

Indian Constitution and Right to Peaceful Protest

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Abstract: *This research paper is regarding the right to peaceful protest is interpreted along with the freedom of peaceful assembly, the fundamental right guaranteed and enforced in court of law under the part III of Constitution of India. It states the relevant provisions of the Constitution of India. The way in which the right to protest was exercised by people in the olden days and how now it is exercised. Right to protest used as a weapon for solving the grievances. Traditionally used in the non-violent mode and recently exercised by practicing and demonstration of violent activities. The right to protest to be used with certain restrictions. The role of policemen to stop the violent protest. Policemen while taking steps to stop such kind of violent protest sometimes uses excessive force in order to control the situation which leads to violation of human rights and dignity. For the misconduct on the part of policemen the state can be held liable. Remedies available under the various articles of the Constitution of India to the victim along with the justification. Overall the research states about the right to peaceful protect and the relevant articles in the constitution of India. Key Words: Constitution of India, article, right, policemen, peaceful protest, violent, exercise, Fundamental right and violent.*

judicial activism by the court. As of now not only legislatures but also the court play role in making the laws by issuing the guidelines. These guidelines issued are treated as law until the proper legislatures are enacted on the subject matter. Earlier only legislature had the power to make the laws. The right of Freedom of peaceful assembly as right to protest can be exercised but is subject to some reasonable restrictions in the interest of the sovereignty and integrity of India, as well as peace and public order. It is rightly stated that peaceful assembly and protest is one of the crucial tool of public participation against any injustice done or any kind of grievances, it could be against the government as well. If the person while exercising this right crosses its limits then the appropriate authority can take reasonable action against the individual for example that can be a policemen in case of violent protest. Again it is stated that the force applied by the authority to be as much as required excess will result into the violation of rights of the person exercising his right to peaceful protest.

In Indian Constitution gives its citizens freedom to practice any religion and culture upto the extent others rights are not violated. Person can wear whatever they want only point to take care is that basic ethics and social behaviour is retained. Person can support anyone and any ideology but not at the cost of national integrity and security. In the same manner citizen can protest against anyone and for anything, they can even protest against the government, but the protest should be peaceful and non-violent. Hence it is rightly said that India a Democratic country is abided by the rule of law and the Constitution, therefore constitution in its part three guarantees fundamental rights to each and every citizen of India, the freedom of speech and expression as well as freedom to assemble and form associations includes right to peaceful protests.

Introduction:

Right to peaceful protest is a fundamental right:

Freedom of peaceful assembly includes right to assemble peacefully and protest, it is a fundamental right guaranteed in the Constitution of India through exercise of

It is ensured no citizen is denied these fundamental rights as it cannot be taken away by one except due process of law with reasonable justification. One should never ever forget, with the enjoyment of rights there comes the responsibilities as well. As it is rightly quoted that every right has a correlative or corresponding duty attached to it. The person is not supposed to enjoy his rights by violating others rights, that is strictly not permitted. The person is not allowed to protest if there is any security reason. In case if the person protests, when he is not allowed due to justifiable reason, then in that case the person can be detained by the respective authority and can be prosecuted according to the due process of law.

Although initially right to protest at the traditional period was not officially permitted, but was still practiced, and now due to judicial activism right to peaceful protest has become one of the fundamental right included under the head of freedom to assemble at a particular place, without arms and without creating any kind of nuisance or disturbing the rights of the other person.

Provisions of Constitution of India:

Fundamental Rights under part III of the Constitution of India:

The below given are the relevant provision:

The fundamental freedom that is guaranteed as under Article 19 (1) (a), 19 (1) (b) and 19 (1) (c) of the Constitution of India.

Article 19 (1) (a) states about the freedom of speech to all the citizens of India and therefore this provision ensures that the people could raise slogan, albeit in an orderly and peaceful manner, without harming anyone or using any kind of language that is offensive in nature. This article is not only related to right to freedom of speech and expression, which is available to every citizen of India. It states that every citizen has a right to express his views and opinions with regards to any issues and by any mode to name a few through film, movie, mouth, writing and so on. This right cannot be

exercised completely, law imposes certain reasonable restrictions to this right.

Article 19 (1) (b) states that every citizen has a right to assemble, but people can exercise this right only for the peaceful assembly and that to without any kind of arms and ammunitions.

Article 19 (1) (c) states that all the citizens have right to form association or unions. Again this right is with reasonable restriction.

Along with the rights there comes the degree of responsibility. Constitution of India clearly recognises these inherent, reasonable restrictions, clearly related to that particular purpose for which there is fundamental right.

One of the traditional way to express grievances is through direct action or we can say by peaceful protest. The history speaks that at the time of struggle for independence, the key weapon used for protest was peaceful assembly of the people, non-violent protest marches in the organised manner. In the olden times the protest was done in a peaceful manner. The practice of Satyagraha was adapted by Mahatma Gandhi. He had stated that democracy is the art and science to manage the physical, economic and spiritual resources of varied sections of the people in the interest of the common interest of all. Therefore in India as the democratic country, protests protest plays the most significant and essential role. The essence of Satyagraha was mode of protest in a non-violence manner. Thus thereafter right to peaceful protest is recognised as one of the fundamental right under the Constitution of India by Supreme Court through one of its judgement announced.

It was stated during those days that right to assemble and demonstrate protest by holding dharnas was the basic feature of a democratic system. The citizen of a democratic country like India has a right to raise their voice against the decisions and policies of the government or can even express their feeling of displeasure over the actions taken by the government on any of the subject matter of social and national importance. The



government has to take into consideration such protest and see that any changes are required to be made in their decision and action taken, for the betterment of the nation and its people, it can be stated that government has to respect as well as encourage such kind of the rights, as this will give an opportunity to the people or citizens of the state to take part in decision making and there would be democracy in the true sense, if such kind of rights are granted to the citizens. Hence right to peaceful protest was regarded as one of the fundamental right of the citizen.

The manner in which this right to peaceful protest is exercised by the people in the recent trend is not the same that was in the olden days. Violent practices are used by young people, who fights or causes damage in public places, actions involving deliberate destruction of or damage to public or private property are demonstrated by people in the name of the protest. And during this kind of practices, when the police tries to control such activities of the protestors to protect the public as well as private property, then the policemen's are also targeted by the protestors. This kind of practice and violent demonstrations by the unruly groups that has become so common, that the people have begun to see them as a supplement or in addition to democracy. To give an example Dalit's in India had demonstrated protest against dilution of schedule Cast/Schedule Tribes Act, initially it was peaceful protest but later on got converted into a violent protest during which around four people died as well. All these kinds of demonstrations by the people force the police to take an actions in order to stop them by applying certain force. This in turn creates a negative feelings about the police people in the minds of the common people.

If we take a simple example of Kashmir, where there were number instances in which a group of people, who from a larger body on the basis of ethnicity, religion, or gender and provoke violence in the name of protest. In this kind of situations, the task of the police and law enforcing agencies becomes strenuous and

exquisite. In the exercise of suppressing such kind of violence or unlawful assemblies, the police has to manage or achieve its task with utmost caution, skilfully and with exactness.

Thus, on one hand, peace, law and order is required to be restored and simultaneously it is also to be taken care of not applying unnecessary force or force beyond required to stop these violent activities at the time of protest. Policemen are given compulsory training and they have under go for such kind of special training in order to deal with such kind of situations while they are performing their duties. Many a times it has been noticed that the policemen are not in position to handle such kind of situations and which leads to ugly and out of control and they fail to succeed in their task of maintaining peace and order. One of the reason of failure of the policemen is lack of training to the police personnel, to manage such kind of violent situations/environment and challenges to their authority.

In the cases where assembly is peaceful, the use of police force is not at all required. But if the situation is such that the group of people, who have assembled becomes violent, then it becomes a matter of necessity and the police person is justified in using some kind of reasonable force being applied in order to stop such kind of violence or disturbing activities of destroying public life and property and maintain peace, law and order in the state, which is actually expected from the policemen in performing his duties. The police can apply force in the form of lathi charge.

However in order to bring the situation under control, when the police applies some force and in applying so if the policemen crosses, exceeds or goes beyond the limits by using unreasonable force the condition in such scenario becomes more worst.

Section 144 of the Criminal Procedure Code empowers the magistrate to issue orders of restricting ten or more people from assembling in an area. In case the police starts stopping the people to assemble and form groups in the absence of any kind of orders by the

Magistrate then that action would be illegal and state could be held liable for the violations of the persons fundamental right by misuse of the powers vested in the police, as the police can take action only after such kind of the orders are passed by the Magistrate on the situation, which requires to take away the person's right to assemble in the interest of the common public. In one of the case of MadhuLimaye in 1971 the Supreme Court held that the citizens right to peaceful assembly can be taken away only, if assemble of people is the direct cause of any kind of perceived threat to peace and order in the state.

The history states that there are number of instances where the police has exceeded its authorities and have misused the powers granted to them. In 2012, thousands of protesters marched to RashtrapatiBhavan to demonstrate their anger at the gang rape incident that took place, the prohibitory orders were passed, to bring down under lock central Delhi water cannons were used followed by lathicharg.If the policemen becomes cruel or does not stop applying force even after the situation is under control and continues to attack by applying force, then this leads to violation of not only human rights but also human dignity. There are many instances where the police has misused their power, for example in Maharashtra, there was a case of Ratnagiri administration, whereby taking advantage of Section 144 of Code of Criminal Procedure, the authorities tried to prevent the peaceful protest against the nuclear power there are many more incidence where authorities in order to prevent their corrupt practice as taken advantage of aforesaid legislative provision like it was used to stop the Anna Hazare's anti- corruption campaign and many more.

This is the reason that human rights activists feel that policemen's are frequently abusing and miss using its powers of applying unreasonable force which is at a time not required at all, this in turn becomes a most serious threat to the rule of law. The person

who is a victim of such kind of inhuman treatment, his fundamental rights are violated.

The Remedies available for the violation Fundamental Rights guaranteed by the Constitution of India are as under:

The person whose fundamental rights are violated can file a writ petition against the State and the court can ward compensation to the victim under the below given legislations:

1. Article 32 of Constitution of India to Supreme Court.

This article 32 of Constitution of India gives the right to victim to move to Supreme Court by following appropriate proceedings for the enforcement of the fundamental right guaranteed as per part III of the Constitution of India. The Supreme Court has the authority to issue directions and orders or writs, writs such as habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be applicable to the matter before the Court for enforcement of the Fundamental Rights. Public Interest Litigation can be filled by one of the representative of the group of people, where group of people are affected by such wrong. Without prejudice to the authorities, powers of the apex Court, Parliament also may by law empower any other court to exercise within their local limit of its jurisdiction.

2. Article 226 of Constitution of India to High Court.

Every High Court, throughout their territories shall also have the power to exercise jurisdiction, to the issues of any person, individual or authority in appropriate cases in relation to the violation of the fundamental rights of the person can give directions and orders. Can also issue orders to any Government authority.

The Supreme Court had stated that there was a need to frame and issue guidelines on the issue of rights of citizen to peaceful protest in order to ensure that there is a balance between the

rights of people to protest and at the same time maintain law and order in the nation.

The frequent use of prohibitory orders under section 144 of Criminal Procedure Code seems unfair and not rational on the part of the authorities and would unnecessarily restrict the fundamental right of the people to conduct a peaceful protest. There was a case filled by a non-governmental organisation, MazdoorKisan Shakti Sanghatan, they had opposed to the repeated use of prohibitory orders by the Delhi Police under the above mentioned provision of law, by stating that it almost wholly declared the whole Central Delhi as a restricted area for organising and conducting any public meeting, dharna or peaceful protest. As given in the sub-section 4 of the Section 144 of Criminal Procedure Code, such kind of prohibitory orders can be issued only for the maximum period of two months. Hence, the Delhi Police in order to have continuity of the prohibitory orders adopted an idea of getting issued the same orders one after the other repeatedly. This legal provision has become a regular based tool used by police daily in their work. These kind of orders are in fact passed by the local magistrate only if he foresees any kind of danger to life of people or a disturbance of the public peace, or wants to remove any obstruction, nuisance or injury to any person lawfully employed. In this situations, the magistrate may ask the authorities to stop the people demonstrating protest from doing certain acts which may lead to danger. Blocking of road routes at the time of peaceful public protest is allowed, if it done with the permission of the state authorities as this king of blocking routes is not considered as an absolute restriction, in these kind of cases the police authorities can make an alternative routes for the smooth movement of the traffic. In addition to this it is stated that if the police authorities are unable to find the substitute route to divert the traffic in that the permission granted could also get cancelled by the state authorities. As the freedom of assemble and peaceful protest guaranteed by the constitution is with reasonable restriction over here in this

matter to maintain public order, which includes maintenance of traffic as well in the area concerned has to be given priority over the individual's right to peaceful protest. The welfare of the state always prevails over the individuals rights. The rights of public in general are given more importance then individual's rights getting affected or violated by it, and the same cannot even be practiced at the cost of causing damage to any person.

In the context of above research, it is justified by stating the below given points, that the court is right in granting or awarding compensation to the victim of violation of human rights and human dignity, where the policemen applying excess force then required in order to stop the protest made by the group of people and maintain law as well as order. By doing so it has to be taken care that neither the injustice is done to the rights of people nor the public as well as property is affected by such protests and demonstrations. It is because of the because of the right to protest, most of the freedoms came into practice by the people and now there exists the liberal democracy.

1. It is clear, when the un-necessary force is applied by the policemen it is a misconduct on his part and violation of the fundamental rights of the victim and this gives rise to a liability not only under criminal or tort law but also under public law.
2. Pecuniary compensation can be awarded for such a violation of fundamental right i.e. right to assemble and right to peaceful protest.
3. It is the state that will be held liable to pay the compensation awarded to the victim and not the police officer found guilty of misconduct by applying the doctrine of vicarious liability, master liable for the acts of the servant in due course of employment.

4. The doctrine of sovereign immunity will not be applicable in the case of violation of the fundamental rights of the person and therefore it cannot be used as one of the defence in public law.

Conclusion:

Through judicial activism it is stated that right to peaceful protest is covered as a part of fundamental right. The right to peaceful protest cannot be taken away from the citizens, but simultaneous the protest and demonstrations should also not be allowed to that extent, where it is going to disturb the others rights and paralyse the life of the civilised society. This right can be exercised by an individual or group of people with certain reasonable restriction. If there is violation of the individual's right to protest, then such a victim can file a petition against another person or government as the case may be and the respective court where the petition is filed has an authority to pass an orders and compensation can be awarded to the victim. The remedies for violation of fundamental rights are available under the provisions of the Constitution of India. To conclude it is truly and rightly said that peaceful and non-violent protest is like a democratic right of the people. The innovative ways of peaceful protest has been successful but not completely. For example the Nirbhaya Movement, 2012, where the people had demonstrated protest against injustice and the incident of gang rape at Delhi, the protest was successful as the government at the centre and states announced many steps to ensure that the women's are safe. On the other hand where the students had gone on strike to demonstrate protest in 2015 at Delhi, against the appointment of the chairman of the film and television institute of India, as he lacked the requisite credentials, there was clashes between the students and the police. After about 150 days of agitation being done finally students gave up and stopped the further protest and there was outcome of the protest.

Suggestions:

Innovative modes to protest peacefully:

The traditional modes used at the time of Gandhi were Anshan's, rallies and dharmas, these protest were slow, and they require lots of patience and time in order to get some fruitful results out of it. These kind of old ways of protest are less effective in today's modern era, where people have become more strong, powerful and corrupt. Hence there was urgent need to think about new ideas and bring creative modes of peaceful protest, such kind of mode which could easily attract the attention of media, through media large number of people and then finally the concerned authorities.

The below given are some of the new ways of peaceful protest:

1. Through Public Speeches.
2. A group of people filling petition.
3. Wearing of black colour ribbon on hand or black colour clothes.
4. Reciting slogans.
5. Distribution of Leaflets and pamphlets.
6. Displaying portraits.
7. Painting the pictures and demonstrating.
8. Campaigns on social media.
9. Switching of lights.
10. Bike rally with flags and posters
11. Rally with candles lighted and demonstration of banners as well.
12. By not attending functions, weddings, parties and gathering of a corrupt public officials and political leaders.
13. Protest through the means of radio, television or newspaper.
14. Protest by strike.

Though there are few mentioned above and more additional ways of peaceful protest, predicting the effectiveness of protest by innovative ideas is also difficult. It's not easy to directly link the actions of demonstration taken and based on that the bills are getting passed or changes are made in the laws.



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