restrictions, which can be executed on protestors only if, any protest can harm the sovereignty, integrity, security, or relation with other states.

From Article 19 we can easily understand that citizens got the “Right to Protest” and the administration have the right or power to restrict if that turns into a violent and unlawful protest. In recent protests, police have used excessive force to control the protestors.

Right to Freedom of Speech – Article 19(1)(a):

Under this article, a person has the right to free speech and expression and they are free to

² <https://indiankanoon.org/doc/867010/>

publicly express their opinion on the activities of the government.³

Right to Freedom of Association- Article 19(1)(b):⁴

It is essential to have the right to form organisations or association. People are free to organize in order to challenge government activities collectively.

Right to Freedom of Assembly – Article 19(1)(c):⁵

This article ensures the right of an individual or a group of individuals to peacefully gather in order to question and object to government acts. They might express their displeasure in public gatherings, marches, protests, and agitations. Long-term protest movements might also emerge from them.

When all of these rights are considered together, it is clear that they allow anybody to peacefully organise and demonstrate against the government's actions or inaction.

Restrictions on Right to Protest

The right to protest guaranteed under Article 19 of the Constitution is not an absolute fundamental right as the other fundamental rights are also not absolute and there are some reasonable restrictions that are mentioned under Article 19(2) and Article 19(3), the reasons are:

- The protest should not harm state's security.
- It should not violate public order
- It should not violate in terms of ethics and morality
- It should not cause contempt of court, defamation or encourage to commit an offence
- It should harm friendly relations with other countries.

The restriction on the ground that it is violative of public order can be justified only by the proof that the activities of protestors are unlawful and such act is likely to occur due to the protest.

There are some strict laws against protests; these laws can be applied on protestors in order to restrict any movement. Some of these are:

³ <https://indiankanoon.org/doc/1218090/>

⁴ <https://indiankanoon.org/doc/1218090/>

⁵ <https://indiankanoon.org/doc/1218090/>

- **Unlawful activities Prevention Act (UAPA)**

Unlawful Activities Prevention act is aimed at preventing unlawful association that can lead to violent activities in India. It gives power to the government to deal with activities directed against the integrity and sovereignty of India.

UAPA was passed in 1967. The national integration Council set up a committee for national Integration and rationalization. The 16th amendment act occurred because of the recommendation of this committee. There is a need to handle the domestic crisis in the country so the government decided to restrict the fundamental rights of citizens. By the 16th amendment act, three fundamental rights were restricted, these rights are Freedom of speech and expression, the Right to assemble peacefully, and the Right to form an association and Union.

National Investigation Association (NIA) is the enforcement body of UAPA. It is a counter-terrorism agency. UAPA deals with unlawful activities that can be an act of individuals or organizations and they are intended to bring cession or disrupt or question the sovereignty and integrity of the country.

- **Sedition Laws**

Section 124 A of the Indian Penal Code (IPC) talks about sedition and that was drafted by Thomas Babington Macaulay⁶.

Sedition is a non-bailable offence under IPC. Punishment of sedition is from Imprisonment up to three years to life imprisonment depending on the gravity of the crime. This law is not applicable on the person having a Government job.

- **National Security Act**

The National Security Act was formulated on 23 September 1980. Its fundamental purpose is to “provide for preventive detention in certain cases and matters connected therewith”. It has 18 sections. NSA is in function till now; we have seen recent applications of this act.

During Covid-19, 4 people were detained under the provisions of the National Security Act 1980 in Indore as they were attacking health workers. NSA provides power to state and central

⁶ Saraf Modak, “Explained- Sedition Law”, www.indianexpress.com ; February 7, 2020
<https://indianexpress.com/article/explained/simply-put-sedition-law-what-courts-said-6254972/>

governments to arrest any person for the security of the country. Under NSA, the maximum confinement time is 12 months, but this term can also be increased based on new evidence. If any person was detained under this act then their basic rights were also restricted, like the right to be informed and legal aid.

There is no data available that how many people were arrested under the National Security act and that would be the primary criticism behind this act.

These laws can be used to detain someone. The administration was applying these acts frequently because of that the rank of India in Human Development Index (HDI) declined abundantly. Many of these laws were framed to safeguard the security of citizens but now government uses these laws to stop protests.

Why Right to Protest is important?

Nowadays, the Right to protest is in question and it is necessary to know whether the right to protest is our fundamental right or not? And if it is our right then does it important?

There are many recent cases relating to protests. But many questions were highlighted because of farmers' protests against farm laws 2020 that was started in 2020.

There was much historical evidence by which it was clear that protests have inspired positive social change and helped in the advancement of human rights. Protest can encourage the citizens to question the government so, Right to protest is also important in a democratic country. This right can enable individuals or groups to express their dissent and grievances. Citizens can easily share their views and opinion by the way of movement.

Protest furnishes the citizen with the potential to think against any act of the government and by doing that they were not alone. There could be thousands of people who think the same thing. Protest establishes a way of debate and argument between citizens and government which is essential in a democracy. There are many other important aspects of protests as it shows the thought of the majority of people government can use this the improvement of the policies and rules of the state.

But government around the world sees protest as the behavior of citizens which should be controlled or reduced. They recognize protests as the enemy of peace.

International Law on the Right to Protest

The Universal Declaration of Human Rights of the United Nations supports peaceful assembly or protest by the people. This declaration was ratified in December 1948. There are many treaties under international law that recognizes the right of individual or group of individuals to protest. According to these treaties, people are free to form associations and they can conduct peaceful assemblies and speech. One of these treaties is International Covenant on Civil and Political Rights.

It is obvious that the rights to freedom of assembly, association, and speech are subject to specific restrictions in these and other accords. The International Covenant on Civil and Political Rights, for example, prohibits "war propaganda" and "advocacy of national, racial, or religious hatred," and allows for the restriction of freedom of assembly if it is "necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others." (See Articles 20 and 21 for more information.) Different jurisdictions have created their own laws clarifying these rights.

Recent Protests

Movements after independence:

a. Andra Movement (1952)

Protestors demand for a new state for telugu language people. This protest results in the formation of new state named AndhraPradesh.

b. Chipko Movement (1973)

This movement has been taken place in 1973. This movement is stated by Sunderlal Bahuguna. This movement is based on the principles established by Gandhiji. This movement worked on the idea of the non-violence of Gandhiji. The main objective of this movement is to stop deforestation by embracing trees. Many women and children have participated in this movement. Almost thousands of people have participated in this movement to support the green movement across the nation.

c. Anti Corruption (2011)

The movement accelerated from 5 April 2011. Anna Hazare started hunger strike at Jantar

Mantar in Delhi. The movement focused to reduce corruption by the introduction of Jan Lokpal Bill.

d. Nirbhaya Protest (2012)

On December 16th, 2012, a 23 years old student named Jyoti was brutally gang raped by 6 men on a bus. This incident was highlighted and known as “Nirbhaya Gang Rape Case”. Nirbhaya means “fearless”. Many people gathered together and protested in the street of Delhi and show their anger towards this event. They forced the Indian Government to take action.

Government created a committee led by Justice Verma, former Chief Justice of India, named Verma Committee. This committee focuses on the issues related to crime against woman. Their recommendations were introduced in the Indian Penal Code (IPC) through the Criminal Law Amendment Act of 2013.⁷

e. Farmer's Protest (2020)

Farmers are protesting against the new farm laws that were introduced by the government in 2020. Farm laws consist of three laws but the main focus is given to the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act. Their problem is essentially about the FPTC Act and its provisions that they see as weakening the APMC Mandis.⁸

Rights in case of Arrest during Protest

In India, several detentions of the people have taken place during any protest. In the recent protest on CAA/NRC, police have detained many protestors who are protesting against the bill. However, these detentions are different from arrests. In this case, police officers have released them after some hours.

As a citizen of India, it is very important to know the rights of the people who are detained during protests. Under the Code of Criminal Procedure, the rights of the arrested person are mentioned. These are the rights of the arrested person:

1. Under Section 303 of CrPC and Article 22 (1) of the Indian Constitution, every arrested person has the right to consult a legal practitioner of his choice. Section 41 D of CrPC states

⁷ Susan McLoughlin, India's “Nirbhaya Movement”: What has changed Since then?, WIIS Global; 16 March, 2020 (<https://www.wiisglobal.org/indias-nirbhaya-movement-what-has-changed-since-then/>)

⁸ Harish Damodaran, “Explained: The concern of farmers”, Indian Express; 21 march, 2021 <https://indianexpress.com/article/explained/farmers-big-concern-and-what-govt-could-negotiate-7073291/>

that every arrested person has the right to meet an advocate of his choice during interrogation.

2. Section 46 of CrPC states that a woman can only be arrested by a female police officer and she cannot be arrested before sunrise and after sunset.

3. Before signing a Memo of arrest, the arrested person has the right to verify its accuracy. An arrested person can check the date and time of arrest and it should be attested by at least 1 witness.

4. Under Section 50 A of the Code of Criminal Procedure, it is the obligation of the person who is arresting the person to inform friends and family of the person arrested. An arrested person can choose any person whom the police officer must inform. A police officer must inform the nominated person within 8 to 12 hours of the arrest.

5. Section 50 of the Code of Criminal Procedure states that police officers should inform the arrested person that he has the right to bail. The arrested person should also know the grounds of his arrest.

6. An arrested person can also ask for medical examination by a trained medical practitioner in case of any injury under section 54 of the Code of Criminal Procedure. The police officer doesn't have the right to deny an arrested person's demand for medical examination.

7. Any person arrested must not be detained for more than 24 hours. People arrested must be produced before the magistrate within 24 hours of the detention under Sections 56 and 57 of the Code of Criminal Procedure.

8. An arrested person can also file any complaint if his/her right is violated during his detention. The police officer doesn't have the right to use force or restraint him from any of his right that is guaranteed to the arrested person by the CrPC and Constitution of India.

Recent Supreme Court Cases:

1. Amit Sahni v. Commissioner of Police (2020)

Protest against Citizenship Amendment Act at Shaheen Bagh.

SC stated that public places cannot be occupied for indefinite period. Police can clear that place as, protestors doesn't have the right to do so.

Supreme Court referred **Mazdoor kisan Shakti Sangathan v. UOI & Anr (2018)**⁹. In this case, protest was going on at Jantarmantra. Two rights were discussed in these cases:

- Right to hold Demonstration
- Right to Commute

Police can provide guidelines and particular area to the protestors.

2. Ramlila Maidan Incident v. Home Secretary, UOI & Ors (2012)

Baba Ramdev's yoga camp was setup in Ramlila maidan. But protest started on "Black Money".

Section 144 was imposed at Ramlila Maidan. After that, police used force to dissolve the gathering.

Supreme Court stated that "Citizens have a Fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action."

Conclusion:

People can avail "right to protest" to raise their voice against any bill or regulation introduced by the government but only peaceful protest is lawful. We must realize that the protest should be held solely for the sake of democracy, not for the sake of destruction. The protest's goal is to maintain the country's integrity while also addressing the flaws in the work of government.

In India, movements are the base of our independence. The protest has been a part of Indian Society. Indians have got independence because of the movements and revolutionary actions taken by our freedom fighters. This behavior of questioning the political parties was acceptable before independence but after independence, this conduct was partially restricted.

After independence, the Government formulated many laws against any protests that can harm the citizens of India and to safeguard the peace and security of the country. But, some of these laws were misused in recent times.

Recent Supreme court judgments also suggest that we have the "Right to Protest" but we cannot cause inconvenience to the general public.

⁹ Mazdoor kisan Shakti Sangathan v. UOI & Anr. (2018) 17 SCC 324.

If a protest grows violent, the government may be able to use any sort of force against the demonstrators. In that case, it is the people's responsibility to demonstrate peacefully so that their actions remain legal and do not injure any citizens.

At last, the “Right to Protest” is not mentioned in our constitution but it is secured by article 19 of the Constitution of India. So, if citizens want to avail their right to protest against any action of the government then they can do that but their action should be non-violent, otherwise, the government has the authority to restrict them and this power of government is supported by two sections, firstly, section 19 of the constitution and secondly, section 51 which imposes a duty on the citizen to safeguard public property.