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EXAMINING THE ROLE OF CONSTITUTIONAL
COURTS IN UPHOLDING THE RIGHT TO PROTEST



SAMVIDHAAN SERIES: VOLUME - II
PART III ACTION RESEARCH & RESOURCE CENTRE

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IN UPHOLDING THE RIGHT TO PROTEST***

**SAMVIDHAAN SERIES: VOLUME - II
PART III ACTION RESEARCH & RESOURCE CENTRE**

**Licence to Protest: Examining the Role of
Constitutional Courts in upholding the Right to Protest.**

Authored by
Sanjana Srikumar and Tisha Roy

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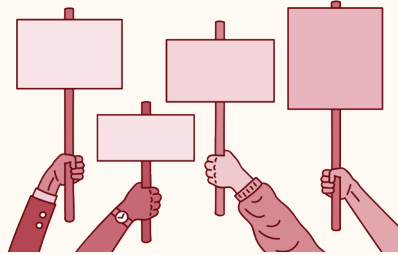
Part III Action Research and Resource Centre

Delhi: P-60, Ground Floor, Block-P, Chittaranjan Park,
New Delhi - 110019

Patna: Krishnalay, Ground floor, Road no. 9, C/o SK
Chaudhary Rajeev Nagar, Patna- 800024

Email: contact@part-three.org

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in Upholding the Right to Protest*

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Authored by

Sanjana Srikumar & Tisha Roy




Research Assistance

Priya Chaudhary

Edited by

Mangla Verma





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Foreword

Human beings are endowed by Nature to think. A thought is an expression of the self. What one thinks forms an individual's identity and gives him existential freedom, which, in the words of Rene Descartes, is, "I think, therefore I am." By its very nature, any authority or law cannot bind this process of thinking. It is an inviolable possession of every human being from where other rights originate. Justice Cardozo, in the US Supreme Court case of *Palko v Connecticut* (1937), had identified freedom of thought and speech as 'the matrix, the indispensable condition, of nearly every other form of freedom'.

While a 'thought' lies in the inner realm - *forum internum*; its manifestation belongs to the external realm - *forum externum*. Freedom of thought within is always free - without any exceptions - and bound only by self-restraint of what an individual considers objectively as right or wrong. But when it manifests outside in the form of speech or expression, it is subject to certain exceptions imposed by law. Such a law should, however, refrain from transcending the boundaries protecting the thoughts within. Any sanction or punishment for merely having a thought is unthinkable. It may, however, be relevant to refer to how freedom of thought, which is a precursor to freedom of speech, can be affected. In George Orwell's Novel "1984", the idea of '*Newspeak*' shows how a language can be used to limit the expression of original thoughts. This can be done through fear, coercion, torture, digital technologies and other means. It is a subject on which a lot can be said, but probably this is not the occasion.

There is a link between thought and its expression: a thought gives rise to an expression, but equally, the expression also nourishes the thought. The U.S. Supreme Court in *Ashcroft Vs Free Speech* 535 US 234 (2002) said it beautifully: “[t]he right to think is the beginning of freedom, and [...] speech is the beginning of thought”. Art 18 of UDHR speaks about the “freedom of thought and conscience”, whereas Art 19 of UDHR refers to “freedom of speech and expression”. Our Constitution protects under Art. 19(1)(a), “freedom of speech and expression” and “freedom of conscience” in Art.25. In this regard, reference to the 2021 report of the UN Special Rapporteur on freedom of thought will be of some interest. In the report, he calls it a “forgotten freedom” and says that its relationship with other rights in domestic and international law has been given “scant attention.”. Scholars feel that though the subject is interesting, it is also quite complex.

Any unjust, oppressive, insensitive or discriminatory act by the State or otherwise may trigger a reaction in the thought process. People may agree or disagree or would like to give it a different interpretation, a different opinion. This reaction of an individual may then manifest outwardly as poetry, a story, a song, a painting or protests in different forms for the preservation of democracy and for the free exercise of social and political rights. Of course, an individual’s freedom of thought and expression, like every form of freedom, carries with it corresponding duties and obligations towards others.

Gandhiji used the idea of nonviolence to express his dissent during his struggles and protests. His fight was for truth and justice—*satyagraha*—which ultimately succeeded. Gandhiji thus set an example for the entire world: that all human beings have a right to express their ideas following the path of non-violence against what is unjust and to fight fearlessly for truth and justice. This idea of protest, in the Indian context, is therefore not new but a legacy inherited from our freedom struggle. Justice Krishna Iyer, in *Rohtas Industries* [1976 2 SCC 82], reminded us that “*Our story of freedom and social emancipation led by the Father of the Nation has employed, from the highest of motives,*

combined action to resist evil and to right wrong”, which finds expression in organized boycotts and mass satyagraha.

The First Amendment in the American Constitution led to various views regarding the freedom of speech, from the clear and present danger to the balancing acts. But our socio-economic conditions are different. Our Constitution reaffirms the importance of freedom of speech and expression in the entire fabric of human life. Realizing this, the Supreme Court has given wider meaning to the freedom of speech and expression by including freedom of propagation of ideas, circulation and communication of opinions and views, the right to speak and publish, people’s right to read, the right to know, to receive and impart information and the freedom of the press, etc. within the fold of Art. 19 (1)(a) of the Constitution. The Supreme Court’s role in upholding these rights is crucial, as can be seen in its judgment in *Shreya Singhal (2015(5)SCC 1)*, which enunciated the law very clearly on different aspects of freedom of speech and expression. In *Anita Thakur v. Union of India (2016) 15 SCC 525*, the Supreme Court recognized this tradition of protest and observed that *“Organised, non-violent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.”*

But there are aberrations when the court allows the exceptions to overlap the basic freedom of thought and its expression while judging the State’s actions. This happens when only words and their superficial meanings are seen as tools of interpretation without consciously and objectively weighing what impact they will have on personal freedom and democracy. It is a very sensitive and balancing task and not so easy either. Recent examples of imposing draconian laws by the State on individuals expressing their dissent are a cause of worry to every right-thinking person having faith in democracy and the Rule of law. The courts faced with this situation are required to perform an extremely difficult and delicate task. Every such law should be judged with prime concerns, such as whether it is curtailing the space of thoughts and expression

that every person inherits. Is it circumscribing the constitutional guarantees of human freedom unjustifiably? Will it ever be good for democracy?

The authors of this study have undertaken a commendable task of exploring the meaning of freedom of speech and expression through various judgments of the Apex Court and High Courts. This work is a crucial step towards a more comprehensive understanding of the freedom of speech and expression. I express my sincere hope that this endeavour will inspire us to examine every court judgment meticulously and objectively from the perspective of how far it has upheld and strengthened the freedom of expression and dissent, which is so vital for democracy as well as for an individual and society.



Sanjay Parikh

Senior Advocate,
Supreme Court of India.

Executive Summary

Peaceful protests have historically been pivotal in our country, sparking significant public debate in recent years regarding the limitations placed on the right to protest. This report aims to critically examine the role of the Supreme Court and High Courts in defining this right and assessing the legitimacy of imposed restrictions. It reviews 18 landmark decisions by the Supreme Court through its history, and 42 High Court rulings from the past two decades.

Human Rights Framework for the Right to Protest

Protests embody the right of citizens to express dissent and to have their views heard, both individually and collectively, through public gatherings. These activities are protected under the rights to freedom of speech and expression, as well as the right to peaceful assembly.

Internationally, these rights are enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Contrary to the recent debates in India regarding protests in public spaces, the Human Rights Committee—a treaty body for implementing the ICCPR—acknowledges that peaceful assemblies may promote contentious ideas or goals, potentially disrupting traffic or economic activities. However, such disruptions do not negate the protections afforded to these assemblies.

In India, the right to protest is safeguarded by the right to freedom of speech and expression under Article 19(1)(a) of the Constitution and the right to assemble peacefully without arms under Article 19(1)(b). These rights are subject to reasonable restrictions under Articles 19(2) and (3) respectively, which permit limitations in the interest of public order and among other legitimate State objectives. The expressions *reasonable restriction and public order* were only introduced in Article 19(2) after the First Constitutional Amendment in 1951.

Supreme Court's Interpretations on Public Order as a ground for restricting the Right to Protest

In 1960, the Supreme Court affirmed the necessity of ensuring a proximate relationship between restrictions on the right to protest and the maintenance of public order. This principle was further clarified in *Ram Manohar Lohia v. State of Bihar*, where the Court explained that law and order, public order, and the security of the state can be imagined as three concentric circles: law and order being the largest, followed by public order, and the smallest being the security of the state. Thus, security of the state has a narrow connotation and refers to threats to the state's existence, while Public order is narrower than mere disturbances of law and order. The Court emphasised that not every breach of peace or disturbance of law and order constitutes public disorder. Thereafter, in *Shreya Singhal v. Union of India*, the Court held that mere annoyance does not equate to a disturbance of public order; there must be a clear and present danger or tendency to create public disorder for restrictions to be justified.

Laws regulating the Right to Protest

While our constitution robustly guarantees the right to protest, court decisions reveal that protests are heavily regulated and restricted by a series of laws. The legislations imposing these restrictions includes:

Legislation	Restrictions
<i>Criminal Laws</i>	
<p>Section 144 Code of Criminal Procedure Code, 1973 (“CrPC”), now Section 163 Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”).</p>	<p>Right to protest is severely regulated by criminal law, specially S. 144 CrPC/S. 163 BNSS. It enables a District Magistrate (DM) or Sub-Divisional Magistrate (SDM) to pass orders in cases of anticipated injury or danger or disturbance to public peace and tranquility, including:</p> <ul style="list-style-type: none"> • directing any person to not do an act, or • orders with respect to any property in that person’s possession <p>Such an order may also be passed in the absence of the party affected and may be directed at a specific person or all persons within a specific area. The order can be passed for a period of upto two months, but can be extended by the State government for a period of six months from the date of the order.</p>
<p>Section 188 of the Indian Penal Code (“IPC”) now Section 223 of Bharatiya Nyaya Sanhita, 2023 (“BNS”)</p> <p>S. 195 CrPC (S. 215 BNSS)</p>	<p>Non-compliance with the order issued by the DM/SDM under S. 144 CrPC/S. 163 BNSS is criminalized under S. 188 IPC/S. 223 BNS if the disobedience of the order causes or may cause injury or danger or any disturbance to public peace and tranquillity. Therefore, mere disobedience of an order under S. 144 CrPC does not attract criminal prosecution. There is a need to demonstrate a danger or disturbance as a result of that disobedience.</p> <p>Further, a procedural safeguard is provided under S. 195 CrPC (S. 215 BNSS) wherein, a complaint in writing can only be made by the concerned public servant, who’s order has been disobeyed with, for a court to take cognisance of the offence.</p>
<p>Section 143 CrPC now Section 162 BNSS.</p> <p>Section 268 IPC (S. 270 BNS)</p>	<p>Empowers an Executive Magistrate (DM/SDM) to prohibit the repetition or continuance of public nuisances.</p> <p>Public nuisance has been defined in Section 268 IPC (S. 270 BNS) as any act or omission which causes or may cause any common injury, danger or annoyance to the people who live or occupy property in the vicinity, in the use of any public right.</p>

<p>Section 141 IPC (S. 189 BNS).</p> <p>Section 149 IPC (S. 190 BNS)</p> <p>Sections 129 to 131 CrPC (S. 148 to 150 BNSS)</p>	<p>In case a public rally becomes unruly, it may also be considered an unlawful assembly under Section 141 of the IPC.</p> <p>Section 149 IPC (S. 190 BNS) clarifies that every member of an unlawful assembly will be guilty of an offence committed by any member of the assembly, if the offence is done in order to fulfil a common object of that assembly.</p> <p>Sections 129 to 131 CrPC (S. 148 to 150 BNSS) lays down the procedure of dispersing an unlawful assembly.</p>
<p>Unlawful (Activities) Prevention Act, 1967 and the Arms Act, 1959.</p>	<p>Recent case law suggests that criminal legislations such as the Unlawful (Activities) Prevention Act, 1967 and the Arms Act, 1959 are being invoked against protesters. It remains to be seen if the provisions of UAPA which have been introduced in the BNS and the new section penalising acts of secession, armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity of India (S 152 BNS) will be invoked against the protestors.</p>
<p><i>Police Acts</i></p>	
<p>The Police Act, 1861 and other State Police Acts.</p>	<p>It specifies the powers of the police with respect to maintenance of public order. In addition, several State Police Acts regulate the grant of permission to hold a demonstration or protest. For instance:</p> <ul style="list-style-type: none"> • Section 33 of the Maharashtra Police Act, 1951 empowers the Commissioner of Police to frame rules for regulating assemblies, processions and licensing and regulation of public places. • Section 37(3) of the Act provides for the power to pass an order to prevent public assembly in an area to prevent public disorder. <p>Police legislations may also regulate the use of force for dispersal of an assembly. For instance:</p> <ul style="list-style-type: none"> • Rule 14.56 of the Punjab Police Rules, 1934 (also applicable to Delhi) provides for the use of force against crowds.

<i>Legislations that govern access to public places and ways</i>	
Section 8B of The National Highways Act, 1956	It provides for the power to regulate access to highways and penalizes obstruction of highways.
The Railways Act, 1989	This law has been used by the authorities to restrict the right to protest, particularly in cases where railway operations are obstructed or disrupted during demonstrations.
Contempt of Courts Act, 1971.	Protests in Court premises may be regulated by the Supreme Court and High Courts through this Act.
West Bengal Maintenance of Public Order Act, 1972 and other such State legislations.	Public buildings are regulated through State legislations such as the West Bengal Maintenance of Public Order Act, 1972, which under Section 6-9 provides for penal provisions such as ‘prevention of subversive acts’ to protect government buildings, railways etc.
Legislations pertaining to universities such as the Mahatma Gandhi University Students’ Code of Conduct Rules, 2005.	University statutes permit authorities to regulate activities within their premises and have often been used to curb protests by student organizations. For instance: <ul style="list-style-type: none"> • Rule 5 of the Mahatma Gandhi University Students’ Code of Conduct Rules, 2005 prohibits political activity by students including gatherings, dharna etc.
<i>Civil legislations</i>	
Section 3(1)(f) and Section 5 of the Foreign Contribution (Regulation) Act, 2010 and Rule 3(vi) of the Foreign Contribution (Regulation) Rules, 2011	It classifies an organization that “habitually engages in bandhs or hartals and other forms of political action in support of social causes”, as an organization of a political nature, which means that the organization can not receive any foreign contribution.

<p>Rule 4A, Bihar Government Servants' Conduct Rules</p>	<p>It prohibits demonstrations by public servants.</p>
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Right to Protest and the Indian Supreme Court

The Indian Supreme Court's handling of the right to protest reveals a complex interplay between fundamental rights and state regulations. The Court's approach reflects varying attitudes toward protests as instruments of democratic governance and dissent. Historically, the Supreme Court has recognized protests as crucial for holding public officials accountable and engaging directly in democratic processes. It has acknowledged the state's duty to protect this right. However, recent rulings suggest a differentiated approach, distinguishing contemporary dissent from historical contexts like colonial rule.

Section 144 CrPC, which restricts assemblies to maintain public safety and order, has been upheld by the Supreme Court in various cases. In *Babulal Parate v. State of Maharashtra*, the Court affirmed its constitutionality, considering it an emergency power with safeguards. Similarly, in *Madhu Limaye v. Sub-Divisional Magistrate*, Section 144 was upheld as necessary for preventing violence. However, the Court has emphasised that Section 144 should be invoked only with real threats, not hypothetical ones, as seen in the *Ramlila Maidan Incident, In Re*. Conversely, in *Mazdoor Kisan Shakti Sangathan v. Union of India*, the Court upheld the routine renewal of Section 144 orders, effectively banning assemblies and diverging from its emergency nature. The Court however, directed the police to create guidelines for protest permissions, highlighting concerns about excessive administrative discretion. Further, the Supreme Court has consistently upheld the need for prior police permission as a reasonable restriction on the right to protest, aimed at ensuring regulated use of public spaces. It has struck down arbitrary regulations lacking clear guidelines but has maintained a stance favouring police consultation, without fully addressing the state's duty to facilitate these rights.

The Supreme Court has grappled with the complex issues surrounding police action against protesters. In *Beenu Rawat v. Union of India*, the Court expressed concerns about potential misuse of police authority impacting protesters' rights. In *Anita Thakur & Ors. v. Govt. of J&K*, the Court acknowledged that while police force is justified against violent crowds, excessive force against peaceful protesters violates human rights. Thus, the Supreme Court has based its assessment of police force on the perceived conduct of protesters, showing a concerning reliance on subjective judgments about the protesters' actions and intentions.

Interestingly, the Supreme Court has often based protest restrictions on grounds beyond those specified in Articles 19(2) and 19(3) of the Constitution. For example, in *Mazdoor Kisan Shakti Sangathan*, the Court upheld a National Green Tribunal ban on protests at Jantar Mantar for noise pollution, despite it being outside the Tribunal's environmental mandate. The Court has sometimes used Fundamental Duties to justify restrictions on Fundamental Rights, as noted in the *Ramlila Maidan Incident, In Re.*, emphasising duties to protect public property and maintain order. In *Shaheen Bagh*, the Court upheld restrictions on indefinite protests on public roads due to commuter inconvenience, though it did not explicitly connect this to Article 19(2) public order restrictions. During the farmers' protests, the Court supported the right to protest despite road blockades, reflecting a nuanced stance on balancing protest rights with public inconvenience.

Further, PILs have sometimes led to restrictions on the right of peaceful assembly without any legislative backing. For instance, the Supreme Court has issued guidelines in response to violent protests, such as requiring coordination with police, bypassing legislative processes and limiting judicial review. In *Shaheen Bagh* and during the farmers' protests, the Court took on a mediatory role, focusing on conflict resolution rather than strictly assessing the constitutional validity of restrictions.

The High Courts and the Right to Protest

The High Court decisions from 2004 to 2023 highlights the judiciary's approach to the right to protest, showing a blend of

upholding this right while addressing concerns related to law and order. High Courts frequently address disputes over police permission for protests, generally upholding the right to protest while imposing conditions to maintain order. These conditions often include notifying authorities about organisers and avoiding disruptions. Courts have varied in their scrutiny of police concerns about potential disturbances, with some demanding clear justifications for restrictions and others accepting speculative concerns about communal violence. Restrictions imposed by non-police authorities, like judicial or university officials, have also been reviewed.

The approach to blanket prohibitions on protests also varies across High Courts. The Kerala High Court upheld a university's blanket ban on political protests, citing campus regulations. In contrast, the Karnataka and Bombay High Courts found blanket prohibitions under Section 144 illegal, emphasising proportionality and the need for evidence. The Andhra Pradesh High Court struck down a government order banning public meetings on roads, stressing that regulations should not completely obstruct peaceful protests.

High Courts also differ in their treatment of criminalization related to protests. Bail and quashing petitions are often granted for nonviolent protests, such as hunger strikes. Some courts, like the Uttarakhand High Court, have condemned police violence, while others, like the Allahabad High Court, have upheld penal actions even for peaceful protests. The Madras High Court has quashed FIRs for misuse of Section 188 IPC, emphasising legal standards and procedural safeguards against abuse.

The CAA protests also showcased diverse High Court responses. The Karnataka High Court deemed a blanket ban under Section 144 illegal, granted bail to protesters, and condemned police violence. The Bombay High Court struck down a ban on certain protest activities, upholding peaceful dissent. The Allahabad High Court protected protesters' privacy and criticised police practices. The Madras High Court quashed cases for lack of procedural clarity, while the Delhi High Court addressed misuse of stringent laws such as UAPA and granted bail. Conversely, the Gauhati and Allahabad

High Courts upheld criminal proceedings against protesters based on violence and property damage allegations.

High Courts have considered economic impacts of protests, as seen in the Gauhati High Court's criminalization of protests disrupting essential goods movement. However, the Madras High Court dismissed a business loss claim related to a protest, asserting that such restrictions should not be based on economic inconvenience alone. The Bombay and Kerala High Courts upheld the right to protest even when it affected business operations or involved large-scale demonstrations. However, High Courts have only occasionally considered the social context of protests. The Bombay High Court acknowledged marginalisation driving protests in *Iftexhar Zakee Shaikh v. State of Maharashtra*, and the Madras High Court noted the emotional impact of a student's death on protests against the NEET exam in *Arunkanth v. TN Uniformed Services Recruitment Board*.

Conclusions

A review of constitutional jurisprudence highlights that while the right to protest is robustly protected by fundamental rights, it faces significant legislative and executive regulation. The Supreme Court's recent focus on legality, legitimacy, proportionality, and safeguards against abuse marks progress in aligning restrictions with human rights standards. Legislative regulations, particularly Section 144 of the CrPC, impose extensive restrictions, with the Supreme Court's interventions only partially addressing concerns of abuse.

The High Court decisions emphasise the role of state police regulations in controlling protests, with growing demands for transparency. Executive discretion in requiring prior permission and regulating protests is often misused, with powers expanded through public interest litigation. There is also a troubling trend toward criminalising protests using stringent laws. Courts frequently defer to state concerns about law and order without scrutinising restrictions. Despite inconsistencies, recent Supreme Court rulings on proportionality and High Court guidelines indicate increasing awareness of misuse and arbitrariness, underscoring the judiciary's critical role in upholding fundamental rights.

About this Report

Introduction

Peaceful protests have played a critical role in the freedom struggle, in the face of brutal repression of dissent by the colonial government. In recent years, protests that seek to uphold constitutional values have been the source of public debate - not just because of the issues that prompt the protest but also on the forms of restrictions on this right that are justifiable in a democratic, sovereign India. For instance, recent reports that suggest that passports of protesting farmers will be cancelled on the basis of images in surveillance footage prompt concerns about the need to ensure that restrictions on the right to protest are compatible with fundamental rights guaranteed in the Constitution.¹

This report seeks to critically examine the role of the Supreme Court and High Courts in defining the contours of the right to protest. Protests often occupy both public spaces and public imagination. It is this dual role that is protected by the Constitution under the right of speech and expression, which affirms the right of citizens to express dissent and have their views heard, and the right to peaceful assembly, which affirms their right to express this dissent collectively and through gatherings at physical spaces. The report, therefore, considers how constitutional courts have viewed protests and critically examines their application of a fundamental rights framework to uphold these rights or adjudicate the validity of restrictions.

Methodology

For this purpose, we have reviewed 18 decisions of the Supreme Court of India through its history and 42 recent decisions of various High Courts in the last two decades. The report is considering protests in terms of the expression of dissent as well as assembly in public spaces. Therefore, we have excluded mere expression in the absence of physical assembly or vice-versa. As such, decisions on processions that are not accompanied by expression of dissent, decisions on the right to strike or refuse work where no physical assembly took place and purely individual speech in print or online media have not been considered. The report is also confined to reportable decisions on the popular legal database SCCOnline and is therefore, not exhaustive. Despite these exclusions, the decisions reviewed reflect changes in how the Supreme Court has viewed the right to protest as well as emerging trends in recent decisions of various High Courts.

Note: This report considers judgments passed till March 2023. Further, it does not discuss the new criminal laws as it was written before they came into force.

Outline

Part A of this report outlines the laws governing the right to protest. Chapter 1 outlines a human rights framework for adjudicating the right to protest on the basis of international human rights law and domestic constitutional law. Chapter 2 traces the legislative basis for restrictions considered in the right to protest.

Part B of the paper critically considers the role of constitutional courts in upholding the right to protest. Chapter 3 considers the adjudication of the right to protest by the Supreme Court of India, whereas Chapter 4 considers the impact of this jurisprudence on the High Courts and the role that High Courts have played in upholding the right to protest in the last two decades.

Finally, Part C concludes with an examination of the right to protest in constitutional jurisprudence and possible pathways forward.

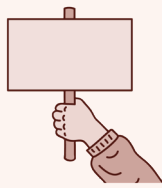


PART A

Introducing the Law on Right to Protest

Part A outlines the human rights framework for adjudicating the right to protest on the basis of international human rights law and domestic constitutional law. It further traces the Constitutional safeguards and restrictions on the right to protest. Lastly, it talks about different legislations which regulate and impact the right to protest.





CHAPTER 1

Human Rights Framework for the Right to Protest



International Context

The right to protest is protected under the human right to freedom of expression and the freedom of peaceful assembly. In international human rights law, these rights are enumerated in the Universal Declaration of Human Rights, 1945 as well as the International Covenant on Civil and Political Rights, 1966 (ICCPR).² In fact, the Human Rights Committee - a treaty body for the implementation of the ICCPR, in considering the right of peaceful assembly, has affirmed that *“together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism.”*³

The Convention protects assemblies in various forms- demonstrations, protests, sit-ins etc. The Human Rights Committee notes that peaceful assemblies may be in pursuance of contentious

ideas or goals, and that their scale or nature may cause disruption to vehicular or pedestrian movement or economic activity.⁴ These disruptions do not take away from the protection enjoyed by these assemblies.⁵ Protection of this right entails a *negative duty*, that is, States are obliged not to restrict this right without compelling justification, as well as a *positive duty* to enable access to this right without discrimination, including through protection against violence by non-State actors.⁶ Restrictions on this right must be provided by law as well as be necessary and proportionate to the legitimate objectives of the State under the Convention, such as public order.⁷ These obligations, therefore, call on States to adopt the least restrictive measures. For instance, even if there is a possibility of violence, the State must consider whether it can contain the situation or recommend less intrusive measures such as postponement or relocation of the assembly.⁸

Indian context

In India, the right also gains significance in light of the history of protests and demonstrations as a key tool in the struggle for independence.⁹ As a result, the Constitution also includes ostensibly robust provisions to protect the right to protest. The right to protest is guaranteed under various provisions of Article 19 of the Constitution. Article 19, as it currently stands, states as follows:

Article 19. Protection of certain rights regarding freedom of speech, etc

Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

[...]

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable

restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. (3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.”

It is clear from the above that the right to protest is protected by the right to freedom of speech and expression under Article 19(1)(a) of the Constitution and the right to assemble peacefully without arms under Article 19(1)(b). These rights are, in turn, subject to the restrictions of Articles 19(2) and (3) respectively, and therefore, reasonable restrictions may be imposed on the basis of *public order*, among other legitimate State aims.

In fact, the expression *reasonable restriction* as well as *public order* were only introduced in Article 19(2) after the First Constitutional Amendment in 1951. This was in response to two judgments of the Supreme Court in *Romesh Thappar v. State of Madras*¹⁰ and *Brij Bhushan v. State of Delhi*,¹¹ which struck down public order legislations on the basis that a restriction on freedom of speech and expression could only be directed against State security or its overthrow, and not merely maintenance of public order.

However, even after this Amendment, the Supreme Court has from time to time upheld the protections under Article 19 through an expansive protection for dissent and a narrow reading of reasonable restrictions. Before considering the Supreme Court’s jurisprudence in cases involving public protests (*see Chapter IV*), it is necessary to consider this background.

The Supreme Court has in several contexts affirmed that freedom of expression is essential to protect the right of citizens

to directly participate in the democratic process.¹² Considering the significance of Article 19, the Court has also clarified that the Indian constitutional framework envisages negative as well as positive obligations of the State. Positive obligations means that the State is duty-bound to take affirmative steps to ensure conditions in which these freedoms can be exercised, including protection from violence by non- State actors.¹³

While the recognition of positive obligations is recent, there is ample jurisprudence on the negative obligations. The Court has from time to time sought to apply fetters on the ability of the State to restrict fundamental rights. In *State of Madras v. VG Row*,¹⁴ the Court held that restrictions on fundamental rights must be considered from the perspective of *reasonableness*, that is, the Court must consider “*the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time.*”



Public Order as a Legitimate Aim for Restricting the Right to Protest

In the context of protests, restrictions may be traced to, for instance, the legitimate aim of protecting public order under Article 19(2) or Article 19(3). The Supreme Court has affirmed that there is a need to ensure a proximate relationship between the restriction and the maintenance of public order.¹⁵ The Supreme Court further clarified in *Ram Manohar Lohia v. State of Bihar*¹⁶ that “*one has to imagine three concentric circles : Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents the security of the State.*” Security of the state had a narrow connotation where the existence of the State was threatened, and while public order was a wider concept, it was still to be construed more narrowly than mere disturbance of law and order. In this context, the Court clarified that every breach of peace or disturbance of law and order does not lead to public disorder.

In *S. Rangarajan v. P. Jagjivan Ram*,¹⁷ the Court further elaborated this test as under:

“The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of 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. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a ‘spark in a power keg’.”

A restriction on this ground is therefore, valid only if there is a proximate nexus with public order. Mere annoyance cannot be considered a disturbance to public order, and there has to be a clear and present danger or tendency to create public disorder.¹⁸



Proportionality of restrictions and safeguards against abuse

A big leap in the jurisprudence on fundamental rights came in the case of *Maneka Gandhi v. Union of India*,¹⁹ where the Court rejected a formalistic understanding of fundamental rights and held that the rights guaranteed in Part III of the Constitution have to be read together. As a result, a violation of fundamental rights, if it violates personal liberty, must strictly be for grounds laid down in Articles 19(2) to 19(6), as well as the test against arbitrariness in Article 14 and *procedure established by law* under Article 21 of the Constitution.²⁰

More recently, the Court has clarified that as a result, legislation may be struck down solely on the ground of arbitrariness.²¹ In a landmark nine-judge decision in the context of the right to privacy in *K.S. Puttaswamy (Retd) (Privacy-9j) v. Union of India*,²² it has been clarified that restrictions on fundamental rights must meet a three-part test- *legality*, that is the restrictions must be provided by law; *legitimacy*, or that they must be in pursuance of a legitimate state aim; and *proportionality*, which ensures a rational nexus between objects and the means adopted to achieve them. This was affirmed in the concurring opinion of Kaul, J., which added a fourth prong to this test to evaluate the procedural guarantees against abuse of such interference.²³ The opinion of Nariman, J. further clarified that the ultimate analysis of balancing individual, societal and State interests requires the training and expertise of a judicial mind.²⁴

In light of these recent developments, much of the jurisprudence on protests may need reconsideration- in particular, with respect to the prong of proportionality. Recently, the Supreme Court had such an occasion to consider a legal provision that impacts the right to protest- Section 144 of the Code of Criminal Procedure, 1973 CrPC, albeit in a different context. After referring to recent developments in constitutional law in *Anuradha Bhasin v. Union of India*,²⁵ the Court directed that all orders under Section 144, which allows for preventive or protective measures in case of an emergency, must be published. In addition, the Court clarified that:

“160.10. The power under Section 144 CrPC, being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an “emergency” and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.

160.11. The power under Section 144 CrPC cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.

160.12. An order passed under Section 144 CrPC should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.

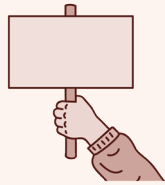
160.13. While exercising the power under Section 144 CrPC, the Magistrate is duty-bound to balance the rights and restrictions based on the principles of proportionality and thereafter, apply the least intrusive measure.

160.14. Repetitive orders under Section 144 CrPC would be an abuse of power.”

As will be clear in the subsequent chapters, these safeguards are needed even in the context of protests in order to ensure that actions of the State are least restrictive on fundamental rights and do not suffer from excessive discretion.

ENDNOTES

- 1** Sukhbir Siwach & Rakhi Jagga, *Farmers' stir: Haryana Police starts passport and visa cancellation against protesters*, Indian Express (29 Feb, 2024), available at <https://indianexpress.com/article/cities/chandigarh/haryana-police-farmers-passport-visa-cancellation-process-protesters-9187313/> (last accessed 11 Mar, 2024).
- 2** Universal Declaration of Human Rights (1948), art.19, art.20; International Covenant on Civil and Political Rights, 1966, art.19, art.21; *See also* Convention on Rights of the Child 1989, art. 15; International Convention on the Elimination of All Forms of Racial Discrimination 1965, art.5(d)(ix).
- 3** Human Rights Committee, General Comment No. 37 on the Right of Peaceful Assembly (article 21) (17 Sep 2020), para 1.
- 4** *Id*, para 6.
- 5** *Id*, para 7.
- 6** *Id*, para 21-24.
- 7** *Id*, para 36.
- 8** *Id*, para 52.
- 9** *See Anita Thakur v. Govt of J&K*, (2016) 15 SCC 525, para 12.
- 10** 1950 SCR 594. Please note that para numbers of cited AIR/SCR cases in this report correspond with their SCCOnline versions.
- 11** 1950 SCR 605.
- 12** *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, para 29; *S Rangarajan v. Jagjivan Ram*, (1989) 2 SCC 574, para 36.
- 13** *Indibily Creative Pvt Ltd. v. Government of West Bengal*, (2020) 12 SCC 436, para 50; *Tehseen Poonawalla v. Union of India*, (2018) 9 SCC 501; *S Tamilselvan v. Government of Tamil Nadu*, 2016 SCCOnline Mad 5960.
- 14** (1952) 1 SCC 410, para 23.
- 15** *Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia*, (1960) 2 SCR 821.
- 16** AIR 1966 SC 740, para 55 (Hidayatullah, J.)
- 17** (1989) 2 SCC 574, para 45.
- 18** *Shreya Singhal v Union of India*, (2015) 5 SCC 1, para 38-44.
- 19** (1978) 1 SCC 248. As per the law laid down in this judgment, arts.14, 19 & 21 lead together is referred to as the golden triangle.
- 20** *Id*; *See for instance*, Nariman, J. in *K.S. Puttaswamy (retd) v. Union of India*, (2017) 10 SCC 1, para 526. It has also been argued that this 'golden triangle' has the impact of diluting Article 19 due to dilution of focus from the grounds specifically mentioned in Article 19- *see* Sukarm Sharma, *Rescuing Article 19 from the Golden Triangle*, (2022) 15 NUJS L Rev 319.
- 21** *Shayara Bano v. Union of India*, (2017) 9 SCC 1; *Association for Democratic Reforms & Anr v. Union of India*, 2024 SCC Online SC 150.
- 22** (2017) 10 SCC 1, para 325 (Chandrachud, J), para 379-380 (Chelameswar, J.).
- 23** *Id*. para 638 (Kaul, J.),
- 24** *Id*. para 526 (Nariman, J.),
- 25** (2020) 3 SCC 637, para 160.1



CHAPTER 2

Laws regulating the Right to Protest

While constitutional law offers robust guarantees for the right to protest, in reality, a perusal of decisions on the right to protest reveals that protests are severely regulated and restricted by a catena of legislation. Many of these have been considered and upheld by Courts.



Criminal Procedure Code

The right is severely regulated by criminal law. Section 144 of the CrPC²⁶ enables a District Magistrate or Sub-Divisional Magistrate to pass orders in cases of anticipated danger. Such an order may direct any person to “*abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.*”²⁷ Such an order may also be passed in the absence of the party concerned and may be directed at a specific person or all persons within a specific area.²⁸ The order may not be passed for a period exceeding two months, subject to the power of the State government to pass a direction extending the validity of the order for a period of six months from the date

of the order.²⁹ The law also contemplates safeguards including the power to decide applications for rescinding or altering the order as well as an opportunity of hearing to an aggrieved party.³⁰

It is worth noting that a recent paper demonstrates that despite the colloquial association of Section 144 CrPC with the curtailment of public assembly and exercise of civil liberties, a study of such orders passed over a year in Delhi showed that they constitute a miniscule portion of the orders passed under this provision.³¹ Nonetheless, despite this wider ‘function-creep’ beyond the issue of public order, such orders are frequently reported as a response to protests, in order to prevent the assembly of people in certain areas.³²

Protests frequently invite penal consequences. Non-compliance with the order under Section 144 is criminalized under Section 188 of the Indian Penal Code, 1860 (“IPC”),³³ which penalizes disobedience of an order passed by a public official which he is legally empowered to do, if the disobedience causes “*obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed*” and if it tends to cause “*danger to human life, health or safety*” or “*a riot of affray.*” However, Section 195 of the CrPC³⁴ provides that no Court shall take cognizance of an offence under Section 188, IPC without a complaint in writing by the public servant concerned. Therefore, mere disobedience of an order under Section 144, CrPC does not attract criminal prosecution. There is a need to demonstrate a consequence as a result of that disobedience under Section 188, IPC as well as the procedural safeguards under Section 195, CrPC.

Further, Section 143 CrPC³⁵ empowers an Executive Magistrate to prohibit the repetition or continuance of public nuisances. Section 268, IPC³⁶ has defined *public nuisance* as any act or omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. In case a public rally becomes unruly, it may also be considered an unlawful assembly

under Section 141, IPC.³⁷ Section 149, IPC³⁸ clarifies that if an offence is committed by any member of an unlawful assembly to effectuate the common object of that assembly, every person who, at the time of committing that offence, was a member of the same assembly, will be guilty of that offence. Sections 129 to 131, CrPC³⁹ lay down the procedure of dispersing an unlawful assembly.

Police Acts

The Police Act, 1861 specifies the powers of the police with respect to maintenance of public order. In conjunction with this, several State police Acts regulate the grant of permission to hold a demonstration or protest.⁴⁰ For instance, Section 33 of the Maharashtra Police Act, 1951 empowers the Commissioner of Police to frame rules for regulating assemblies and processions and other forms of licensing and regulation of public places. Section 37(3) of that Act further provides for the power to pass an order to prevent public assembly in an area to prevent public disorder. Police legislations may also regulate the use of force for dispersal of an assembly- for instance, Rule 14.56 of the Punjab Police Rules, 1934 (as applicable to the National Capital Territory of Delhi) provides for the use of force against crowds.

Other Laws

In addition to the above, recent case law suggests that criminal legislations such as the Unlawful (Activities) Prevention Act, 1967 (“UAPA”) and the Arms Act, 1959 are being invoked against protesters. There are also several other legislations that govern access to public places and ways. The National Highways Act, 1956 provides for the power to regulate access to highways and penalizes obstruction of highways.⁴¹ The Railways Act, 1989, is another legislation that has been used by the authorities to restrict the right to protest, particularly in cases where railway

operations are obstructed or disrupted during demonstrations. Similarly, protests in Court premises may be regulated by the Supreme Court and High Courts through the Contempt of Courts Act, 1971. Many public buildings are also regulated through State legislations such as the West Bengal Maintenance of Public Order Act, 1972, which includes penal provisions such as '*prevention of subversive acts*' to protect government buildings, railways etc.⁴² University statutes may also permit them to regulate activities within their premises and have often been used to curb protests by student organizations- for instance, Rule 5 of the Mahatma Gandhi University Students' Code of Conduct Rules, 2005 prohibits political activity by students including gatherings, dharna etc.

There are also civil legislations that may provide for civil consequences for protesters. For instance, the Foreign Contribution (Regulation) Act, 2010 classified an organization that "habitually engages in bandhs or hartals and other forms of political action in support of social causes", as an organization of a political nature, which meant that the organization could not receive any foreign contribution.⁴³ Another example is Rule 4A, Bihar Government Servants' Conduct Rules 1956 which prohibits demonstrations by public servants.

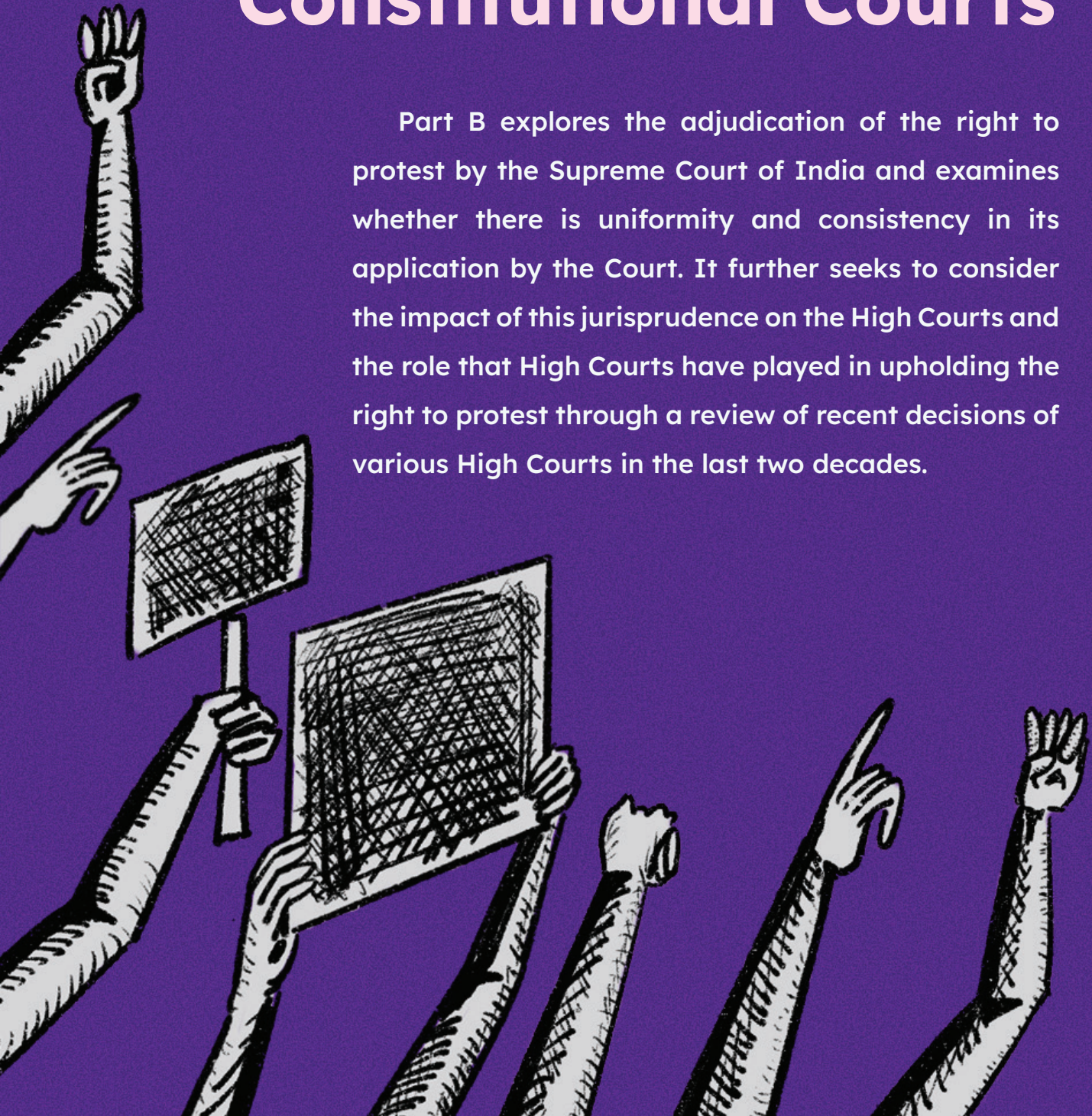
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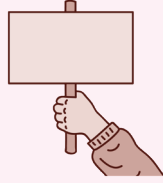
- 26** This is now contained in the Bharatiya Nagarik Suraksha Sanhita, 2023, Section 163.
- 27** Code of Criminal Procedure 1973, Section 144(1).
- 28** *Id*, Section 144(2), 144(3).
- 29** *Id*, Section 144(4).
- 30** *Id*, Section 144(5)-(7).
- 31** Vrinda Bhandari et al, The Use and Misuse of Section 144 CrPC (22 Mar 2023), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4389147 (last accessed 13 Feb 2024).
- 32** *See for instance* Hindustan Times, Farmers' Delhi Chalo Protest: Section 144 imposed in entire Delhi, large gatherings banned (12 Feb, 2024), *available at* <https://www.hindustantimes.com/india-news/farmers-delhi-chalo-protest-section-144-imposed-in-entire-delhi-large-gatherings-banned-101707719909382.html> (last accessed 13 Feb, 2024).
- 33** Bharatiya Nyaya Sanhita, 2023, Section 223.
- 34** Bharatiya Nagarik Suraksha Sanhita, 2023, Section 215.
- 35** Bharatiya Nagarik Suraksha Sanhita, 2023, Section 162.
- 36** Bharatiya Nyaya Sanhita, 2023, Section 270.
- 37** Bharatiya Nyaya Sanhita, 2023, Section 189.
- 38** Bharatiya Nyaya Sanhita, 2023, Section 190.
- 39** Bharatiya Nagarik Suraksha Sanhita, 2023, Sections 148 to 150.
- 40** *See generally* Ankita Chakraborty & Dipa Dube, *Mass Agitations, Police Powers and Legal Paradigms*, (2021) 8.1 GNLU L. Rev. 200.
- 41** Section 8B.
- 42** Sections 6-9.
- 43** Foreign Contribution (Regulation) Act, 2010, Section 3(1)(f) and Section 5, read with Rule 3(vi) of the Foreign Contribution (Regulation) Rules, 2011. This provision was read down in *Indian Social Action Forum v. Union of India*, (2021) 15 SCC 60.

PART B

Examining the role of Constitutional Courts

Part B explores the adjudication of the right to protest by the Supreme Court of India and examines whether there is uniformity and consistency in its application by the Court. It further seeks to consider the impact of this jurisprudence on the High Courts and the role that High Courts have played in upholding the right to protest through a review of recent decisions of various High Courts in the last two decades.





CHAPTER 3

Right to Protest and the Supreme Court



Introduction

The Supreme Court has time and again affirmed the significance of the right to protest. For this chapter, we analysed 18 Supreme Court decisions throughout the history of the Court that consider the right to protest that is, in the context of the right to peaceful assembly in public spaces and the right to dissenting speech (*Annexe I*). These decisions range from 1961 to 2023. In the intervening decades, the Supreme Court has taken varying approaches about the role of protests in democratic governance. About 4 of these cases dealt with Section 144 of the CrPC and while the constitutionality of the provision has been consistently upheld, one of these 4 cases found that the order under consideration was not a proportionate exercise of power justified by material circumstances. In another case, the protections of Section 144, CrPC were diluted. Apart from Section 144, CrPC, these cases dealt with police legislations that require prior permission, laws governing public roads and highways and noise pollution guidelines.

As many as 5 of the 18 cases were public interest litigation invoked to restrict the right to protest rather than enforce fundamental rights- often without much reference to constitutional or legislative frameworks. In most of the cases, it is clear that protests are a highly regulated activity and the requirement for prior permission for protests has been overwhelmingly upheld. Another concerning trend is that several cases go beyond public

order or other legitimate aims in Articles 19(2) and 19(3) and permit restrictions on other grounds, including fundamental duties.



Role of protests in democratic governance

Protests have been seen as a method of accountability of public functionaries,⁴⁴ as well as a form of direct participation in democratic governance.⁴⁵ The Court has upheld a positive obligation to facilitate and protect the exercise of this right.⁴⁶ The Supreme Court in *Indian Social Action Forum v. Union of India*⁴⁷ noted that “support to public causes by resorting to legitimate means of dissent like bandh, hartal, etc. cannot deprive an organisation of its legitimate right of receiving foreign contribution.” The Court, therefore, recognized that these forms of action were recognized in law as legitimate forms of political action. The Court has also affirmed these protections in cases of public servants, and held that a blanket prohibition on demonstrations by public servants was unconstitutional.⁴⁸

In Anita Thakur v. Union of India,⁴⁹ the Supreme Court observed that “one cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.”

In stark contrast, the Court in *Amit Sahni (Shaheen Bagh, in re) v. Commissioner of Police*,⁵⁰ observed that “erstwhile mode and manner of dissent against colonial Rule cannot be equated with dissent in a self-ruled democracy.” The Court also observed that the power under Section 144, CrPC existed in England not just to suppress colonies but continued to remain relevant in post-colonial India.⁵¹ There is, therefore, variance in the manner in which the Court perceives the centrality of protests in a democratic society.



Permission for protests

Overwhelmingly, the Court has affirmed the requirement of prior permission as a reasonable restriction on the right to protest. The Supreme Court had the occasion to consider the limits of the right to peaceful assembly in a Constitutional Bench decision in *Himat Lal K Shah v Commissioner of Police, Ahmedabad and Anr.*⁵² The bench was considering a challenge to the requirement for police permission, under the Bombay Police Act, 1951. The Court held that “*there is nothing wrong in requiring previous permission to be obtained before holding a public meeting on a public street, for the right which flows from Article 19(1)(b) is not a right to hold a meeting at any place and time. It is a right which can be regulated so that all can enjoy the right.*”⁵³ The Court, therefore, upheld the requirement of prior permission.

However, it struck down the Rules framed by the Commissioner under that Act because they gave arbitrary discretion to the officer and did not provide any guidance about the circumstances in which permission could be denied. The Court in other cases has also upheld the pre-requirement to consult with the police to hold public assemblies as a reasonable restriction on rights under Article 19(1)(a) and Article 19(1)(b).⁵⁴ This approach also does not take into consideration the *positive* duty of the State to facilitate the exercise of fundamental freedoms including the right to peaceful assembly and the right to freedom of expression.



Constitutionality of Section 144, CrPC

Restrictions imposed under Section 144, CrPC to prevent *obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquillity, or a riot, or an affray* have been upheld from time to time as a response to protests. The constitutionality of this provision was first upheld by a five-judge bench in the case of *Babulal Parate v. State of Maharashtra.*⁵⁵ An order under Section 144, CrPC was passed in that case to prohibit the assembly of

more than five persons in an area in response to clashes between processions of two different labour unions. The Court upheld the constitutionality of the provision on the basis that it was an emergency power and the law provided for safeguards including satisfaction regarding the necessity of passing such an order.⁵⁶ The Court also differentiated the protection under Article 19 from protections in the US constitution and held that Article 19(2) permits restrictions on the basis of present danger as well as the apprehension of danger.⁵⁷

The Supreme Court had upheld Section 144, CrPC on the basis of maintenance of law and order as well as public order without the benefit of decisions of the Court which differentiate these two expressions. Therefore, a fresh challenge to Section 144, CrPC was referred to a seven-judge bench in *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr & Ors.*⁵⁸ The Court in this case noted that public order and public tranquillity overlapped but not every disturbance to public peace is a disturbance to public order. The Court held that public order includes incidents which threaten security of the state but also in addition, include the French conception of order publique- or the absence of riots, affray and crimes of violence.⁵⁹ The Court upheld Section 144, CrPC on the basis that the *“gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application.”*⁶⁰ The Court further upheld the provision because mere disobedience of the order did not constitute an offence in the absence of *“additional obstruction, annoyance, or danger to human life, health or safety or a riot or an affray.”*⁶¹



Time & place restrictions under Section 144, CrPC

In *Ramlila Maidan Incident*,⁶² the Supreme Court reiterated the validity of the power under Section 144, CrPC to pass temporary orders to prevent an imminent breach of peace through time and place restrictions. However, such a restriction is only justified if the threat to public peace is “*real and not quandary, imaginary or a mere likely possibility*”, and the restriction should not exceed the constraints of the situation either in nature or duration.⁶³ In that case, a licence had been issued for a yoga camp by the Municipal Corporation. However, given the number of people at the yoga camp and an apprehension that the camp was turning into a protest against black money and corruption, an order



under Section 144, CrPC was issued. The Court found that this was illegal since the police already had advance notice of the event to apply its mind and take emergency measures to prevent violence or regulate traffic.⁶⁴ The Court reiterated that Section 144, CrPC is an *emergency protective order* or an *emergency preventive order* and could not be exercised in the absence of any evidence on record to show information regarding circumstances that compel emergency measures in the absence of an opportunity of hearing.⁶⁵ The Court held emphatically that “*material facts, imminent threat and requirement for immediate preventive steps should exist simultaneously for passing any order under Section 144 CrPC. The mere change in the purpose or in the number of persons to be gathered at the Ramlila Maidan simpliciter could hardly be the cause of such a grave concern for the authorities to pass the orders late in the night.*”⁶⁶

In 2018, the Supreme Court made a distinct break from its understanding of Section 144, CrPC as an emergency power. In fact, far from being an emergency measure, the Supreme Court in *Mazdoor Kisan Shakti Sangathan v. Union of India*⁶⁷ was considering a situation where the order under Section 144, CrPC was renewed every two months and had in fact become a routine, administrative order. These orders covered the Central Delhi/New Delhi areas and virtually amounted to a ban on all assemblies in the area. It was averred by the Petitioners that Delhi being the centre of power, citizens had unrestricted right to protest and this tradition continued from agitations during British Rule till the 1980s.⁶⁸ From 1993, the only place where protests were allowed was Jantar Mantar. However, a judgment of the National Green Tribunal dated 05.10.2017, which was also under challenge, had banned protests at Jantar Mantar on the basis that it caused noise pollution and violated environment statutes.⁶⁹ The judgment suggested moving the protest site to Ramlila Maidan. Interestingly, the Petitioners had argued that the right to protest envisaged protest at a visible and effective location, and that Ramlila Maidan was at a great distance from the venue of Parliament and this rendered the rights under Article 19(1)(a) and Article 19(1)(b) meaningless.⁷⁰ The Court did not find any illegality in the order under Section 144, and also did not

offer any justification for how such orders in perpetuity can be passed when the constitutionality of the provision was upheld on the basis that it was an emergency power.⁷¹ The Court directed the police to frame guidelines that govern permission for protests in the area.⁷² The judgment in *Mazdoor Kisan Shakti Sangathan* therefore, marks a departure from the existing jurisprudence on Section 144, and perhaps highlights the apprehensions of several petitioners who have challenged the constitutionality of this provision for excessive discretion to administrative authorities.



Beyond public order: Law & Order, Public Interest & Fundamental Duties

The Court has frequently gone beyond Article 19(2) and Article 19(3) and traced the source of restrictions to other grounds beyond what is permitted in these provisions. In the *Mazdoor Kisan Shakti Sangathan* case, the Court was also considering an appeal from a judgment of the National Green Tribunal which banned protests in Jantar Mantar because they blocked ingress and egress of residents of the area, prevented residents from moving their vehicles to their residence and caused noise pollution.⁷³ Interestingly, the Tribunal is a statutory body and it is not clear how it could exercise its jurisdiction in a manner that requires weighing rival contentions based on Fundamental Rights, apart from the narrow issue of Noise Pollution (Regulation and Control) Rules, 2000 under the Environment (Protection) Act, 1986 that the Tribunal is empowered to consider in terms of the National Green Tribunal Act, 2010.⁷⁴ There is also no explanation about why such issues would not arise from protests at the alternative site of Ramlila Maidan and the Supreme Court notes that this site is also in a congested part of Old Delhi and may not be a reasonable alternative.⁷⁵ The Supreme Court upheld the balancing of rights and held that the right to peaceful protest could be curtailed in public interest, a ground that is unknown to Article 19(2) of the Constitution.⁷⁶ However, the Court found that an absolute ban was not necessary and directed the police to adopt measures to

regulate this right in a manner that protects the interests of the residents of the area.⁷⁷

Similarly, despite clear case law, as outlined above, on the distinction between public order and law and order, the Supreme Court in *Bharatiya Janta Party v. State of West Bengal*,⁷⁸ found merit in the State Government's apprehensions about the impact of a political rally on the law and order situation in the State. The Court did not entertain the Special Leave Petition against the order of the High Court. However, the Court noted that it will be open for the petitioner to submit a further modified proposal, which meets the apprehensions of the State Government about maintenance of *law and order*.⁷⁹ Despite noting that the case involves an exercise of the fundamental rights under Article 19(1) (a) of the Constitution of India, the Court did not require the State to justify the restrictions on grounds of public order.⁸⁰ Similarly, in a case concerning the denial of permission to hold a procession to the Rashtriya Swayamsevak Sangh by the Tamil Nadu State police citing *law and order* apprehensions, the Supreme Court deferred to the law and order apprehensions of the State but upheld the decision of the Division Bench of the Madras High Court directing the grant of permission subject to directions including not speaking ill on any caste, religion, and not speaking in favour of organisations banned by the Government.⁸¹

There is also a perceptible shift to relying on Fundamental Duties to justify restrictions of Fundamental Rights, even though the Chapter on Fundamental Rights itself comprehensively outlines a framework for adjudicating the validity of such restrictions. In the *Ramlila Maidan Incident case* discussed above, the Court went so far as to hold that "*the true source of the right is the duty.*"⁸² The Court referred to the duty outlined under Article 51-A of the Constitution to safeguard public property and abjure violence, and held that "*the restriction placed on a fundamental right would have to be examined with reference to the concept of fundamental duties and non-interference with the liberty of others.*"⁸³



Impact on freedom of movement of others

Similarly, *in re Shaheen Bagh*, the Court upheld time and place restrictions and held that an indefinite protest on a public road was not permissible as it caused “*inconvenience to commuters.*”⁸⁴ Interestingly, though the Court notes the contention that restrictions on protests could only be advanced on grounds of public order under Article 19(2), the Court did not provide an analysis about whether inconvenience to commuters could be legitimately traced to the ground of public order.⁸⁵

On the other hand, in case of the farmers protests, the Court considered a writ petition seeking dispersal of the protest on the ground that agitation of the farmers and the consequent blockade of roads/highways infringes the right to freedom of movement and the right to carry on trade and business of residents of Delhi and neighbouring States.⁸⁶ However, the Court has affirmed the right to protest of farmers during the pendency of the writ petitions.⁸⁷ The Court also observed that the closure of roads was in fact done by the police to prevent the entry of protesters to the city of Delhi.⁸⁸

The Court has also had the occasion to consider the issue of hartals against orders of the Court and held that hartals outside the Supreme Court do not *per se* amount to contempt, if they do not lead to obstruction of justice through picketing, preventing entry and exit, disturbing court proceedings etc.⁸⁹ At the same time, the Court did note that they must not be understood as “approving the holding of a dharna” and considered a dharna by a disgruntled litigant to be an inappropriate form of protest.



Police action against protesters

These issues are further complicated in case of protests against police officers, who are otherwise authorised to disperse protests. The Supreme Court considered such a situation in *Beenu Rawat v. Union of India*,⁹⁰ where it found that there are threats

to the right to life of protesters in cases of protests against the police, who may misuse their licence to carry arms. Similarly, in *Anita Thakur & Ors. v. Govt. of J&K & Ors.*,⁹¹ the Supreme Court, while noting that there are many cases where a protest turns violent against police personnel and they may be compelled to retaliate, also found that “*where assembly is peaceful, use of police force is not warranted at all. However, in those situations where crowd or assembly becomes violent it may necessitate and justify using reasonable police force. However, it becomes a more serious problem when taking recourse to such an action, police indulges in excesses and crosses the limit by using excessive force thereby becoming barbaric or by not halting even after controlling the situation and continuing its tirade. This results in violation of human rights and human dignity. That is the reason that human rights activists feel that police frequently abuses its power to use force and that becomes a serious threat to the Rule of law.*” Thus, the likelihood of police violence against protesters was acknowledged by the Court.

Previously, in *Ramlila Maidan Incident, In re*,⁹² the Court took note of the disproportionate use of force by the police officials, including lathi charge, violence against sleeping protesters, tear gas shells etc, which were found to exceed the mandate of police powers in terms of the Punjab Police Rules as applicable to Delhi.

In several cases, the Court’s analysis of the use of force by the police rests on its perception of the petitioners. For instance, the Court has referred to the clean antecedents of the protesters in ordering independent investigation into police violence against them.⁹³ On the other hand, in a case concerning protests for a separate State for the Gorkha areas in West Bengal, the Court found the narrative of police violence unlikely in view of the violence committed by protesters and refused to transfer the investigation of FIRs to an independent body or CBI.⁹⁴ Admittedly, the right to protest doesn’t protect violence that emanates from protests. However, in previous cases, the Court has acknowledged the violence by some members of the assembly and still found that the use of force by the police was disproportionate.⁹⁵ It is nonetheless concerning that the Court’s belief in narratives of

State repression and violence against protesters are based on the destruction of public property and its subjective satisfaction about the 'clean hands' of the protesters, in writ jurisdiction under Article 32 of the Constitution.



Public interest litigation as a source of restrictions on Article 19

A bigger issue is the exercise of writ jurisdiction to restrict freedom of assembly without any legislative basis. Consider, for instance, a case where the Supreme Court has considered the need for a proportionate response to a protest that becomes violent in order to protect the right to life and right to freedom of expression of other members of the public.⁹⁶ Going beyond its mandate, the Court issued guidelines to prevent damage to public property, including mandating an extra-statutory requirement for organizers of a protest to meet the police to discuss the route taken by a demonstration.⁹⁷ Judicial restrictions on fundamental rights take away from the check and balance offered by the possibility of judicial review, which is available where restrictions originate in legislative or executive action. At the same time, judicial guidelines issued by constitutional courts are also often issued based on the response of parties or the *amicus* appointed by the Court and lack both the possibility of widespread consultation that legislatures may have access to as well as the ability to assess rapidly evolving circumstances on the ground that the executive may have access to.

In fact, the Court was alive to this concern in *Shaheen Bagh, In Re.*⁹⁸ The High Court order under challenge had expressly refused to intervene on the ground that the State had powers to regulate traffic under various statutes and therefore, no judicial direction was required. The Supreme Court too noted that “*one of the bedrocks of the Constitution of India is the separation of powers between the legislature, the executive and the judiciary. It is the function of the legislature to legislate, of the executive to implement the legislation, and of the judiciary to test the constitutional validity of the legislation, if a challenge is so laid.*”⁹⁹

The Court even expressed concerns that the administration was in effect seeking to take cover of Court orders rather than take action itself. The Court went so far as to hold that *“the courts adjudicate the legality of the actions and are not meant to give shoulder to the administration to fire their guns from.”*¹⁰⁰ Despite these observations, the Court appointed a mediator attempting to persuade the protesters to open the road without considering the statutory basis of these restrictions on the right to protest or their proportionality, thus assuming the role of the judge, jury and executioner.¹⁰¹

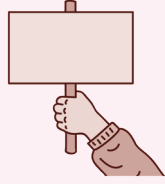
Similarly, in case of the farmers protests, the Court considered a writ petition seeking dispersal of the protest on the ground that agitation of the farmers affected the freedom of movement of others and sought to appoint a committee to mediate between the government and the farmers.¹⁰² However, unlike the order in case of Shaheen Bagh, the right to peaceful protest of the farmers was upheld in the interim.¹⁰³ The Court observed that *“the right to protest is part of a fundamental right and can as a matter of fact, be exercised subject to public order. There can certainly be no impediment in the exercise of such rights as long as it is non-violent and does not result in damage to the life and properties of other citizens and is in accordance with law.”*¹⁰⁴

Thus, public interest litigation has enabled a new form of restriction on fundamental rights that bypasses democratic processes that are representative and/or consultative, while also taking away an effective remedy to challenge it. The Court in these cases adopts the role of the executive in attempting to mediate rather than consider the constitutionality of restrictions on the right to protest.

ENDNOTES

- 44** *Beenu Rawat v. Union of India*, (2013) 16 SCC 430, para 14.
- 45** *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324, para 54; *In Re: Ramlila Maidan Incident*, (2012) 5 SCC 1, para 12.
- 46** *In Re: Ramlila Maidan Incident*, (2012) 5 SCC 1, para.245.
- 47** *Indian Social Action Forum v. Union of India*, (2021) 15 SCC 60, para 26-27.
- 48** *Kameshwar Prasad v. State of Bihar*, 1962 Supp (3) SCR 369.
- 49** (2016) 15 SCC 525, para 12.
- 50** (2020) 10 SCC 439, para 16.
- 51** *Madhu Limaye v. Sub-Divisional Magistrate*, (1970) 3 SCC 746, para 46.
- 52** (1973) 1 SCC 227.
- 53** *Id*, para 42.
- 54** *In re Destruction of Public & Private Properties*, (2009) 5 SCC 212; *Koshy Jacob v Union of India*, (2018) 11 SCC 756; *Ramlila Maidan Incident, in re*, (2012) 5 SCC 1, para 268.
- 55** (1961) 3 SCR 423, 1961 SCC Online SC 48.
- 56** *Id*, para 21.
- 57** *Id*, para 23-27.
- 58** (1970) 3 SCC 746, para 8.
- 59** *Id*, para 16.
- 60** *Id*, para 24.
- 61** *Id*, para 27.
- 62** (2012) 5 SCC 1, para 54.
- 63** *Id*, para 58.
- 64** *Id*, para 132.
- 65** *Id*, para 133.
- 66** *Id*, para 218.
- 67** (2018) 17 SCC 324.
- 68** *Id*, para 12.
- 69** *Id*, para 14.
- 70** *Id*, para 14,21,43.
- 71** *Id*, para 66-68.
- 72** *Id*, para 69.
- 73** (2018) 17 SCC 324.
- 74** Sections 14(1),15(1) and Schedule I.
- 75** (2018) 17 SCC 324, para 64.
- 76** (2018) 17 SCC 324, para 61.
- 77** *Id*, para 64-65.
- 78** (2020) 16 SCC 124.
- 79** *Id*.
- 80** *Id*.
- 81** *K Phanindra Reddyv. G Subramanian*, 2023 SCC Online SC 402.
- 82** *Ramlila Maidan Incident, in re*, (2012) 5 SCC 1, para 39.
- 83** *Id*, para 40.
- 84** (2020) 10 SCC 439, para 17.

- 85** *Id*, para 18.
- 86** *Rakesh Vaishnav v. Union of India*, (2021) 1 SCC 590, para 4.
- 87** *Rakesh Vaishnav v. Union of India*, (2021) 15 SCC 531.
- 88** *Id*, para 5.
- 89** *J.R. Parashar, Advocate v. Prashant Bhushan, Advocate*, (2001) 6 SCC 735, para 31. However, contempt notice was issued with respect to the affidavit filed by Respondent No. 3 in this case, which was found to be contumacious in *In Re: Arundhati Roy*, (2002) 3 SCC 343.
- 90** (2013) 16 SCC 430, para 14.
- 91** *Anita Thakur & Ors. v. Govt. of J&K & Ors.* (2016) 15 SCC 525, para 17.
- 92** (2012) 5 SCC 1, para 141-166.
- 93** (2013) 16 SCC 430, para 15.
- 94** *Bimal Gurung v. Union of India*, (2018) 15 SCC 480.
- 95** *Ramlila Maidan Incident, in re*, (2012) 5 SCC 1; *Anita Thakur & Ors. v. Govt. of J&K & Ors.* (2016) 15 SCC 52
- 96** *Destruction of Public & Private Properties, in re*, (2009) 5 SCC 212; *Kodangallur Film Society v. Union of India*, (2018) 10 SCC 713.
- 97** *In re Destruction of Public & Private Properties*, (2009) 5 SCC 212; *Koshy Jacob v Union of India*, (2018) 11 SCC 756.
- 98** *Amit Sahni (Shaheen Bagh, in re) v. Commissioner of Police*, (2020) 10 SCC 439.
- 99** *Id*, para 2.
- 100** *Id*, para 20.
- 101** *Id*, para 9.
- 102** *Rakesh Vaishnav v. Union of India*, (2021) 1 SCC 590.
- 103** *Rakesh Vaishnav v. Union of India*, (2021) 15 SCC 531.
- 104** *Id*, para 6-7.



CHAPTER 4

Right to Protest and the High Courts



Introduction

In this chapter, we have considered 43 decisions of the High Courts, pronounced in the last two decades i.e. 2004 to 2023 (*Annexe II*). A review of these decisions reveals the critical role that constitutional courts can play in preserving the right to protest. About 15 cases relate to different forms of time and place restrictions including denial of permission to protest or prohibitory orders under police statutes or Section 144 of the CrPC, civil suits and public interest litigation seeking removal of protests or restrictions on protests by Courts and Universities in premises over which they exercise administrative powers. A vast majority of the decisions reviewed have upheld the right to protest and granted reliefs to aggrieved persons, while upholding varied forms of conditions in furtherance of the maintenance of *law and order*. Courts have also considered contexts of blanket prohibitions on the right to protest and had divergent responses to the issue.

What stands out most significantly is that the right to protest is haunted by the spectre of the criminal justice machinery- about 28 of the decisions reveal criminalization of the right to protest or police excesses. These relate to a variety of provisions ranging from the IPC and the Unlawful Activities (Prevention) Act to legislations governing public property, railways and highways. In

at least 15 of these cases, the Courts have granted reliefs on the basis that the criminal proceedings do not reveal any violence or injurious consequence constituting an offence as a result of the protest. Courts are thus alive to the misuse of criminal law against peaceful protesters as well as issues of police violence. It is also clear that Courts have played a critical role in mitigating State restrictions on the protests against the Citizenship Amendment Act, 2019 (“CAA”). Finally, the decisions reveal considerations of economic and business interests as a result of protests as well as, in some cases, the social context of the protest.



Permission to Protest

The Courts have frequently been called to consider the denial of police permission to protest under various State police laws. Courts in several cases have upheld the right to protest and directed the police to grant permission and ensure law and order without infringing on the fundamental rights of petitioners.¹⁰⁵ However, conditions imposed include furnishing names and addresses of the members of the Petitioner’s organization, prior intimation of speakers at the protest and non-blocking of roads.¹⁰⁶ The Calcutta High Court declined public interest litigation seeking directions to not issue permission to political parties to hold rallies, but held that no major or arterial roads must be blocked.¹⁰⁷

Interestingly, these cases refer to *law and order*, and do not consider whether the conditions thus imposed relate to the legal standard of *public order* in terms of Article 19 (2) and (3). Yet, in *Bharat Mukti Morcha v. State of Maharashtra*,¹⁰⁸ while the Bombay High Court acknowledged that restrictions must pertain to *public order*, the Court accepted the State’s apprehensions as the denial of permission on grounds of inadequate availability of police personnel on the said date was in effect an apprehension about public order even though the word ‘law and order’ was used. Contrast this with the decision in *Amravathi Parikrakshana Samithi v. State*,¹⁰⁹ where the Andhra Pradesh High Court, though

referring to law and order rather than public order, found that law and order was the duty of the police and the difficulty of providing adequate personnel was not considered. Thus, reference to a stricter legal standard does not necessarily lead to outcomes that accord greater protections to the rights at hand and *vice versa*.

The cases also reveal a deference to police misgivings regarding law and order or apprehensions of communal tensions. In the *Bharat Mukti Morcha case*,¹¹⁰ for instance, denial of permission was upheld on the basis of the apprehension that a meeting or rally at Bezanbag ground near the Rashtriya Swayamsevak Sangh (RSS) headquarters in Nagpur on October 6, 2022 would threaten law and order. Similarly, in *Mission Save Constitution v. Union of India*,¹¹¹ the Delhi High Court denied permission for a protest event by the All India Muslim Maha Panchayat on Ramila Ground, citing the potential for communal overtones and the possibility of a law and order situation in the Old Delhi area, which was deemed a “sensitive” area. The Court in this case expressly held that the executive was best placed to assess these apprehensions, effectively foregoing a proportionality analysis or requiring the State to perform its positive duty to protect the right to protest. This approach essentially allows the state authorities to impose limitations on the exercise of a constitutionally guaranteed right based on mere speculative concerns or conjectures, without requiring to substantiate the claims with concrete grounds and evidence. Such an approach not only violates the basic tenets of procedural fairness but also shifts the burden of proof onto the citizens, who are then required to disprove the unsubstantiated apprehensions of the authorities. By contrast, in some cases, Courts have required publication of orders including material facts that justify the restrictions on the right to protest and enable individuals to seek judicial review.¹¹²

There are also cases that consider authorities other than the police. The Madhya Pradesh High Court has upheld the refusal to grant the right to protest in court premises against judicial orders, without any reference to the legal authority for such refusal.¹¹³

In another case before the Delhi High Court, the right to protest at a designated spot in the University was considered sufficient to protect the right to protest and the Court affirmed the stand of Jawaharlal Nehru University to keep protests away from the administrative block.¹¹⁴



Blanket Prohibition

Courts have had divergent views on the legality of blanket prohibitions on the right to protest. In *Mount Zion College of Engineering v. Mahatma Gandhi University*,¹¹⁵ the Kerala High Court declined to pass a declaration that political/organizational protests are banned on campus. However, the Court affirmed the University's power to regulate the same through the Mahatma Gandhi University Student Code of Conduct Rules, 2005. The Court further observed that the right to protest did not extend to the right to protest on the basis of a political organization, thereby affirming the blanket prohibition on political/organizational protests contained in the Rules.

On the other hand, the Karnataka High Court in *Sowmya R. Reddy v. State of Karnataka*¹¹⁶ referred to the decision of the Supreme Court in *Anuradha Bhasin v. Union of India*¹¹⁷ on proportionality and found that a blanket prohibition on public assembly under Section 144, CrPC was illegal. The Court in this case also considered the absence of material evidence to justify the prohibition, in contrast to the decisions on denial of permission, as discussed above. The Bombay High Court also struck down a similar order issued under Section 37(1)(3) of Maharashtra Police Act, 1951, which placed a blanket ban on sloganeering and other activities.¹¹⁸ In *Kaka Ramakrishnan v. State of Andhra Pradesh*,¹¹⁹ the Court considered Sections 30 and 30A of the Police Act, 1861 and noted specifically that the power of the police was confined to regulating conduct of assemblies/processions and there was no power to completely prohibit the right to protest peacefully. On this basis, the Court struck down a Government order which prohibited public meetings on public roads.



Criminalization of protests

The High Courts have considered many cases of criminalization of protests and taken into account whether there was an overt violent act rather than a mere act of protest or peaceful assembly. Often, bail or quashing petitions have been allowed on the basis that there was no such violent act and peaceful assembly is protected under Article 19(1)(a) and 19(1)(b) of the Constitution.¹²⁰ In this context, hunger strike has been upheld as a form of nonviolent protest.¹²¹ As a corollary, in cases where there are allegations of violence, remedies have been denied.¹²²

In some instances, the High Courts have also taken police violence into account. Police action of forcible removal of a protester was considered arbitrary and a violation of the right to life by the Uttarakhand High Court in *Swami Gyan Swaroop Sanand v. State of Uttarakhand*.¹²³ Similarly, the Karnataka High Court noted that there was a deliberate attempt to criminalize victims of police violence, contrary to the police narrative of a protest that turned violent.¹²⁴

By contrast, in the case of *Annu Tandon and three others v. State Through Railway Protection Force*,¹²⁵ the Allahabad High Court was considering the use of Section 174(a) of the Railways Act against protesters accused of obstructing train movement during an anti CAA demonstration. The Court held that even a peaceful protest leading to obstruction of train operations would amount to an offence under the Railways Act, without considering the legitimate exercise of the right to protest.¹²⁶ The decision of the Allahabad High Court raises concerns about the significant divergence in how High Courts have considered penal provisions relating to unlawful assembly, rioting etc invoked against protesters.

In particular, the Madras High Court has overwhelmingly quashed FIRs against peaceful protesters. This arises out of a visibly cascading effect of a decision of the High Court in *Jeevanandham & Ors v. State*,¹²⁷ where the Court was alive to

the context of misuse of Section 188, IPC and observed that it is a common practice to register such cases even where the legal ingredients are missing. The Court affirmed that the legal ingredients to constitute an offence under Section 188 IPC (which criminalizes disobedience of orders of public servants, including orders under Section 144 of the CrPC) are (i) promulgation of a legal order; (ii) its communication to the accused; (iii) its disobedience by him; and (iv) the injurious consequence as described in the section.¹²⁸ The Court issued guidelines to prevent the misuse of Section 188, IPC, including that no FIR should be registered for this provision, and that a written complaint of a public servant was necessary.¹²⁹ It was further clarified that the promulgation of an order under Section 30(2) of the Police Act must satisfy the test of reasonableness and cannot be a blanket power to trifle any democratic dissent.¹³⁰ The impact of this precedent is visible- as many as 6 decisions reviewed in this report grant reliefs in consideration of non-compliance of these guidelines or the absence of injurious consequences as a result of the protest.¹³¹ The Court has also clarified that mere advocacy, rather than incitement to lawless action, cannot be criminalized.¹³² In one of these cases, the Court quashed an order of the Superintendent of Police rejecting the candidature of a candidate for participating in a protest against NEET.¹³³

In addition to this, High Courts have prescribed safeguards like transparency in notifying rules, publication of orders and communication with protesters.¹³⁴ These procedural guarantees can deter abuse of executive discretion in allowing or denying permission for protests. Such guidance is absent in several other High Courts.



A Case Study of the protests against the Citizenship Amendment Act, 2019

The protests against the CAA are an illustrative case study of the role of the High Courts in preserving the right to protest. Since the protests took place throughout the country, these decisions offer an insight into how different courts have considered a

reasonably similar context of State pushback and repression against the protests.

In Karnataka, there was an order under Section 144, CrPC prohibiting the assembly of more than five persons throughout the State in context of the protests against CAA. The Karnataka High Court applied the guidelines in *Anuradha Bhasin (supra)* and held that a blanket order throughout the State was illegal, and also required the disclosure of material reasons to substantiate an order under Section 144, CrPC.¹³⁵ The Court further observed that the right to protest was a fundamental right and writ Courts had to view its infractions seriously.¹³⁶ The Karnataka High Court also clarified in another case that protesting against the law could not be considered an unlawful assembly within the meaning of Section 141, IPC, nor could defiance of the order under Section 144, CrPC constitute an offence, and granted bail to accused protesters.¹³⁷ The High Court went so far as to note that, contrary to the police's allegation that the protests turned violent, there was evidence of police violence including death due to police action.¹³⁸ The Court also noted that the criminal cases were filed against victims of police violence, instead of registering FIRs against the police officers as per the mandate of law.¹³⁹



The Bombay High Court quashed an order under Section 37(1)(3) of Maharashtra Police Act, 1951, which was facially neutral and banned activities such as sloganeering, but appeared to be directed at preventing agitations against the CAA.¹⁴⁰ The Court emphasized the importance of engaging with citizens peacefully expressing dissent, and the need to sensitise bureaucracy on constitutional values and human rights.¹⁴¹ In this case, the context of the protest- as a dissent against a legislation that was viewed by affected communities as violating their constitutional rights was considered significant.¹⁴²

In *suo-moto* proceedings, the Allahabad High Court further protected the right to protest by protecting the right to privacy of protesters, requiring the police to remove banners containing names, photographs and personal details of protesters accused of vandalism.¹⁴³ The Court noted that this wasn't an issue relating to a personal injury to persons whose names were displayed but injury caused to precious constitutional and democratic values.¹⁴⁴

The Madras High Court also affirmed the significance of the right to protest and quashed proceedings against protesters even though there was no prior permission to protest.¹⁴⁵ The Court further found no material in the FIR to show that there was any promulgation of prohibitory orders which was communicated to the public and there was any disobedience by the petitioner, or that as a consequence of the protest, any trouble occurred.¹⁴⁶

The Delhi High Court has granted bail to protesters and warned against the incarceration of those exercising the democratic right to protest.¹⁴⁷ The Court also had the occasion to consider the applicability of stringent laws such as the Unlawful Activities (Prevention) Act, 1967 against the protestors, raising concerns about its misuse.¹⁴⁸ The Court expressed concern that the State, in its anxiety to suppress dissent, was blurring the line between the constitutionally guaranteed right to protest and the terrorist activity.¹⁴⁹ On the other hand, the Court in a subsequent case, set aside the discharge of accused persons by the trial court with

reference to “*violent speeches*” and “*raising slogans against the Delhi police.*”¹⁵⁰

The Gauhati High Court has also refused to grant bail to protesters against the Citizenship Amendment Act, 2019 in view of allegations of economic blockade and damage to public property.¹⁵¹ Similarly, the Allahabad High Court refused to quash criminal proceedings against protesters and found that there was sufficient material to warrant a trial.¹⁵²



Economic and Business Interests

High Courts have frequently considered State economic interests or the business interests of private companies, in context of the right to protest. For instance, the economic impact of a protest was considered significant by the Gauhati High Court in upholding criminalization, where it blocked the movement of essential goods.¹⁵³

However, in *Dow Chemicals International Pvt Ltd v. Nithandam*,¹⁵⁴ a civil suit for loss of business emanating out of a protest to demand justice for victims of the Bhopal Gas tragedy was dismissed by the Madras High Court on the basis that neither the State nor Courts can impose restraints on the right to protest “*unless there was threat to the life and liberty of an aggrieved individual or an organization is threatened from its very existence or their right to carry on business is curtailed.*” In *Mahesh Sonu Gawade v. State of Goa*,¹⁵⁵ the Bombay High Court quashed criminal proceedings with respect to a peaceful blocking of a road near Queni Mine entrance, resulting in stoppage of the transportation of iron ore. In *Prakash Karat v. State of Kerala*, the Kerala High Court upheld the right to protest of persons who formed a Statewide human chain to protest the ASEAN Free Trade Agreement.¹⁵⁶



Social context of protests

The understanding of protests in terms of their contextual analysis is significant since protests do not occur in a vacuum. They are a response to specific political, social or economic issues affecting certain communities. While most High Courts have not shown sensitivity to the underlying motivation and causes central to the protests, the Bombay High Court in *Iftexhar Zakee Shaikh v State of Maharashtra*¹⁵⁷ took into account that the protests were led by a marginalized community that is aggrieved by the impact of laws on their basic rights. Similarly, the Madras High Court in *Arunkanth v. TN Uniformed Services Recruitment Board*,¹⁵⁸ took into account the fact that the protests against the NEET exam were in response to the death of a student named Anitha, after which there was widespread emotional outrage amongst the entire student community in the State.

ENDNOTES

105 *K. Thiagarajan, General Secretary, Thamizh Thesiya Vidhuthalai Iyyakam v. Commissioner of Police*, 2013 SCC Online Mad 3033 (Madras High Court); *Amravathi Parikrakshana Samithi v. State*, 2021 SCC Online AP 3493; *Shanthakumar v. State*, 2022 SCC Online Mad 3835 (Madras High Court).

106 *Id.*

107 *Rituparna Sarkar Dutta v. State of West Bengal*, 2018 SCC Online Cal 1921 (Calcutta High Court).

108 2022 SCC Online Bom 3315 (Bombay High Court).

109 2021 SCC Online AP 3493 (Andhra Pradesh High Court).

110 2022 SCC Online Bom 3315 (Bombay High Court).

111 2023 SCC OnLine Del 6892 (Delhi High Court).

112 *Sowmya R Reddy v State of Karnataka*, 2020 SCC OnLine Kar 1527 (Karnataka High Court); *Swati Rajiv Goswami v. Commissioner of Police, Ahmedabad*, 2023 SCC Online Guj 164 (Gujarat High Court).

113 *Bhagat Singh Mahdel v. Gulshan Bamra*, 2017 SCC Online MP 1846 (Madhya Pradesh High Court).

114 *Jawaharlal Nehru University v. Geeta Kumari*, 2018 SCC Online Del 9601 (Delhi High Court).

115 2015 SCC Online Ker 9890 (Kerala High Court).

116 *Sowmya R Reddy v State of Karnataka*, 2020 SCC OnLine Kar 1527 (Karnataka High Court).

117 (2020) 3 SCC 637.

118 *Iftekhhar Zakee Shaikh v State of Maharashtra*, 2020 SCC Online Bom 244 (Bombay High Court).

119 2023 SCC Online AP 4025.

120 *Basheer v. State of Kerala*, 2016 SCC Online Ker 14028; *Jaheeruddin vs. State of MP* 2018 SCC OnLine MP 1723 (Madhya Pradesh High Court); *Dominic M.M. v. Sub Inspector of Police*, 2018 SCC Online Ker 3283 (Kerala High Court); *Mahesh Sonu Gawade vs. State of Goa*, 2019 SCC OnLine Bom 5235 (Bombay High Court); *Ashik v. State of Karnataka*, 2020 SCC Online Kar 3290 (Karnataka High Court); *Gold Rafi v. State*, 2021 SCCOnline Mad 13684 (Madras High Court); *Mohd. Lathifulla v. State*, 2021 SCCOnline Mad 13686 (Madras High Court); *Shadab Ahmad v. State (NCT of Delhi)*, 2021 SCC Online Del 4251 (Delhi High Court); *Tabassum v. State (NCT of Delhi)*, 2021 SCC Online Del 4254 (Delhi High Court); *Mohd Ayyub v State (NCT of Delhi)*, 2021 SCC Online Del 4377 (Delhi High Court); *Asif Iqbal Tanha v. State of NCT of Delhi*, 2021 SCC OnLine Del 3253 (Delhi High Court); *Natasha Narwal v. State of Delhi NCT*, 2021 SCC OnLine Del 3254; *Devangana Kalita v. State of Delhi NCT*, 2021 SCC OnLine Del 3255 (Delhi High Court); *Anu Tuli Azta v. State of Himachal Pradesh*, 2021 SCC Online HP 294 (Himachal Pradesh High Court); *Prakash Karat vs. State of Kerala*, 2022 SCC OnLine Ker 5243 (Kerala High Court); *Kailash Vijayvargiya & Anr v. State of West Bengal*, 2023 SCC Online Cal 2453.

- 121** *K. Thiagarajan, General Secretary, Thamizh Thesiya Vidhuthalai Iyyakam v. Commissioner of Police*, 2013 SCCOnline Mad 3033 (Madras High Court).
- 122** *Chhotulal v. State of Rajasthan*, 2007 SCC Online Raj 1024 (Rajasthan High Court); *Tripura People's Front v. State of Tripura*, 2021 SCCOnline Tri 531, and final judgment dt 02.02.2023 in W.P. (Crl) No. 02/202 (Tripura High Court); *Bhaskarjit Phukan v. National Investigation Agency*, 2021 SCC Online Gau 231(Gauhati High Court); *Mohammad Talha v. State of U.P.*, 2023 SCC OnLine All 122; *State v Mohd Qasim* , 2023 SCC OnLine Del 1835.
- 123** 2018 SCC Online Utt 1055 (Uttarakhand High Court).
- 124** *Ashik v. State of Karnataka*, 2020 SCC Online Kar 3290 (Karnataka High Court).
- 125** 2022 SCCOnline All 591 (Allahabad High Court)
- 126** *Id.*
- 127** *Jeevanandham v. State*, 2018 SCC Online Mad 13698 (Madras High Court).
- 128** *Id.*
- 129** *Id.*
- 130** *Id.*
- 131** *Ramaligam v. State*, 2021 SCC Online Mad 10765 (Madras High Court); *Sivakumar & Anr v. State*, 2021 SCCOnline Mad 12810 (Madras High Court); *Gold Rafi v. State*, 2021 SCCOnline Mad 13684 (Madras High Court); *Mohd. Lathifulla v. State*, 2021 SCCOnline Mad 13686 (Madras High Court); *Viswalingasamy v. State*, 2021 SCCOnline Mad 14746 (Madras High Court); *Arunkanth v. TN Uniformed Services Recruitment Board*, 2023 SCC OnLine Mad 5456.
- 132** *Sivakumar & Anr v. State*, 2021 SCCOnline Mad 12810 (Madras High Court)
- 133** *Arunkanth v. TN Uniformed Services Recruitment Board*, 2023 SCC OnLine Mad 5456.
- 134** *Sowmya R Reddy v State of Karnataka*, 2020 SCC OnLine Kar 1527 (Karnataka High Court); *Swati Rajiv Goswami v. Commissioner of Police, Ahmedabad*, 2023 SCC Online Guj 164 (Gujarat High Court); *Gold Rafi v. State*, 2021 SCCOnline Mad 13684 (Madras High Court); *Mohd. Lathifulla v. State*, 2021 SCCOnline Mad 13686 (Madras High Court).
- 135** *Sowmya R Reddy v State of Karnataka*, 2020 SCC OnLine Kar 1527 (Karnataka High Court).
- 136** *Id.*
- 137** *Ashik v. State of Karnataka*, 2020 SCC Online Kar 3290 (Karnataka High Court).
- 138** *Id.*
- 139** *Id.*
- 140** *Iftexhar Zakee Shaikh v State of Maharashtra*, 2020 SCC Online Bom 244 (Bombay High Court).
- 141** *Id.*
- 142** *Id.*
- 143** *In re: Banners Placed on the Road Side in the City of Lucknow*, 2020 SCCOnline All 244.
- 144** *Id.*
- 145** *Gold Rafi v. State*, 2021 SCCOnline Mad 13684 (Madras High Court); *Mohd. Lathifulla v. State*, 2021 SCCOnline Mad 13686 (Madras High Court).

146 *Id.*

147 *Shadab Ahmad v. State* (NCT of Delhi), 2021 SCC Online Del 4251 (Delhi High Court); *Tabassum v. State (NCT of Delhi)*, 2021 SCC Online Del 4254 (Delhi High Court); *Mohd Ayyub v State (NCT of Delhi)*, 2021 SCC Online Del 4377 (Delhi High Court).

148 *Asif Iqbal Tanha v. State of NCT of Delhi* , 2021 SCC OnLine Del 3253 (Delhi High Court); *Natasha Narwal v. State of Delhi NCT* 2021 SCC OnLine Del 3254 (Delhi High Court); *Devangana Kalita v. State of Delhi NCT*, 2021 SCC OnLine Del 3255 (Delhi High Court)

149 *Id.*

150 *State v Mohd Qasim*, 2023 SCC OnLine Del 1835.

151 *Bhaskarjit Phukan v. National Investigation Agency*, 2021 SCC Online Gau 231(Gauhati High Court).

152 *Mohammad Talha v. State of U.P.*, 2023 SCC OnLine All 122.

153 *Bhaskarjit Phukan v. National Investigation Agency*, 2021 SCC Online Gau 231(Gauhati High Court).

154 *Dow Chemical International Pvt Ltd v. Nithandam*, 2009 SCCOnline Mad 1059 (Madras High Court), para 27.

155 *Mahesh Sonu Gawade vs. State of Goa*, 2019 SCC OnLine Bom 5235(Bombay High Court)

156 2022 SCC OnLine Ker 5243.

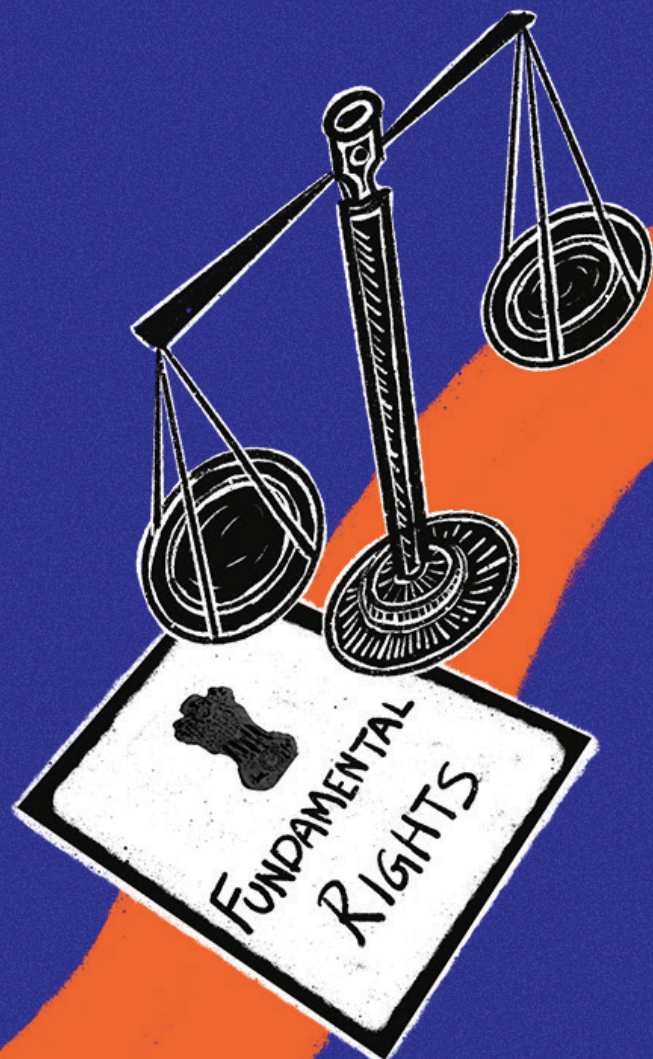
157 2020 SCC Online Bom 244 (Bombay High Court).

158 2023 SCC OnLine Mad 5456.

PART C

CONCLUSIONS

Part C lays down the visible trends of constitutional jurisprudence on the right to protest developed through the decisions of the Supreme Court and High Courts and examines whether the restrictions on the fundamental right to protest is compatible with the human rights framework.





Conclusion

A review of constitutional jurisprudence reveals that the right to protest is the subject of robust guarantees of fundamental rights in the Constitution as well as, in practice, of severe legislative regulation and executive discretion. The recent approach adopted by the Supreme Court, including standards of legality, legitimacy and proportionality as well as non-arbitrariness and safeguards against abuse is, however, a step forward in ensuring that restrictions on fundamental rights are compatible with human rights frameworks.



Legislative regulation of Protests

The analysis of Supreme Court and High Court judgments reveal that protests are severely regulated and restricted by a catena of legislation. The legitimacy of such restrictions require further judicial review on grounds of necessity and proportionality. While Section 144, CrPC has been the subject of many challenges before the Supreme Court, the impact of these cases has been the consistent dilution of safeguards against its abuse.

At the same time, a review of High Court decisions demonstrates that State police legislations are playing a significant role in regulating the right to protest. There is, however, an increasing emphasis on the need for transparency through publication of orders, granting right to information requests, providing reasons in writing so that the decisions are subject to judicial review.



Executive discretion on the right to protest

While the requirement for prior permission to protest has been consistently upheld, Courts have frequently found that the discretion granted under these laws to the executive has been improperly exercised. Some of these powers have also been expanded by the Supreme Court in public interest litigation. Police legislations govern not just the regime of prior permission but also the permissibility of police action and violence against protesters. There is also an increasing trend of criminalization of protests, ranging from stringent anti-terrorism laws to laws that regulate public property, highways and railways.



Assessing the Constitutionality of Restrictions

The legitimacy of restrictions on the right to protest in terms of Article 19(2) and Article 19(3) raises several concerns. Courts have consistently deferred to State concerns about the maintenance of law and order, fundamental duties of protesters or inconvenience to other citizens, without tracing these restrictions under public order or other permissible grounds for restricting these rights. Even where the right to protest has been affirmed, Courts often admit conditions imposed by the executive on the right to protest.

Finally, the necessity and proportionality of restrictions on this right must be considered. Courts have in some cases uncritically accepted State narratives of violence by protesters, while in other cases, Courts have been alive to the misuse of police powers, arbitrariness and police violence. Significantly, the Supreme Court has frequently deferred to State narratives about the protest, whereas recent decisions of the High Court show awareness of police practices, such as the misuse of Section 188, IPC. While Courts have played a critical role in mitigating the worst consequences of criminalization through grant of bail, there has been little consideration of the need to ensure that restrictions on the right to protest are least restrictive - for instance, use of non-

penal consequences, intimidation rather than permission regimes or the regulation of the kind of conditions that the State may legitimately impose on protesters.

All in all, a review of judicial decisions on the right to protest prompts both caution and optimism. On one hand, Courts have frequently strayed from the constitutional framework and there is wide divergence in how Courts have looked at protests. Courts have also deferred to the State on apprehensions of communal overtones or considered factors such as the inconvenience of commuters. At the same time, the impact of decisions of the Supreme Court on proportionality as well as guidelines against misuse by several High Courts is also evident. Constitutional courts may have limitations with respect to the ability to adjudicate on facts. However, where Courts have applied strict scrutiny to narratives of the State or benefitted from the record of lower Courts such as cases pertaining to criminalization, it is clear that they can play a critical role in upholding fundamental rights.



ANNEXURE I

**Supreme Court decisions
on the Right to Protest**

Case Citation	Restriction under Consideration	Court's Ruling
<p>1. <i>K Phanindra Reddy v. G Subramanian</i>, 2023 SCC Online SC 402 (Affirmed the decision in <i>G. Subramanian v. K Phanindra Reddy</i>, 2023 SCC Online Mad 720)</p>	<p>Denial of permission to hold a procession to the Rashtriya Swayamsevak Sangh by the State police citing law and order apprehensions. Sections 30 of the Police Act, 1861 and Sections 41 and 41A of the Chennai City Police Act, 1888.</p>	<p>The Court affirmed the decision of the Division Bench of the Madras High Court allowing the writ petition and directing the grant of permission subject to directions including not speaking ill on any caste, religion, and not speaking in favour of organisations banned by the Government.</p>
<p>2. <i>Rakesh Vaishnav v. Union of India</i>, (2021) 1 SCC 590 (2021) 15 SCC 531</p> <p>[The Writ Petition was finally dismissed as withdrawn <i>vide</i> order dt. 21.08.2023 in Writ Petition (Civil) No. 1118/2020]</p>	<p>Writ Petition seeking dispersal of protest on the ground that the closure of roads by the State in response to the protests blocked roads to Delhi from neighbouring states impacted the right to freedom of movement and the right to conduct any trade or business.</p> <p>This prayer was heard along with other Writ Petitions challenging the validity of the 'Farm Laws' that were the subject of the protests- i.e. (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</p>	<p>The Court affirmed the right of the protesters during the pendency of the Petition <i>vide</i> order dated 17.12.2020. The Court stayed the Farm Laws <i>vide</i> order dated 12.01.2021. While no restrictions were placed on the protest, the Court observed that this relief may satisfy the demands of the protesters.</p>

<p>3. <i>Indian Social Action Forum v. Union of India</i>, (2021) 15 SCC 60</p>	<p>Prohibition of foreign contribution for an organization that <i>habitually engages in bandhs or hartals</i> and other forms of political action in support of social causes [Foreign Contribution (Regulation) Act 2010, Section 3(1)(f) and Section 5, read with Rule 3(vi)]</p>	<p>The Court held that restrictions on Article 19 had to be narrowly construed and must have a proximate nexus with the object and purpose of the legislation. In this case, the purpose was to prevent foreign influence in administration through regulation of bodies involved in electoral politics. Therefore, the provision was read down to only refer to such organizations that are engaged in active politics.</p>
<p>4. <i>Bharatiya Janta Party v. State of West Bengal</i>, (2020) 16 SCC 124</p>	<p>Restriction on rallies by political party since rallies covered entire state for a period of 20 days</p>	<p>The Court did not entertain the Special Leave Petition (to appeal from the decision of the High Court) and observed that the apprehensions of the State government regarding the impact of the proposed Rath Yatra on the law and order of the State were legitimate. The Court held that it was open for the petitioner to submit a modified proposal which meets the apprehensions of the State government.</p>
<p>5. <i>Amit Sahni v. Commissioner of Police</i>, (2020) 10 SCC 439</p>	<p>Writ Petition (filed as public interest litigation) seeking dispersal of a protest against the CAA on the ground that public roads were blocked.</p>	<p>The prayer had become infructuous as the protest site had been cleared in response to the coronavirus pandemic. However, the Court observed that an indefinite protest could not be held on public ways.</p>

<p>6. <i>Bimal Gurung v. Union of India</i>, (2018) 15 SCC 480</p>	<p>The Petition alleged police violence and false prosecution of protesters under various criminal statutes including various provisions of the Indian Penal Code, 1860 the Arms Act, 1959 the National Highways Act, 1956 the Unlawful Activities (Prevention) Act etc., 1967</p>	<p>The Court held that where a protest leads to violence, it is not covered by the protection of Article 19. The Court further held that the narrative of police violence was unlikely and refused to transfer the investigation in the FIRs pending against the protesters to an independent agency.</p>
<p>7. <i>Mazdoor Kisan Shakti Sangathan v. Union of India & Anr.</i>, (2018) 17 SCC 324</p>	<p>Repeated orders under Section 144, CrPC prohibiting holding public meetings/assembly of five or more persons without written permission in Central Vista Lawns, Parliament House, North and South Block and surrounding areas; order renewed every 60 days and virtually an order in perpetuity, permission is never granted and therefore, it was virtually a ban. The Court was also considering civil appeals from the judgment of the NGT dt. 05.10.2017 that passed directions to stop dharna, protest, agitations etc at Jantar Mantar Road and removal of loudspeakers etc, and to shift protesters to the alternative site at Ram Leela Maidan, Ajmeri Gate. The NGT was considering the Noise Pollution (Regulation and Control) Rules, 2000 under the Environment (Protection) Act, 1986.</p>	<p>The Court upheld the orders under Section 144, CrPC on the basis of the sensitivity of the New Delhi area. With respect to the NGT order, the Court found that an absolute ban was not necessary and directed the Commissioner of Police, in consultation with relevant agencies, to ensure that demonstrations are regulated so as to not cause disturbance to the residences/offices in the area.</p>

<p>8. <i>Koshy Jacob v Union of India</i>, (2018) 11 SCC 756</p>	<p>Guidelines sought for State response in case protests become violent and prevention of damage to public property</p>	<p>Petition dismissed in light of undertaking by Attorney General about pending amendments to the Prevention of Damage to Public Property Act, 1984</p>
<p>9. <i>Kodangallur Film Society v. Union of India</i>, (2018) 10 SCC 713.</p>	<p>Guidelines sought for State response in case protests become violent and prevention of damage to public and private property and especially against cultural programs and establishments</p>	<p>Court affirmed the duty of the State to protect the right to life and right to freedom of expression of others, and issued guidelines for proportionate responses to violence emanating from protests.</p>
<p>10. <i>Anita Thakur v. State of J&K</i>, (2016) 15 SCC 525</p>	<p>Violence against protest/ march</p>	<p>The Court found that the use of force by the police was disproportionate and awarded compensation.</p>
<p>11. <i>Beenu Rawat v. Union of India</i>, (2013) 16 SCC 430</p>	<p>Police violence against peaceful protesters</p>	<p>The Court observed that there is a perceptible threat to the right to life under Article 21 in cases of protests against the police, since the police are licensed to carry arms. There may be misuse of this power, to curtail democratic rights of peaceful protesters against wrongs of public functionaries. The Court directed an independent investigation by a Special Investigation Team and an inquiry into the violation of the right to life by the National Human Rights Commission.</p>

<p>12. <i>In Re: Ramlila Maidan Incident</i>, (2012) 5 SCC 1</p>	<p>Police violence against peaceful protesters; Prohibitory Order under Section 144, CrPC; Use of police force to disperse protests under Delhi Police Standing Order 309 (which provided that no more than 50,000 people to assemble at Ramlila ground and alternate venue to be offered), read with Section 139, CrPC and Rule 14.56(1) (a) of the Punjab Police Rules.</p>	<p>The order under Section 144, CrPC was found to be without legal basis in the absence of any circumstances that justify emergency measures. The use of force by the police against protesters was also found to be disproportionate and the Court passed directions for disciplinary inquiry into the liability of individual members of the police force.</p>
<p>13. <i>In re Destruction of Public & Private Properties</i>, (2009) 5 SCC 212;</p>	<p>Guidelines sought for State response in case protests lead to damage to public and private properties</p>	<p>Court issued several onerous guidelines to fill the legislative vacuum, including duties of the organizers of a demonstration to seek a meeting with the police to discuss the route to be taken by a demonstration, as well as their presumptive liability in case of any damage to property under tort law.</p>
<p>14. <i>J.R. Parashar, Advocate v. Prashant Bhushan, Advocate</i>, (2001) 6 SCC 735</p>	<p>Petition to issue contempt against advocates for a hartal outside the gates of the Supreme Court</p>	<p>The Court dismissed the Petition on technical grounds as well as the failure to disclose any material evidence of contempt.</p> <p>However, the Court <i>inter alia</i> observed that a hartal outside the premises of the Court would not on its own constitute contempt, if it did not lead to any</p>

		obstruction of justice- such as preventing members of the public and advocates from accessing court premises, disturbing court proceedings etc.
15. <i>Himat Lal K. Shah v. Commissioner of Police, Ahmedabad & Anr.</i> , (1973) 1 SCC 227	Requirement to take prior permission to hold a public meeting under Section 33(1) of the Bombay Police Act, 1951 and Rules for Processions and Public Meetings framed by Commissioner of Police, Ahmedabad thereunder	The Court upheld the validity of the Act, and the requirement to take prior permission. The Court, however, struck down Rule 7 of the Rules for being arbitrary and not providing any guidance on the circumstances in which police can refuse permission to hold a meeting.
16. <i>Madhu Limaye v. Sub-Divisional Magistrate</i> , (1970) 3 SCC 746.	Constitutionality of Section 144, CrPC.	The Court upheld the constitutionality of Section 144, CrPC.
17. <i>Kameshwar Prasad v. State of Bihar</i> , 1962 Supp (3) SCR 369 (1960 SCC Online SC 30).	Rule 4A, Bihar Government Servants' Conduct Rules, 1956- which sought to prohibit demonstrations by public servants.	The Court declared that the Rule was unconstitutional in so far as any form of demonstration was prohibited. However, the Court clarified that there was no fundamental right to strike.
18. <i>Babulal Parate v. State of Maharashtra</i> , (1961) 3 SCR 423 [1961 SCCOnline SC 48]	Order under Section 144, CrPC prohibiting assembly of more than five people in an area	The Court upheld the constitutionality of Section 144, CrPC as well as the order passed in the present case as a reasonable restriction on Articles 19(1) (a) and 19(1)(b) of the Constitution.



ANNEXURE II

High Court decisions on
the Right to Protest

Case Citation	Restriction under Consideration	Court's Ruling
<p>1. <i>Mohammad Talha v. State of U.P.</i>, 2023 SCC OnLine All 122</p> <p>(Allahabad High Court)</p>	<p>Section 482, CrPC</p> <p>The accused faced charges under Sections 323, 332, 336, 352, 395, 427, 435, 504, 506 and 120-B of IPC and Section 7 of the Criminal Law (Amendment) Act, 1932 and Section 3 read with Section 4 of the Prevention of Damage to Public Property Act, 1984</p>	<p>The Allahabad High Court refused to quash proceedings against accused individuals charged with offences related to widespread public order violations during protests against the CAA.</p> <p>The court emphasised the right to peaceful protest but noted that democratic rights must be exercised lawfully. The Court held that there was sufficient evidence in the case diary to warrant a trial and, therefore, rejected the plea to quash the proceedings.</p>
<p>2. <i>Kaka Ramakrishnan v. State of Andhra Pradesh</i>, 2023 SCC Online AP 4025</p> <p>(Andhra Pradesh High Court)</p>	<p>Government order which prohibited the conducting of public meetings on public roads. Sections 30 and 30A of the Police Act, 1861 considered.</p>	<p>The Andhra Pradesh High Court observed that the power of the police is only to regulate the conduct of assemblies, processions etc., more so when they are likely to obstruct/block the roads etc. The Court observed that there was no power to completely prohibit the right to protest peacefully.</p>
<p>3. <i>Kailash Vijayvargiya & Anr v. State of West Bengal</i>, 2023 SCC Online Cal 2453</p> <p>(Calcutta High Court)</p>	<p>FIR under Sections 147, 149, 353, 427 of IPC read with Section 9 of the West Bengal Maintenance of Public Order Act, 1972 read with Section 3 of the Prevention of</p>	<p>The Court referred to the right to protest and held that a peaceful demonstration could not be considered an unlawful assembly.</p>

	<p>Damage to Public Property Act, 1984. The allegations pertained to an alleged mob led by the Bharatiya Janata Yuva Morcha, which tried to take control of the State secretariat by hoisting the BJP flag, and that the area was covered by Section 144, CrPC.</p>	<p>The Court also found a lack of material on perusal of the case diary and quashed the criminal proceedings.</p>
<p>4. <i>Mission Save Constitution v. Union of India</i>, 2023 SCC OnLine Del 6892 (Delhi High Court)</p>	<p>Deputy Commissioner of Police denied permission to Mission Save Constitution to hold All India Muslim Maha Panchayat on Ramila Ground.</p>	<p>The Court observed that holding public events to ventilate grievances is a fundamental right under Articles 19(1)(a) and (b) of the Constitution. However, the Court held that there was an apprehension of a law and order issue since the period between Navratri and Diwali was auspicious for Hindus and the event posters suggested a possibility of communal overtones to the event. Further, the Court observed that there were increasing communal tensions in the Old Delhi area, which the executive was better-placed to assess. The Court held that after the festive season is over, it was open to the Petitioner to approach the authorities for a fresh permission.</p>
<p>5. <i>State v Mohd Qasim</i>, 2023 SCC OnLine Del 1835 (Delhi High Court)</p>	<p>Criminal revision filed against discharge of accused in case filed under Sections 143, 147, 149, 186, 353, 427 of IPC including section 3 of the Prevention</p>	<p>The Delhi High Court overturned the trial court's decision to discharge Sharjeel Imam, Safoora Zargar, Asif Iqbal Tanha, and eight others in the</p>

	<p>of Damage to Public Property Act, 1984.</p>	<p>Jamia violence case and framed charges against them for offences including rioting, unlawful assembly and causing damage to public property.</p> <p>The court emphasised that the right to peaceful assembly is subject to reasonable restrictions and that acts of violence or violent speeches are not protected. It was observed that the respondents were seen in the first line of the mob, raising slogans against the Delhi police and violently pushing barricades, as seen in the video footage.</p>
<p>6. <i>Swati Rajiv Goswami v. Commissioner of Police, Ahmedabad</i>, 2023 SCC OnLine Guj 164</p> <p>(Gujarat High Court)</p>	<p>Denial of permission to hold protests against the Citizenship Amendment Act, 2019 under Section 33 of the Gujarat Police Act, 1951, and denial of request for information under the Right to Information Act, 2005 (“RTI”) about the applicable Rules under the said provision.</p>	<p>The Court emphasised that transparency and informed citizenry are essential for democracy, stating that the public authorities have a duty to proactively disclose information, including the rules and regulations. The Court observed that under Section 4 of RTI and in accordance with fundamental rights of petitioner under Articles 19 and 21 of the Constitution of India, the Petitioner is entitled to access the information.</p> <p>Thus, the Court granted the petition, directing the Commissioner of Police</p>

		to publish all relevant rules and orders on the police department's website.
<p>7. <i>Arunkanth v. TN Uniformed Services Recruitment Board</i>, 2023 SCC OnLine Mad 5456</p> <p>(Madras High Court)</p>	<p>A writ petition was filed, challenging an order by the Superintendent of Police rejecting the Petitioner's selection for the post of Grade II Police Constable, on the basis of an FIR under Sections 143, 188, 353, 295 and 297, IPC for participating in a protest against the NEET examination during his student days, even though the said FIR had been quashed.</p>	<p>The Court held that the right to protest for a common cause is a fundamental right. The Court noted that there were no allegations of violence against the Petitioner and that after the death of a student named Anitha, there was widespread emotional outrage amongst the entire student community in the State. The Court held that his exercise of his fundamental right to protest cannot have any implication on his candidature for Grade-II Police Constable. Therefore, the respondents were directed to issue an appointment order to the petitioner, and the order rejecting his selection was quashed.</p>
<p>8. <i>Annu Tandon and three others v. State Through Railway Protection Force</i>, 2022 SCCOnline All 591</p> <p>(Allahabad High Court)</p>	<p>Appeal against conviction under Section 174(a) of the Railways Act, 1989</p>	<p>The Allahabad High Court held that even a peaceful protest or agitation leading to obstruction to train operations would amount to an offence under Section 174(a) of the Railway Act. The court ruled even if it is peaceful the citizens have the right to protest against the policies or inactions of government in a democratic setup without committing an offence.</p>

		<p>However, it also mentioned that this right is subjected to reasonable restriction. Thus, citizens cannot disregard laws enacted by the state while exercising their right to protest and freedom of speech and expression.</p>
<p>9. <i>Bharat Mukti Morcha v. State of Maharashtra</i>, 2022 SCCOnline Bom 3315</p> <p>(Bombay High Court)</p>	<p>Denial of permission to hold a meeting or rally at Bezanbag ground near the Rashtriya Swayamsevak Sangh (RSS) headquarters in Nagpur on October 6, 2022, on grounds of law and order apprehension. The denial was challenged, among other reasons, for lack of legislative authority.</p>	<p>The Court agreed with the Petitioners on their right to assemble peacefully and that a restriction could only be traced under public order, rather than law and order. However, the Court found that the denial of permission on grounds of inadequate availability of police personnel on the said date was in effect an apprehension about public order even though the word ‘law and order’ was used. The Court also traced the authority to pass such an order under Section 37(3) of the Maharashtra Police Act, 1951 even though the provision was not specifically invoked at the time of the denial of permission.</p>
<p>10. <i>Prakash Karat vs. State of Kerala</i>, 2022 SCC OnLine Ker 5243</p> <p>(Kerala High Court)</p>	<p>Private complaint under Sections 143, 147, 149 and 283 of the IPC and Sections 38 r/w section 52 of the Kerala Police Act, 1960 for a Statewide human chain formed by the Communist Party of India (Marxist)</p>	<p>The Kerala High Court held that a protest or an assembly without the use of criminal force cannot be considered an unlawful assembly, and that such a peaceful assembly was protected by the right to protest under Articles 19(1)</p>

	lined up on the sides of the National Highway to protest the ASEAN free trade agreement.	(a) and 19(1)(b) of the Constitution.
11. <i>Shanthakumar v. State</i> , 2022 SCC Online Mad 3835 (Madras High Court)	Denial of police permission to hold a 'padhyathra' or procession by the Bharatiya Janta Party to raise awareness about the benefit of creating a textile park in the area. The ground for rejection was that the proposed route had heavy traffic.	The Court affirmed the right to protest peacefully and held that the denial of permission on grounds of traffic without material to show 'law and order' issues was arbitrary. The Court held that the proposed padhyathra can be permitted on the condition that they conduct the awareness walk on one side of the road without obstructing traffic.
12. <i>Amravathi Parikrakshana Samithi v. State</i> , 2021 SCC Online AP 3493 (Andhra Pradesh High Court)	Writ Petition filed to challenge denial of permission to hold a Mahapadhyatra (procession) from Tullur Village, Guntur District to Tirumala, Chittoor District under Section 30 of the Police Act.	The Court held that considering the fact that the right to protest and holding peaceful demonstrations is a fundamental right, the order denying permission was unsustainable. The Court further held that it is the duty of the police to take necessary precautionary measures during the said Maha Padayatra to maintain law and order and that the police cannot abrogate the said duty stating that it would be difficult for them to provide any such protection in the four districts. The Court, therefore, directed the Respondents to give permission for the procession.

<p>13. <i>Mohd Ayyub v State (NCT of Delhi)</i>, 2021 SCC Online Del 4377 (Delhi High Court)</p>	<p>Bail sought in FIR under Sections 186/353/332/323/147/148/149/336/427/302 , IPC and Sections 3/4 of the Prevention of Damage to Public Property Act, 1984.</p>	<p>The Court noted that “<i>the right to protest and express dissent is a right which occupies a fundamental stature in a democratic polity, and therefore, the sole act of protesting should not be employed as a weapon to justify the incarceration of those who are exercising this right.</i>” The Court also found no material evidence of criminal acts alleged and therefore, regular bail was granted.</p>	
<p>14. <i>Tabassum v. State (NCT of Delhi)</i>, 2021 SCC Online Del 4254 (Delhi High Court)</p>			
<p>15. <i>Shadab Ahmad v. State (NCT of Delhi)</i>, 2021 SCC Online Del 4251 (Delhi High Court)</p>			
<p>16. <i>Asif Iqbal Tanha v. State of NCT of Delhi</i>, 2021 SCC OnLine Del 3253</p>	<p>Bail sought in FIR under Sections 109/114/124-A/153 -A/186 /201/212/295/302/307/314/353/395/419/420/427/435/436/452/454/468/471/34 IPC, Sections 3 / 4 of the Prevention of Damage to Public Property Act, 1984, Section 25/26 of the Arms Act, 1959 and Sections 13/16/17/18 of the Unlawful Activities (Prevention) Act, 1967.</p>	<p>The Delhi High Court ruled that offences under UAPA are not made out <i>prima facie</i> against student leaders Asif Iqbal Tanha, Devangana Kalita and Natasha Narwal in the Delhi riots conspiracy case related to the CAA protests. It was held that the right to protest is not a “terrorist act” under the UAPA. The Court emphasised that the right to protest is a fundamental right and cannot be termed as a ‘terrorist act’.</p>	
<p>17. <i>Natasha Narwal v. State of Delhi NCT</i> 2021 SCC OnLine Del 3254 (Delhi High Court)</p>			
<p>18. <i>Devangana Kalita v. State of Delhi NCT</i> 2021 SCC OnLine Del 3255 (Delhi High Court)</p>			

		<p>In addition to this, the Court cautioned against the frivolous use of the UAPA and its provisions relating to ‘terrorism’ offences. It emphasised that the term ‘terrorist act’ should not be applied loosely to acts that fall within the definition of conventional offences under IPC. Instead, UAPA should be invoked only for acts having a bearing on the ‘defence of India’. As a result, the appellants were granted regular bail.</p>
<p>19. <i>Bhaskarjit Phukan v. National Investigation Agency</i>, 2021 SCC Online Gau 231</p> <p>(Gauhati High Court)</p>	<p>Appeal against rejection of bail in FIR under sections 120B, 147, 148, 149, 336, 353, 326 and 307 IPC and added sections 153A and 153B IPC and Section 15(1)(a) of the UAPA pertaining to protests against the CAA, which allegedly turned violent and attempted an economic blockade and disruption of supplies and staged at a railway track and a national highway.</p>	<p>The Court observed that Article 51-A of the Constitution has to be read in harmony with the right to freedom of speech and expression. The Court observed that blocking of public roads and movement of essential goods to the public and setting fire to public offices and vehicles cannot be termed as peaceful democratic protests. Therefore, it cannot be said that the appellant has been unreasonably deprived of the right of Article 21 of Constitution of India. The appeal failed and the Court affirmed the order rejecting grant of bail.</p>

<p>20. <i>Anu Tuli Azta v. State of Himachal Pradesh</i>, 2021 SCC Online HP 294</p> <p>(Himachal Pradesh High Court)</p>	<p>An advocate and a member of the Shimla District Courts Bar Association filed a plea in court to dismiss an FIR lodged against her under Sections 341, 143, 147, 149, 353, 504, and 506 of IPC. The filing of the FIR originated from a demonstration organised by lawyers protesting against restricting entries to the District Court premises, which compelled them to take a longer route.</p>	<p>The petitioner contended that the police fabricated the FIR as an act of retaliation to disrupt the protest.</p> <p>The High Court held that even if the contents of the FIR were true, there is no allegation of a criminal act against the Petitioner. The Court affirmed that holding peaceful processions, raising slogans, would not be and cannot be an offence under the Constitution of India. Therefore, the Court quashed the FIR.</p>
<p>21. <i>Viswalingasamy v. State</i>, 2021 SCCOnline Mad 14746</p> <p>(Madras High Court)</p>	<p>Petition to quash proceedings under Sections 143, 147, 148, 341, 283, 448 and 188 of IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 with respect to a protest held for closure of a liquor shop.</p>	<p>The Court held that “<i>mere gathering at a particular place for protesting against a wrongful act cannot be given the colour of criminality</i>” and that staging a protest in a democratic manner cannot be construed to be an offence.</p>
<p>22. <i>Mohd. Lathifulla v. State</i>, 2021 SCCOnline Mad 13686</p> <p>(Madras High Court)</p>	<p>The Petitioners were protesting against the CAA without any prior permission. The police asked them to disburse in view of the Covid-19 pandemic. Since they refused to do so, they were arrested and a case against the petitioner/ A1 and others in Crime No. 189 of 2020 for offence</p>	<p>The Court observed that the exercise of the right to protest was to be safeguarded and not to be criminalized. It further found no material in the FIR to show that there was any promulgation of prohibitory orders which was communicated to the public and there was any disobedience by the</p>
<p>23. <i>Gold Rafi v. State</i>, 2021 SCCOnline Mad 13684</p>		

<p>(Madras High Court)</p>	<p>under Sections 143, 145, 147, 290 of IPC and Section 41(A) of the Tamil Nadu City Police Act, 1888 and Section 3A(1)(c) of the Tamil Nadu Open Place (Prevention of Disfigurement) Act, 1959 came to be registered.</p>	<p>petitioner, or that as a consequence of the protest, any trouble occurred. Therefore, the FIR was quashed.</p>
<p>24. <i>Sivakumar & Anr v. State</i>, 2021 SCCOnline Mad 12810</p> <p>(Madras High Court)</p>	<p>Criminal petition seeking quashing of proceedings under Sections 153(B), 505(1)(b), 505(1)(c), IPC and Section 137(1)(a) of the Railway Act, 1989 for distribution of pamphlets against the running of Sterlite plant in Thoothikudi by entering into the Guruvayur-Chennai Express</p>	<p>The Court noted that the petitioners entered railway compartments, allegedly with platform tickets, which is not permissible. However, the offences alleged are not made out. In addition, such a campaign is a part of the right to protest under Article 19(1) of the Constitution.</p> <p>The Court held that a speech can be held to be an offence only if it is capable of inciting imminent lawless action, and there was a distinction between advocacy and incitement. The Court held that the present case was only advocacy and could not be criminalized.</p>
<p>25. <i>Ramaligam v. State</i>, 2021 SCC Online Mad 10765</p> <p>(Madras High Court)</p>	<p>FIR registered under Section 188, IPC.</p>	<p>The Court held that the complaint is void <i>ab initio</i> since there was no complaint from a public servant, which is a necessary ingredient in terms of Section 195 CrPC. The Court observed that raising slogans against the government would not amount to a commission of an offence.</p>

<p>26. <i>Tripura People's Front v. State of Tripura</i>, 2021 SCCOnline Tri 531</p> <p>Final judgment dt 02.02.2023 in W.P. (CrI) No. 02/2021</p> <p>(Tripura High Court)</p>	<p>FIRs registered under Sections 143, 341, 506 etc. IPC read with Section 8-B of the National Highway Act, 1956 for a bandh protesting the death of a firefighter who, according to the petitioners, succumbed to injuries caused by an attack during a protest by members of Nagarik Suraksha Manch and Mizo Convention on November 21, 2020. The Court was considering whether mere act of a bandh call and blocking of a highway without mischief would constitute an offence under Section 8-B of the National Highways Act, 1956.</p>	<p>While recognizing the petitioners' right to assemble, the court concluded that the specific violation of Section 8B of the National Highways Act, 1956 could not be justified under Article 19(1)(a)(b).</p> <p>The court also observed that the petitioner organisation had no locus standi to seek the quashing of FIRs against individual accused persons.</p> <p>The court, however, clarified that it did not delve into the factual aspects of the cases registered, leaving it for the trial court to decide the guilt or innocence of the accused individuals.</p>
<p>27. <i>In re: Banners Placed on the Road Side in the City of Lucknow</i>, 2020 SCCOnline All 244.</p> <p>(Allahabad High Court)</p>	<p>Banners containing names, photographs and phone numbers of protesters claiming compensation for damage to public property.</p>	<p>The Court upheld the right to privacy of citizens, in particular considering the impact on democratic values. The Court found that the measure was a disproportionate violation of the right to privacy, and the police had powers under the CrPC to investigate the case.</p>
<p>28. <i>Iftexhar Zakee Shaikh v State of Maharashtra</i>, 2020 SCC Online Bom 244</p> <p>(Bombay High Court)</p>	<p>Order issued under Section 37(1)(3) of Maharashtra Police Act, 1951 to prevent agitations against the CAA.</p>	<p>The court invoked fundamental rights under Articles 19 and 21 of the Constitution of India, emphasising the democratic nature of the country and citizens'</p>

		<p>right to peaceful protest. The court ultimately deemed the orders illegal, quashing them, and granted the petitioner permission to conduct peaceful demonstrations at the specified location, emphasising the importance of engaging with citizens peacefully expressing dissent and the need to sensitise bureaucracy on constitutional values and human rights.</p>
<p>29. <i>Ashik v. State of Karnataka</i>, 2020 SCC Online Kar 3290</p> <p>(Karnataka High Court)</p>	<p>Petitioners were charged with violence against the police and damage to public property in violation of prohibitory order under Section 144, CrPC. Cases were registered under Sections 143, 147, 148, 188, 353, 332, 324, 427, 307, 120-B r/w 149 of IPC, 1860 and S. 2(A) of the Karnataka Prevention of Destruction & Loss of Property Act, 1981 and S. 174 CrPC.</p>	<p>The Court noted that there is no direct evidence to connect the petitioners with the alleged offences. It further considered the assertions of the police and held that holding protests against the National Register of Citizens and the CAA cannot be considered an unlawful object within the meaning of Section 141, IPC. Therefore, it was necessary to admit the petitioners to bail.</p>
<p>30. <i>Sowmya R Reddy v State of Karnataka</i>, 2020 SCC OnLine Kar 1527</p> <p>(Karnataka High Court)</p>	<p>Order under Section 144, CrPC prohibiting public assembly in view of the protests against the CAA.</p>	<p>The Karnataka High Court held the Section 144, CrPC order imposed in Bengaluru in December 2019 in the wake of anti-CAA protests to be illegal. It also observed that the fundamental right to hold peaceful protests is a basic feature of democracy.</p>

		<p>The Court observed that the violation of fundamental right to hold peaceful protests, which is a basic feature of democracy, cannot be taken lightly by a writ court.</p>
<p>31. <i>Mahesh Sonu Gawade vs. State of Goa</i>, 2019 SCC OnLine Bom 5235</p> <p>(Bombay High Court)</p>	<p>The petition was filed to seek quashing of an FIR and criminal case under Sections 143, 341, 506(ii) read with Section 149 of the IPC.</p>	<p>The Court noted that the allegations pertain to peaceful blocking of a road near Queni Mine entrance, resulting in stoppage of the transportation of iron ore. <i>Prima facie</i>, the Court did not find that any of the offences were made out or criminal force used. Therefore, the criminal proceedings were quashed. The Court also held that holding a peaceful demonstration is a fundamental right.</p>
<p>32. <i>Rituparna Sarkar Dutta v. State of West Bengal</i>, 2018 SCC Online Cal 1921</p> <p>(Calcutta High Court)</p>	<p>Public interest litigation seeking a writ in the nature of mandamus directing the respondent not to issue permission to any political party/authority to block roads for assembly, rally or procession.</p>	<p>The Court observed that all citizens have the right to assemble peacefully under Article 19(1)(b) of the Constitution, which was subject to reasonable restrictions under Article 19(3) of the Constitution. Therefore, no citizen can exercise fundamental rights in a manner which would curtail other person's rights to free movement. The Court held that permissions to hold rallies/processions may be given by State governments at</p>

		<p>their discretion. However, no major or arterial road must be completely blocked and a reasonable part of every road must be open to pedestrians and motor traffic.</p>
<p>33. <i>Jawaharlal Nehru University v. Geeta Kumari</i>, 2018 SCC Online Del 9601</p> <p>(Delhi High Court)</p>	<p>Contempt petition filed for violation of previous order dt 09.08.2017 that blocked student protests within 100 metres of the administrative block.</p>	<p>The Court held that the right to protest under Article 19(1)(b) was subject to reasonable restrictions including the rights of other students to access the administrative block. The right to protest at a designated spot-Sabarmati lawn was considered sufficient to protect this right.</p>
<p>34. <i>Dominic M.M.v. Sub Inspector of Police</i>, 2018 SCC Online Ker 3283</p> <p>(Kerala High Court)</p>	<p>Bail application for FIR registered under Sections 353, 506 r/w 34, IPC.</p>	<p>The allegations pertained to disrupting the survey with the development of the Thiruvambadi-Pulloorampara-Edathara road. The Court considered the materials and noted that the Applicants were merely exercising their right to protest and have not committed any offensive act. Therefore, bail was granted.</p>
<p>35. <i>Jeevanandham & Ors v. State</i>, 2018 SCC Online Mad 13698</p> <p>(Madras High Court)</p>	<p>The Court was considering a batch of cases registered under Section 188, IPC and observed that it is a common practice to register such cases even where the legal ingredients are absent.</p>	<p>The Court affirmed that the legal ingredients to constitute an offence under Section 188 IPC are (i) promulgation of a legal order; (ii) its communication to</p>

		<p>the accused; (iii) its disobedience by him; and (iv) the injurious consequence as described in the section.</p> <p>The Court issued guidelines to prevent the misuse of Section 188 IPC, including that no FIR should be registered for this provision, and that a written complaint of a public servant was necessary.</p> <p>It was further clarified that the promulgation under Section 30(2) of the Police Act must satisfy the test of reasonableness and cannot be a blanket power to trifle any democratic dissent.</p>
<p>36. <i>Jaheeruddin vs. State of MP</i> 2018 SCC OnLine MP 1723</p> <p>(Madhya Pradesh High Court)</p>	<p>Anticipatory bail filed for cases registered under Sections 147, 148, 149, 427, 336, 353, 332, 333, 153, 153-A, 440, 120-B, 188, 333 and 440 of IPC relating to a procession/rally staged in respect of an incident of a rape of a minor girl in Jammu & Kashmir</p>	<p>The Court upheld the right to protest, while observing that there is a duty cast on every citizen to protest in a peaceful manner without any disturbance, inconvenience and violence to the public at large. The Court expressed concerns regarding raising of anti-national slogans but did not purport to enter into the merits of the case at this stage, and granted anticipatory bail.</p>

<p>37. <i>Swami Gyan Swaroop Sanand vs. State of Uttarakhand</i>, 2018 SCC Online Utt 1055</p> <p>(Uttarakhand High Court)</p>	<p>The Petitioner was on a fast to protect the river Ganga. He was forcibly removed by the police from the spot and served a notice to end his fast.</p>	<p>The Court observed that this was an arbitrary exercise of police power that restricted the right to protest. The Court, therefore, passed directions to protect the right to life of the Petitioner including medical examination of the Petitioner and information to his disciples about his whereabouts.</p>
<p>38. <i>Bhagat Singh Mahdel v. Gulshan Bamra</i>, 2017 SCC Online MP 1846</p> <p>(Madhya Pradesh High Court)</p>	<p>Writ Petition filed by Petitioner, seeking permission to protest against orders of the Court by sitting on dharna, which was not permitted by the Court administration.</p>	<p>The Court found no merits in the Petition and held that freedom of expression or the right to protest were subject to reasonable restrictions. The Petition was dismissed with a cost of Rs. 25,000 and the Court considered the pleadings contemptuous.</p>
<p>39. <i>Basheer v. State of Kerala</i>, 2016 SCC Online Ker 14028</p> <p>(Kerala High Court)</p>	<p>FIR registered under Sections 143, 147, 283 read with 149 of IPC and chargesheet filed, for allegations of an unlawful assembly in the Aluva - Munnar private road and creating obstructions to the vehicular traffic as part of their protest against installation of underground cables for the Sahyadri Iron Ore Company at Nalam mile.</p> <p>The Court was considering a quashing petition.</p>	<p>The Court observed that the locals were expressing their right to protest and there was no allegation that the protest turned violent. Therefore, the proceedings were quashed.</p>

<p>40. <i>Mount Zion College of Engineering v. Mahatma Gandhi University</i>, 2015 SCC Online Ker 9890</p> <p>(Kerala High Court)</p>	<p>Mahatma Gandhi University's Students' Code of Conduct Rules, 2005 prohibited political/organizational strikes/disturbances. The Petitioner college sought a declaration that activities of student organizations are prohibited inside the campus.</p>	<p>The Court declined to pass such a declaration and held that the maintenance of discipline within University premises was within the powers of the University administration. The Court held that the University was free to seek district administration and police for assistance in maintenance of law and order. While no declaration was issued, the Court reiterated the decision of another Division Bench which held that the right to protest should be exercised in a peaceful manner and that the said right doesn't extend to the right to protest on the basis of a political organization.</p>
<p>41. <i>K. Thiagarajan, General Secretary, Thamizh Thesiya Vidhuthalai Iyyakam v. Commissioner of Police</i>, 2013 SCCOnline Mad 3033</p> <p>(Madras High Court)</p>	<p>Permission to hold indefinite fast at Marina beach to highlight the issues faced by Sri Lankan Tamils was denied.</p>	<p>The Court upheld hunger strike as a form of nonviolent protest. The Court further held that the apprehensions of the police to ensure law and order may be achieved without infringing the fundamental right to assembly. Therefore, the denial of permission was held illegal. The Court however, passed directions to the Petitioner to give an undertaking that he would not initiate violence, as well as to furnish the names and address of members of his organization if they</p>

		are joining the hunger strike. The Court further directed that any leaders who wanted to speak by arranging meeting near the venue of fasting should give a prior intimation to the jurisdictional police and seek permission.
<p>42. <i>Dow Chemical International Pvt Ltd v. Nithandam</i>, 2009 SCCOnline Mad 1059.</p> <p>(Madras High Court)</p>	<p>Suit for loss of business as a result of protests staged by respondents outside the company's offices to demand justice for victims of the Bhopal Gas tragedy</p>	<p>The Court held that citizens have a right to protest, and that unless there was a threat to the life and liberty of an aggrieved organization impacting its very existence, the Court or State authorities should not impose prior restraints.</p>
<p>43. <i>Chhotulal v. State of Rajasthan</i>, 2007 SCC Online Raj 1024</p> <p>(Rajasthan High Court)</p>	<p>Bail application in FIR registered under Sections 147, 436 and 379 IPC and Section 3 of the Prevention of Damage to the Public Property Act, 1984.</p>	<p>The allegations pertained to destruction of the Railway Station and setting the police chowki on fire during the Gurjar agitations in the State. The Court held that the right to protest does not extend to the destruction of property and offences against public/society at large.</p>







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