

COMMUTERS' RIGHTS AND PUBLIC PROTEST- Mohit R Pise¹

“Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life.”

- Dr. B R Ambedkar[♦]**Abstract**

*Right from the **Pennsylvania Mutiny of 1783**² in the United States, to the Salt Satyagraha, or the **Dandi March of 1930**³ and the contemporary **anti-CAA protest**⁴ in India, the world has witnessed many violent and non-violent/peaceful mostly anti-governmental protests; as protest has been observed as one of the valid ways to express variation in opinion or a total dissent against it. But, from an optimistic point of view, protests has to be organized and held in such a way that it does not disturb public tranquillity and law and order in the society, vis-à-vis also peacefully obtains the goal for which the protest has been carried out. Right to peaceful protest is the fundamental right enshrined in the Indian Constitution⁵. But it has been observed in various instances that this right may infringe certain other civil rights of the public, one of which is the right to commute. The researcher, through this paper, makes an attempt to check the balance between both the*

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[♦] While delivering a speech in the constituent assembly of India on November 15, 1949.

² [Also known as the **Philadelphia Mutiny** was an anti-government protest by nearly 400 soldiers of the Continental Army in June 1783. The mutiny, and the refusal of the Executive Council of Pennsylvania to stop it, ultimately resulted in Congress of the Confederation vacating Philadelphia and the creation of a federal district to serve as the national capital].

³ [It was an act of nonviolent civil disobedience in colonial India led by Mahatma Gandhi as a direct action campaign of tax resistance and nonviolent protest against the British salt monopoly.]

⁴ [It occurred after the Citizenship Amendment Act (CAA) was enacted by the Government of India on 12 December 2019. The move sparked a widespread national and overseas ongoing protests against the act and its associated proposals of the National Register of Citizens (NRC)].

⁵ Article 19 (b) to the Constitution of India 1950.

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rights to commute as well as the right to protest with the help of various judicial pronouncements and the jurisprudence evolved out of them.

Keywords: Public protest, Right to Commute, Peaceful assembly, reasonable restrictions.

INTRODUCTION

Protests play a crucial role in the civil, social, economic, political and cultural aspects of all societies. “Violence, crime and corruption have come to be associated with political life at all levels and people of India feel deceived and disenchanted with the performance of the political system. Hence, we witness, spurt in protest”⁶ and “historically, protests have often inspired positive social change and improved protection of human rights, and they continue to help define and protect civic space in all parts of the world. Protests encourage the development of an engaged and informed citizenry and strengthen representative democracy by enabling direct participation in public affairs. They enable individuals and groups to express dissent and grievances, to share views and opinions, to expose flaws in governance and to publicly demand that the authorities and other powerful entities rectify problems and are accountable for their actions. This is especially important for those whose interests are otherwise poorly represented or marginalised.”⁷ But can the other important civil rights of the non-protesting common public be compromised in lieu of the protests? Can the common public be put in the huge inconveniences in moving freely/ commuting caused due to the mass jams and blockades of the roads, highways, and bridges etc. which are used by them every day to travel to their workplace? The answer to these questions is ‘NO’. The civil rights of non-protesting public cannot be compromised due to public protests, especially in the world’s largest democracy, India. Civil rights are also of utmost important as that of the fundamental rights for the public; at least in a democratic country. Civil rights cannot be prejudiced against fundamental rights for the sake of maintaining law and order and public tranquillity in the country. Therefore, certain balance has to be maintained between fundamental rights and civil rights of the people so as to ensure smooth functioning of democracy.

⁶ Dalip Singh, *Protest Movements in India*, The Indian journal of Political science, Vol 52, Issue 4, 1991, p. 448. Available at <https://www.jstor.org/stable/41855582> (Visited on 09/04/2022).

⁷ Article 19, defending freedom of expression and information, ‘*The Right to Protest: Principles on the protection of human rights in protests*’, 2016, p.3. Available at <https://www.article19.org/resources/the-right-to-protest-principles-on-the-protection-of-human-rights-in-protests> (Visited on Tuesday, 5/4/2022).

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Judicial institutions of all over the world has tried to maintain the said balance between public protest and commuters' rights. Several such Indian and International instances of recent protests and inconvenience caused to general public by them; and the judicial interpretations and decisions over those instances are attempted to be covered in this paper.

RESEARCH METHODOLOGY

The present mode of writing a research paper is known as doctrinal research or library based research. This type of research methodology focuses on reading and comprehending by proper analysis and evaluation of various secondary data such as case laws, articles on online sources etc. Various academic journals, research articles, news reports, and cases have been referred to carry out this research which are cited as footnotes.

SCOPE AND LIMITATIONS

The present research paper deals with the balance between right to protest and right to commute, however, with only the analysis of secondary data i.e. online sources and research articles on similar topics.

RESEARCH AIM AND OBJECTIVE

To analyse the impact of protests on civil liberties/ rights of common people.

To study the judicial decisions laid over the instances of protests.

To study the balance maintained between constitutional and civil rights by the judiciary.

THE SHAHEEN BAGH (Anti- CAA) PROTEST CASE: THE RIGHT TO PROTEST OR RIGHT TO OBSTRUCT?

The parliament of India, on 11th December, 2019 passed '*The Citizenship (Amendment) Act*' of 2019 wherein the objective of the Bill was to provide "Indian citizenship to illegal migrants of 6 communities i.e. Hindu, Sikh, Buddhist, Christian, Parsi, and Jain) belong to Bangladesh, Pakistan, and Afghanistan."⁸ "Aggrieved by this legislative amendment of Citizenship (Amendment) Act, 2019, a section of society has filed petitions⁹ before the Supreme Court of India under Article 32 of the Constitution of India, assailing the constitutionality and legality

⁸ Section 2 of the Citizenship (Amendment) Act, 2019.

⁹ "140 pleas against Citizenship Amendment Act hang fire in Supreme Court", THE HINDU, 06/12/2020. (Available at <https://www.thehindu.com/news/national/concern-over-delay-in-hearing-pleas-against-caa-in-sc/article33264290.ece>).

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of this amendment, which is pending for consideration.”¹⁰ The passing of the act also led to mass public protests in various parts of the country¹¹. One such protest resulted in the closure of Delhi's Shaheen Bagh district. The report presented before the court suggested that “the women protestors had sat in protest inside the tent, there was a huge periphery comprising mainly of male protestors, volunteers and bystanders who all seemed to have a stake in the continuance of the blockade of the road. While the tents were occupying half of the carriageway, the remaining half of the carriageway had been blocked by creating facilities such as a library, a large model of India Gate and a big metallic three-dimensional map of India located upon a very strong metal scaffolding and was anchored by heavy stones making its removal very difficult, which caused grave inconvenience to commuters.”¹²

This case, decided by the Hon'ble Supreme Court of India has proven to be a milestone in balancing the rights of protestors as well as the right of commuters. The Hon'ble court observed 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 three-judge bench agreed that while the freedom to protest is important, it should not be utilised in any way that violates the rights 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.”¹³

“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.”¹⁴ Therefore, following the main issue, which was “*how and where these protests should be carried on without public ways getting affected?*”¹⁵, the Bench comprising of Sanjay Kishan Kaul, Aniruddha Bose, and Krishna Murari, JJ. held that “*public ways and public spaces cannot be occupied in such a manner and that too indefinitely and should be in designated places alone.*”¹⁶

¹⁰ *Amit Sahni v. Commissioner of Police & Ors*, CIVIL APPEAL NO. 3282 OF 2020.

¹¹ “Protests against CAA intensify across country: How Indian newspapers covered the stir”, INDIA TODAY, 20/12/2019. (Available at <https://www.indiatoday.in/india/story/protests-against-caa-intensify-across-country-how-indian-newspapers-covered-stir-1629930-2019-12-20>).

¹² *Supra n. 9* at para. 10.

¹³ *Ibid.* at para. 17.

¹⁴ Anisha Ray, ‘*Right-to-Protest*’, IJLSI, Vol. 3, No. 2, 2020 at p. 436.

¹⁵ *Supra n. 9* at para. 4.

¹⁶ *Ibid.* at para. 17.

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The Supreme Court made some pointed remarks on democracy and the kind of criticism it allows. While acknowledging the importance of protests in the country's freedom fight and admitting that democracy and dissent go hand in hand, it also made it plain that protests of this size and intensity had no place in a self-governing democracy.¹⁷ “It clearly said that any assembly of an indeterminable number of people protesting anywhere they want is unacceptable. Simultaneously, referring to the *Himat Lal case*¹⁸ where streets and public parks’ primary function was discussed along with the constitutional difference between regulation and arbitrary exclusion. In the present case, as the Supreme Court pointed out, the question was not about how and where the agitations should be staged. It was about the blockage of public ways.”¹⁹

THE FARMERS’ PROTEST CASE

In September 2020, the Parliament of India enacted three pieces of laws²⁰ aimed at overhauling the country's agricultural markets, notably by abolishing existing limits on farm product marketing and allowing farmers to contract directly with private purchasers. However, within months, widespread opposition to the new laws arose, with farmer groups in Punjab, Haryana, and elsewhere in the country arguing that any rapid withdrawal of the government's role in the country's agricultural markets would lead to private firms exploiting farmers. Opponents also charged that the new legislation were enacted without adequate consultation or consensus-building.

This clash between the farmers and the government resulted into mass protest of farmers against the so called black laws as consequences of which, huge blockade of roads, highways, and rail tracks etc. followed in the NCT and its adjacent states and territories. “petitions were filed by individuals who are residents of the National Capital Territory of Delhi as well as the neighbouring States, claiming that the agitation by farmers in the peripheries of Delhi and the consequent blockade of roads/highways leading to Delhi, infringes the fundamental rights of other citizens to move freely throughout the territories of India and their right to carry on

¹⁷ *Id.* at para. 12.

¹⁸ *Himat Lal K. Shah v. Commissioner of Police*, 1973 SCR (2) 266.

¹⁹ M.P. Chengappa & Aditi Jajodia, “*The Shaheen Bagh Judgment: An Attack on Democratic Dissent or a Reasonable Restriction on Public Demonstration? An Analysis*”, CMR University Journal for Contemporary Legal Affairs, Vol. 3, No. 2, 2021 at p. 86.

²⁰ 1. Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; 2. Essential Commodities (Amendment) Act, 2020; and 3. Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020. (Hereinafter referred to as ‘the farm laws’).

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trade and business.”²¹ No solution seems to be in sight even after several rounds of negotiation between the farmers and the government. “The senior citizens, women and children were exposing themselves to serious health hazards posed by cold and covid; few deaths have taken place, though not out of any violence, but either out of illness or by way of suicide.”²²

To their credit, the farmers have conducted their agitation non-violently and without untoward incident.²³ But can a “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 cannot hide behind these rights and escape from our responsibilities.”²⁴ With this perspective, the Supreme Court said that “*the farmers protesting at Delhi borders against the three farms laws have the right to agitate, but they cannot block roads indefinitely even as the farmer unions and government embroiled themselves in a blame game.*” To this, Justice M. M. Sundresh added that, “*Farmers have the right to protest but they cannot keep roads blocked indefinitely. You may have a right to agitate in any manner but roads should not be blocked like this. People have the right to go on roads but it cannot be blocked.*”

The bench also referred to the case of “*Mazdoor Kisan Sanghatan v. 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.”²⁵

²¹ *Rakesh Vaishnav v. Union of India*, Civil Writ Petition(s) No(s).1118/2020 at para. 4.

²² *Ibid.* at para. 5.

²³ *Id.* at para. 6.

²⁴ *Supra n.* 13 at p. 437.

²⁵ *Mazdoor Kisan Sanghatan v. Union of India*, Civil Writ Petition No. 1153 of 2017.

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STRIKING BALANCE BETWEEN RIGHT TO PROTEST AND RIGHT TO COMMUTE

Protests are never meant to be pleasant or tasteful to the other side. As previously stated, the right to peaceful protest is a fundamental right that is subject to specific limitations. However, it must be realised that certain rights of this sort are always destined to infringe on the rights of others. Hence, a proper balance must be found. The Hon'ble Court expressed concern that a similar demonstration might occur every time two parties have opposing viewpoints, resulting in disruption and inconvenience. As a result, these protests do not have to take place in public.²⁶

One of the reasons for limiting any protest is to maintain public order. However, the precise nature of the threat and the predicted hazards must be supported by evidence. “Blocking a road indefinitely or for an extended period of time is certain to cause problems and become an unacceptable impediment to freedom of movement, yet this cannot be the main grounds for curtailing the right to protest. It will be impossible to enforce this verdict as long as the principles established in the *Himat Lal's* case remain valid.”²⁷

It's crucial to know what kind of protests are deemed peaceful. “Would a huge gathering of people without guns and shouting slogans be enough to make a peaceful demonstration? Most likely not. Because the discretion of a few thousand persons occupying a public roadway cannot be applied to thousands and lakhs of people. These rights are subject to reasonable constraints that strike a balance between these two rights.”²⁸ No right can be used in isolation from the obligations and responsibilities that it entails.

In the case of ‘*Government of Tamil Nadu v. P. Ayyakannu*’²⁹, the Madras High Court denied permission to a group of people who intended to stage a protest at Marina Beach. It was held by the Division Bench that, “*the protestors often forget that their right to dissent cannot infringe someone else's right to free movement. They cannot even force anyone to be captive listeners.*”

In the present judgments, the Hon'ble Supreme Court discussed how a balance needs to be maintained and how no ‘grave inconvenience’ should be caused to the commuters. There was a presumption of nexus between the Shaheen Bagh protest, and the disruptions faced by the

²⁶ Supra n. 9 at para. 10.

²⁷ Supra n. 18 at p. 95.

²⁸ *Ibid.*

²⁹ 2018-4-LW558.

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commuters. “*There can be spontaneous protests, but where there is prolonged protest, public places' functioning needs to be kept in mind.*”³⁰

THE ‘FREEDOM CONVOY’ CASE³¹: A STEP FORWARD.

This protest of the Canadian minorities was against the COVID-19 vaccine mandates imposed by the Canadian Government in the country. “To express their political opposition to COVID-19 public health measures, the minorities organized a ‘*Freedom Convoy*’ of vehicles, including a large number of semi-trailer-tractor trucks, to travel from different parts of Canada and converge on the national capital of Ottawa.”³²

“Like many protesters, they wanted their voices heard by political leaders. To ensure that happened, the Defendants designed a plan to block all the streets and roadways around Parliament and the surrounding neighbourhood, and make as much noise as possible and cause discomfort to the political leaders. To make that noise, the Defendants planned, organized, encouraged and directed ‘Freedom Convoy’ participants to blast the horns on their vehicles, non-stop, for several hours.”³³

“The residents around the parliament building (approximately 24,000 in number) were used to the inconvenience of large demonstrations and protests. Sometimes they even join in if they believe in the cause as they understand and respect the importance of democratic freedoms. But they have never experienced anything like the constant and excruciatingly loud horns of the Freedom Convoy. For the approximately 6,000 residents who live closest to the protests, the non-stop blaring horns have caused unbearable torment in the sanctity of their own homes.”³⁴ Such significant mental distress, suffering and torment has caused to the public of Ottawa.

Further, “the protestors had blocked traffic in both directions on Ambassador Bridge, a key link between the cities of *Detroit* and *Windsor*. The route is North America’s busiest land border crossing, and it is a main artery for the supply chain and the transportation of goods, which ultimately resulted in hardships for large companies. Several major automotive

³⁰ Rangin P. Tripathy, “*With Shaheen Bagh ruling, Supreme Court gifts state more powers to control democratic dissent*”, (Available at [With Shaheen Bagh ruling, Supreme Court gifts state more powers to control democratic dissent \(scroll.in\)](#) Accessed on 9/4/2022).

³¹ The 2022 Truckers’ convoy protest in Canada known as the “Freedom Convoy”.

³² *Zexi Li v. Chris Barber & Ors*, the Ontario Superior Court of Justice on 4/02/2022, para. 4. (Available at <https://ablawg.ca/wp-content/uploads/2022/02/Li-Statement-of-Claim.pdf>).

³³ *Ibid.* at para. 5.

³⁴ *Id.* At para. 8.

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manufacturers, including Toyota, Ford and GM have cut back on production because of the protests. Parts shortages in particular have slowed the process.”³⁵

The Ontario Superior Court of Justice observed that:

“The protestors’ horn-blasting constitutes conduct that violates the Criminal Code of Canada, RSC 1985, c C-46 pursuant to sections 430(1)(d) (Mischief), 175(1)(d) (Cause Disturbance), and 180(1)(s) (Common Nuisance), and the exposure to loud noise for a prolonged period of time and sleep deprivation of the non-protesting public are both techniques that have been found to constitute torture, and are considered to be cruel, inhumane and degrading treatment under international law. The protestors has also infringed the right of the common public to move freely by blocking the streets and roadways around the parliament building”.

Subsequently, the court not only ordered the protestors to terminate their protest and free the roadways, but also directed them to “compensate the estimated damages per Class Member of \$100 per day for the continued use of the unlawful horn tactic”³⁶ and stated that, “Canada is a free and democratic society with a long tradition of peaceful protest and assemblies, however, the Defendants(protestors) have abused those freedoms to cause serious harm to others, innocent bystanders to the pursuit of their misguided political goals, and the rights of common people cannot be set aside for that.”³⁷

CONCLUSION

The right to peaceful protest, as described in the aforementioned judgements, is subject to several limitations. To safeguard the interests of those who do not participate in the protest. “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.”³⁸ In conclusion, I would like to mention a quote, “Your right to swing your arms ends just where the other

³⁵ Rachel Popa & Chandler Ford, ‘Impacts of the Canadian Trucker Blockade: How Can Businesses Prepare for Disruptions?’, The National Law Review, 2022, Vol. XII, No. 112. (Available at <https://www.natlawreview.com/article/impacts-canadian-trucker-blockade-how-can-businesses-prepare-disruptions>).

³⁶ *Supra n.* 31 at para. 66.

³⁷ *Ibid.* at para. 69.

³⁸ *Supra n.* 13 at p. 438.

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man's nose begins. So, no matter how much urge we feel of being a free citizen, we cannot 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."³⁹

'Right to dissent is necessary for a Democracy to exist; however, balance of rights is necessary for the smooth functioning of Democracy.'

³⁹ Zechariah Chafee Jr., 'Freedom of Speech in War time', 32 HLR, 932, 957 (1919), at p. 560.

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