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Right to Protest and Reasonable Restrictions Under the Indian Constitution

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Right To Protest and Reasonable Restrictions Under the Indian Constitution

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Abstract

Right to protest is considered an important feature of a democratic society that serves as a means by which individuals make known their views and complaints against the government. Right to protest is protected under the constitution of India primarily from the guarantees provided under Articles 19(1)(a), 19(1)(b), and 19(1)(c). Right to protest in India is ensured from the guarantees of freedom of speech and expression, right to peaceful assembly, and freedom of association. However, these rights are subject to reasonable restrictions in certain conditions.

In this research paper, the Constitutional architecture of the right to protest in India shall be analyzed, especially focusing on the contours and limitations of reasonable restrictions provided for by the Constitution of India. Judicial interventions in this regard would also be examined, along with modern problems such as the police regulation, internet shutdowns, preventive detention, and use of social media in protests. As per the study conducted, although the State has the power to regulate protest for the maintenance of law and order, over-restrictive measures might lead to a threat to the democracy itself. Hence, it becomes imperative for the State to take a balanced approach.

Keywords: *Right to Protest, Fundamental Rights, Reasonable Restrictions, Article 19, Freedom of Speech, Peaceful Assembly, Public Order, Constitutional Law, Judicial Interpretation, Democracy.*

Introduction

Meaning and Concept of Right to Protest

The right to protest implies the ability of people to demonstrate opposition or disagreement on any government policy, social issue, or act through peaceful means. Protest serves as one of the essential methods for participating in a democracy and raising their concerns as well as calling the authorities accountable. There can be many ways to hold protests, for example, demonstrations, rallies, strikes, dharnas, marches, etc.

In a democratic country, the right to protest can be considered synonymous to other rights such as freedom of speech, freedom of expression, and freedom of assembly. While in India, although there is no particular clause that grants a 'right to protest,' it can be considered implicit in the provisions of Article 19. However, this particular right is not entirely unrestricted and is subject to reasonable limitations.¹

Historical Development of Protest Movements in India

Protest movements have been common throughout India's history and have been instrumental in contributing to its political and constitutional growth. Protest movements, civil disobedience movements, and demonstrations against the rule of the British were carried out by Indian freedom fighters during the colonial era. The Non-Cooperation Movement, Civil Disobedience Movement, and Quit India Movement, which were spearheaded by Mahatma Gandhi, brought to light the importance of peaceful protests as means of changing societies.²

After Independence, it can be said that protests have continued to play a vital role in democratic practice in India. Various student movements, labor protests, corruption protests, environmental movements, and farmers' protests have had a say in governance through their protest movements.

Importance of Protest in a Democratic Society

The right to peacefully protest has been recognized as being integral to democracy since it gives the citizens the opportunity to be part of the decision-making process through effective participation. Protests allow citizens who feel marginalized by society to air their grievances on various social, political, and economic issues. They create awareness among people and make the government more transparent.³ By encouraging dissent and criticism, peaceful protests contribute towards reinforcing democratic principles and maintaining a functional constitutional system. Without the freedom to protest, a democratic government might end up acting in an authoritarian manner that pays no heed to the opinions of the people. Therefore, peaceful protests act as a check against abuse of power.

Constitutional Basis of the Right to Protest

The constitutionally enshrined right of protest can be traced back to Article 19 of the Indian constitution, which includes Article 19(1)(a) that provides the right to

¹ Lipika. "The Right to Protest: Fundamental Right of Not?." *Issue 1 Indian JL & Legal Rsch.* 5 (2023): 1.

² Malik, Subhash Chandra. *Indian movements: some aspects of dissent protest and reform.* DK Printworld (P) Ltd, 2022.

³ Purakayastha, Anindya Sekhar, Manas Dutta, and Tirthankar Ghosh. *Social movements, media and civil society in contemporary India: historical trajectories of public protest and political mobilisation.* Springer Nature, 2022.

freedom of speech and expression, Article 19(1)(b) that confers the right to assemble peaceably and without arms, and Article 19(1)(c), which is concerned with the right to form association or unions.⁴ However, the State is empowered under Article 19(2) and 19(3) to place reasonable restrictions on the exercise of rights in Article 19(1). In other words, this would mean that the exercise of right to protest needs to balance personal and collective interest as well as the general interest and convenience of society at large.

Indeed, the courts have consistently reiterated that the right of peaceful protest is a constitutional and democratic right; however, it does not entail violation of others' rights and disturbance of public order beyond a point.

Constitutional Framework of the Right to Protest

- **Freedom of Speech and Expression under Article 19(1)(a)**

The freedom of speech and expression of citizens is enshrined under Article 19(1)(a). The freedom of speech and expression ensures that people can express themselves, criticize any government action, and freely disseminate their views in a non-violent way. The right to hold protests is closely related to the above right as protests are generally conducted to make known one's views.

A free democratic society cannot function without this freedom as it allows citizens to be part of the process of governance by making their views heard. At the same time, such freedom is also subjected to certain reasonable restrictions as provided under Article 19(2).⁵

- **Right to Assemble Peacefully under Article 19(1)(b)**

Under Article 19(1)(b), the people have been granted the right to assemble peaceably and unarmed. This particular right provides the constitutional foundation for any public gathering, rally, march, and similar modes of protest. The citizenry can get together and convey their views with regard to any social or political matter.⁶

At the same time, the State has the authority to regulate such assemblies in order to ensure that no harm comes to society. Thus, although peaceful assembly enjoys constitutional protection, violent assembly does not enjoy this privilege.

- **Right to Form Associations under Article 19(1)(c)**

Section 19(1)(c) of the Indian Constitution provides the right to association, union, and assembly. Through this provision, people can come together for any social, political, labor, or public activity. Most of the agitation in India takes place through

⁴ Prasad, Kshitiz. "Freedom to Assemble vis-a-vis Right to Protest." *Issue 2 Indian JL & Legal Rsch.* 4 (2022): 1.

⁵ Tripura, Babudhan, Jyotish Kumar Gupta, and Moses Kharbithai. "Constitutional Rights And Social Justice In India: An Analysis." *Journal of Namibian Studies* 33 (2023).

⁶ Verma, Ishan. "Right to Assemble: A Negotiating Power or a Disturber of Peace?." *Issue 2 Indian JL & Legal Rsch.* 4 (2022): 1.

trade unions, students' organizations, civil society, or political associations by using this fundamental right.⁷

The right to association helps in strengthening democracy because people get the opportunity to act as a collective force. However, this right may have some reasonable restrictions for the maintenance of public peace, morality, and sovereignty of the state.

- **Relationship Between Protest and Democratic Governance**

The freedom to protest is a key part of democratic government in that it enables people to engage in civic processes and ensure that the ruling authorities are held accountable. Through peaceful protests, people can express their grievances and exert influence over the course of events in society.⁸

Effective democracy depends on citizens being able to raise their voice and call for change without any form of censorship from the ruling authorities. Protests play an important role in supporting democratic ideals through ensuring that there is discourse, transparency, and accountability within the government. However, democratic governments also need to preserve social stability and respect the rights of other people.

Reasonable Restrictions under the Constitution

- **Grounds of Restriction under Article 19(2) and 19(3)**

Even though the Constitution provides for the right to free speech and peaceful assembly, both these rights are subject to reasonable restrictions. Articles 19(2) and 19(3) give the power to the State to make such reasonable restrictions as are necessary for sovereignty and integrity of India, security of the State, public order, decency and morality, and the prevention of offences. Reasonable restrictions are needed because otherwise it could happen that enjoyment of fundamental rights by an individual would create unrest in society.⁹

Reasonableness, legality, and proportionality of restriction are some essential tests for the validity of any restriction.

- **Public Order, Sovereignty, and Security of the State**

Maintenance of public order and national security form some of the main bases upon which protest demonstrations can be controlled by the authorities. The government is justified in controlling demonstrations when such actions might lead

⁷ Singh, Dr Pyar. "An Analysis of the Article 19 (1)(a) and Article 19 (2) of the Indian Constitution and Distorting Form of Freedom of Speech and Expression in the Era of Social Media in India." *Available at SSRN 5100601* (2025).

⁸ Dalton, Russell J. "Political action, protest, and the functioning of democratic governance." *American Behavioral Scientist* 66.4 (2022): 533-550.

⁹ Kumar, Navdeep. "Freedom of Movement and the Growing Limitations in India: A Study." *Issue 1 Indian JL & Legal Rsch.* 4 (2022): 1.

to violence, disruption of critical services, communal conflict, or even harm to the nation's integrity.

But, this does not give an excuse for the state to control any protest simply because it feels it would be inconvenient or disagreeable politically. Restrictions ought to arise from real threats to public order.

- **Restrictions under the Bharatiya Nagarik Suraksha Sanhita, 2023 / Earlier CrPC**

The preventive powers concerning the regulation of protests were earlier vested in accordance with Sections of the Code of Criminal Procedure, 1973, more specifically Section 144, wherein Executive Magistrates were empowered to make orders in urgent cases of nuisance or apprehended danger. In the current scheme of things, the same preventive powers remain available in accordance with the Bharatiya Nagarik Suraksha Sanhita, 2023.

Through these measures, restrictions on assembly may be placed in situations where there are disturbances to public peace and tranquility. Even though such preventive powers are vital for the maintenance of law and order, there have been instances when the powers have been misused by authorities.

- **Role of Executive Authorities in Regulating Protests**

Executive officers, including District Magistrates, policemen, and local governments, have an important role to play in regulating the conduct of protests and rallies. These officers have the duty of issuing necessary permits, ensuring orderly conduct during the demonstrations, controlling traffic, and ensuring that no violence is caused during the protest.¹⁰

Regulations can be imposed by the authorities on time, place, and mode of protests so as to minimize interference with public life as much as possible. However, the use of executive powers ought to be exercised fairly and within constitutional limits, so that the right to peacefully demonstrate is not completely curtailed.

Judicial Interpretation and Landmark Cases

- **Himat Lal K. Shah v. Commissioner of Police¹¹**

In this case, the Supreme Court held that citizens have a constitutional right to hold public meetings and peaceful assemblies on public streets, subject to reasonable regulation by the State. The Court clarified that authorities may regulate protests in the interest of public order but cannot completely prohibit the exercise of fundamental rights.

- **Mazdoor Kisan Shakti Sangathan v. Union of India¹²**

¹⁰ Bhat, Mohsin Alam, and Aparna Chandra. "Law as Resilience, and Law as Roadblocks: Protest Politics and Resistance in India." *Legal Resistance to Autocracy*. Routledge, 2025. 28-60.

¹¹ *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad*, (1973) 1 SCC 227.

The Supreme Court recognized that the right to protest peacefully is an important democratic right protected under Article 19 of the Constitution. At the same time, the Court emphasized that protests should not cause excessive inconvenience to the public or disrupt the rights of others. The judgment stressed the need to balance civil liberties with public order.

- **Amit Sahni v. Commissioner of Police**¹³

This case arose from the Shaheen Bagh protests in Delhi. The Supreme Court held that while citizens possess the right to protest peacefully, public spaces and roads cannot be occupied indefinitely in a manner that causes obstruction and inconvenience to the general public. The Court emphasized that protests must take place in designated areas and within constitutional limits.

Judicial Balancing of Fundamental Rights and Public Order

However, it is also true that the judiciary has tried to maintain the balance between both the right to demonstrate and the maintenance of public order. The judicial system has accepted peaceful protest as a constitutional right but at the same time has recognized the power of the State to put restrictions on it under special circumstances.

Right to Protest in Contemporary India

- **Digital and Online Protests**

In view of developments related to technological innovations and social media usage, protests in India have gradually moved online. People in the country now engage in online protests through the use of hashtags, petitions, etc. Online protests make it easier for more people to join and also help spread information quickly. Problems like internet shutdowns, censorship, and surveillance are some of the problems which have come up.¹⁴

- **Student, Farmers', and Civil Society Movements**

The student movement, the farmer's agitation and the civil society movement have been important in democratic debate in India. These educational bodies, trade unions, environmental and other social organizations are often seen staging peaceful rallies for addressing matters pertaining to education, work, agriculture and public policy. The significance of participation by citizens in the form of protest is thus evident from such movements.

- **Media and Social Media Influence on Protests**

¹² *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324.

¹³ *Amit Sahni v. Commissioner of Police*, (2020) 10 SCC 439.

¹⁴ Grewal, Inderpal, Narges Bajoghli, and Sareh Afshar. "protest and the security state: the case of india." *Feminist Futures* (2023).

The impact of media and social media on today's protest movements is quite evident, as they can play an important role in forming the opinion of people and bringing awareness about social-political issues. Media channels play a role in spreading the message of the protestors among a large population. However, the presence of false information and fake news can result in conflicts as well.

Challenges Relating to the Right to Protest

- **Misuse of Restrictions and Executive Powers**

One of the critical issues surrounding the right to protest is the undue or unreasonable exercise of executive powers that limit the ability of citizens to demonstrate. The government at times makes prohibitions, arrests, and imposes bans in cases where there is no real danger of disruption in the course of peaceful protests.¹⁵

- **Conflict Between Public Convenience and Civil Liberties**

Protests can cause a lot of problems related to traffic, movement, and access to facilities. As a result, there is an inevitable conflict between the protesters' rights and the rights of ordinary people. On the one hand, all people have the right to hold peaceful protests. On the other hand, disruptive protests can cause inconvenience to ordinary people.

- **Use of Internet Shutdowns and Preventive Detention**

In recent times, it has become more common for officials to impose internet blackouts and preventive detention during any form of protest. While these measures are often taken in order to ensure security, any long-term limitation on freedom of expression and movement can be detrimental to democracy.

- **Balancing Security with Democratic Freedoms**

The responsibility of upholding peace and security within the country lies in the hands of the State, however, overdoing the restriction imposed on any protests could adversely affect the principles of democracy. It has been reiterated time and again by various courts that peaceful protest is an indispensable aspect of democracy. Hence, it is imperative to find a fine balance between both these elements.

Comparative and International Perspective

- **Right to Protest under International Human Rights Law**

Various international documents recognize the right to protest. For instance, Article 19 and Article 20 of the Universal Declaration of Human Rights guarantee the freedom of expression and peaceful assembly. Likewise, the International

¹⁵ Sharma, Shivani. "Right to Protest-Hindrance in the Public Functioning." *Jus Corpus LJ 3* (2022): 8.

Covenant on Civil and Political Rights recognizes freedom of speech, freedom of association, and the right to peaceful assembly, among others, provided that such freedoms are subject to certain limitations with regard to issues of national security, public order, and public safety.¹⁶

In this regard, various international bodies dealing with human rights have stressed that any limitation placed on protests must be lawful, necessary, and proportionate.

- **Comparative Position in Other Democracies**

Democratic nations tend to regard the right to protest as a vital aspect of constitutional democracy. Countries like the United States guarantee freedom of expression and peaceful assembly in their constitutional frameworks, albeit through regulation by the relevant authority, as the process ensures order and safety for all individuals in the process. Likewise, the United Kingdom allows peaceful demonstrations with reasonable regulations.¹⁷

As compared to other democracies, India too constitutionally guarantees the right to peaceful protest within Article 19. However, discussions about preventative powers, internet shutdowns, and limitations to assemblies occur from time to time. Comparing both the practices, while it is vital to regulate a protest process, a democratic system highlights protection from peaceful dissent more.¹⁸

¹⁶ Olivares-Jones, Andrea, and Scott Walker. "The Right to Protest Under International Human Rights Law." *International Law and the Regulation of Protest*. Routledge, 2026. 17-53.

¹⁷ Kriener, Florian. "The International Law of Protest." *Proceedings of the ASIL Annual Meeting*. Vol. 117. Cambridge University Press, 2023.

¹⁸ Kriener, Florian. "Protest Movements: On the Fringes of International Law." *Am. Soc'y Int'l L. Proc.* 117 (2023): 323.

Conclusion

Protesting is one of the key elements of constitutional democracy that helps to achieve democracy through the expression of dissatisfaction, accountability, and citizen participation. This right to protest is provided in the constitution of India as the fundamental rights under Article 19 of the Indian Constitution, which includes freedom of speech and assembly. Democratic values are achieved through peaceful protests because they promote citizen participation and engagement with the government.

However, on the other hand, the Constitution also provides for a certain degree of restriction by the State in order to maintain public peace and security and the sovereignty of the nation. The judicial interpretation has always been very clear that although demonstrations are legally permissible within the framework of the Constitution, these protests have to be peaceful and do not infringe upon the rights of others or threaten public peace indefinitely.

In the modern world, issues like misusing the power of the executive branch, internet shutdowns, preventive detention, and excess use of force by the police are posing many problems relating to protection of democratic freedoms. Consequently, an appropriate balance between maintaining security and protecting individual freedoms is extremely important in order to protect the democratic nature of the society.

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