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# OPPOSITION TO FARM LAWS: USE, OVERUSE, ABUSE OR MISUSE OF 'RIGHT TO DISSENT/ PROTEST'

### INTRODUCTION

Soon after the promulgation of the three farm laws<sup>1</sup>, India saw an extraordinary wave of protest against these laws. The protest albeit was seen throughout the country, but was mainly concentrated in the states of Punjab, Haryana and the National Capital Region of Delhi on a large scale. Sympathiser of the farmer's protest say that the protest is a genuine one where farmers are raising their rightful concerns, on the other hand those who are critical of the same argue that much of the protest is mainly because of conspiracy by the opposition political parties. While at the same time, largely the protest was and is going peaceful but in some instances it has caused trouble to the common wo(men) as well. To mention few instances, staging of protest at the Red Fort during 2021 Republic Day celebration, blockage of roads and public places, mass gathering violating Covid-19 guidelines and protocols, Bharat bandh, interrupting transport, et cetera the protest became unpeaceful. In other instances, the government's excess like sealing of borders, using lathi-charge and water cannons, labeling protesters as terrorists or anti-nationals amounts to infringement of right to (peaceful) protest of the citizens of the country. That gives us an opportunity to understand legal aspects of 'right to protest' and the peripheral issues in this short article.

### CONSTITUTIONAL PROVISIONS

During India's struggle for independence from British raj itself, the seeds of peaceful and non-violent protest were sown. However, after independence when the Constituent Assembly met for 2 years, 11 months and 17 days long, we do not find much discussion on right to protest specifically by the members of Constituent Assembly. For that reason, we do not find any mention of protest or the right thereof in the Constitution of India ["Constitution"] expressly or explicitly. But a careful

reading of the text of the Constitution makes it clear that there does exist 'right to dissent/protest' one way or the other sub-silently in Part III of the Constitution. A broader interpretative reading of clauses (a), (b) and (c) of article 19(1) of the Constitution makes it clear that 'right to dissent/protest' does exist. The right to freedom of speech and expression under article 19(1)(a) gives right to freely speak and express our opinion on the acts of the government and not merely limited to have a personal or private opinion. The right to freedom to assemble and to form association under articles 19(1)(b) & (c) transforms into right to assemble and form association for political purposes as well and not merely restricted to non-political and for example religious purposes. Last but not the least, the mentioning of the phrase 'democratic republic'<sup>2</sup> in the Preamble of the Constitution itself (without any qualification) gives right to protest and dissent, without which no democratic republic country can thrive.

However, since none of the rights expressly mentioned in article 19 is absolute, hence right to protest and dissent neither. Similar to clauses (2), (3) and (4) of article 19, the right to protest and dissent is inter alia, subject to public order. Hence, to put it succinctly, the right to protest and dissent is a right to demonstrate protest, dissent and opposition peacefully, non-violently and without affecting and infringing the rights of others. Moreover, clause (i) of article 51A of Part IV-A of the Constitution (a non-justiciable duty) casts a fundamental duty on every citizen to safeguard public property and abjure violence. Therefore, it is expected of every citizenry of this country to adhere to these duties unconditionally while exercising their rights

### JUDICIAL PRONOUNCEMENTS

Thanks to the Supreme Court of India which through various judicial pronouncements affirmed the right to (peaceful) protest as a constitutionally



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<sup>1</sup>The Farmers' Produce Trade and Commerce (Promotion & Facilitation) Act, 2020; The Farmers' (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020; and The Essential Commodities (Amendment) Act, 2020.

<sup>2</sup>Please note, there is no comma or any symbol between these 2 words. That means, it's a phrase and not 2 different words and hence must be read accordingly.

protected fundamental right. Beginning from the year 1973, the SCI in *HimatLal K Shah versus Commissioner of Police, Ahmedabad & Another*<sup>3</sup> held that the citizens cannot stage a protest at whatever place they want and further observed that at the same time the right cannot be abridged by the government unreasonably. In the year 1978, the Supreme Court of India in a celebrated and landmark judgment namely *Maneka Gandhi versus Union of India*<sup>4</sup> observed that every citizen has a right to participate in a democratic process which essentially allows them to make a free and independent choice.

In *S Rangarajan versus Jagjivan Ram*<sup>5</sup>, the SCI held "Our commitment to 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." Further, "The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression."

In the year 2012, the SCI in *Ramlila Maidan Incident versus Home Secretary, Union of India & Others*<sup>6</sup> affirmed that the citizens have a fundamental right to assemble and protest peacefully and no arbitrary (whether legislative or executive) action can take away such right. In the case of *Railway Board versus Niranjan Singh*<sup>7</sup>, the SCI while balancing the right of the protestors on one hand and right of the general public on the other hand noted that the right to protest does not apply to the right of infringing someone else's property.

In *Mazdoor Kisan Shakti Sangathan versus Union of India & Another*, the SCI in order to consider the regulation of demonstrations at Jantar Mantar in New Delhi directed the police authorities to formulate a mechanism for the limited use of the space for protests. It observed that each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with that of their counterparts.

In *Amit Sahni versus Commissioner of Police & Others*<sup>9</sup> [Shaheen Bagh protest case] the SCI observed that public places cannot be occupied indefinitely. Such occupation of public places through protest "is not acceptable and the administration ought to take action to keep the areas clear of encroachment or obstructions". The Supreme Court, however, clarified that "Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone."

Recently, on the plea relating to the staging of wide-spread protest against three farm laws, in *Rakesh Vaishnav & Others versus Union of India & Others*<sup>10</sup> the SCI observed that right to protest and right to express dissent comes with an obligation to have certain duties. The full bench in this case further noted:

*"The right to protest cannot be anytime and everywhere. There may be some spontaneous protests but in case of prolonged dissent or protest, there cannot be continued occupation of the public place."*

## CONCLUSION

If right to protest (or for that matter dissent) is a black letter law then the reasonable restriction on the same is also an undisputed one. In the recent past, we have seen an increasing number of protests at unprecedented scale, be it voices against the amendments to Citizenship Act (CAA), be it implementation of National Register for Citizens (NRC) or be it the three farm laws. All these protests are hallmark of a democratic and free society so that the views and opinions of the general public be heard and taken into account. This allows citizenry of a country to not only participate during the elections only, but between the elections as well and therefore making government directly responsible and accountable to the electors. Any unreasonable restriction by the ones who are responsible for protecting such rights shows their inability to face criticism and tolerate opposition and dissent. The position becomes worrisome when the ruling government tries to curb opposition and dissent by vilifying protestors/dissenters as anti-nationals and imposes section 124-A of the Indian Penal Code, 1860 (a relic of British era), section 144 of the Criminal Procedure Code, 1973 and provisions of the Unlawful Activities (Prevention) Act, 1967. Any arbitrary restriction or limitation on the constitutionally protected fundamental right to freedom to protest and dissent is anti-thetical to democratic principles. Moreover, any unpeaceful protest promoting and instigating violence and hatred is also a big cause of concern as it not only casts a doubt on the overall protest but also amounts to abuse, overuse and misuse of constitutionally protected fundamental right. An informed view and opinion before staging of a protest or dissent would go a long way in balancing conflicting rights and duties.

<sup>3</sup>AIR 1973 SC 87.

<sup>4</sup>AIR 1978 SC 597.

<sup>5</sup>(1989) 2 SCC 574.

<sup>6</sup>(2012) 5 SCC 1.

<sup>7</sup>AIR 1969 SC 966.

<sup>8</sup>AIR 2018 SC 3476; WP(C) 1153 of 2017.

<sup>9</sup>2020 SCC OnLine SC 808; Civil Appeal No. 3282 of 2020.

<sup>10</sup>WP(C) 1118 of 2020.