

# LEGALFOXES LAW TIMES

## **RIGHT TO PROTEST VIZ-A-VIZ HUMAN RIGHT CRITICAL STUDY ?**

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### Abstract

Through this narration of article I am obliged and tried with all efforts to content and would like to put in ears of readers about the clashes happening between nation and people due to malfunctioning of government worldwide, what leads to such clashes and effecting general public life the way through which public raise its voice toward bias actions of government is voice of mass protest or protest whereas it is shame for any government if its own valuable asset raise voice against them and their policies, rules, regulations or welfare scheme formulated by government for betterment of citizen of its nation are not useful whereas people most valuable asset of nation neither of state can function better without its citizens at ease although for good governance government and its agencies needs to work for its citizens and guard its citizen despite of showing gratuity towards its people they betray their people and when governmental policies schemes and statutes don't prove beneficial for people, people generally form union or association which find loopholes in schemes of government across the world. In India people faces arbitrariness of their leaders and corrupt politicians and corporate funders of ruling parties get lobby into public market for their own interest.

International Treaties and protect natural rights of people accordingly and many international treaties on human rights must be protected by its signatory states. Where in world countries are witnessing protests in form of food riots in African countries, Europe and other continents, Russia across many countries and anti-war protests in United States of America, anti-authorities tirades, anti-blasphemy marches, anti-austerity demonstrations, anti-authoritarian movement and anti-capitalist occupations movement worldwide. Interestingly, contemporary political protests are borne of both the Right and Left and are staged in both the Global North and South. Globally, different instances of protest have drawn attention to the deep fissures which challenge the idea of globalisation as a force for peace. Given the diversity of these protests, it is necessary to examine the particular nature of grievances, the sort of change which is sought and the extent to which localised protest can have global implications.

Politics in India later in second decade of 21<sup>st</sup> century has amazed worldwide misleading of legislators toward ingenous public with fake promise and malintention to denigrate politics with business is lethal for democracy government must be reasonable as well as accountable towards its Citizen, India had witnessed disagreement, hullabaloo and large need of substantial change not only superficial talks with

promises and securing devilish corporate and great giving backs to from crook political leader to their corporate friends NO dealing with transparency of economical condition of nation and these mystery giving back through leaders to their corporate friend is misguidance to innocent citizen is harm for democracy; loss of opportunity to fulfill duties by sincere public servants due to interference of political crook leaders in office work for political benefit or their party benefit, capturing on election both other malpractices in election putting nose in judiciary by political superior, over harassed judicial staff failure in delivery of justice system and redress violation of crucial rights.

### \*Right to protest general overview

“If the deaf have to hear, the sound has to be very loud” – Bhagat Singh

In general terms right to protest is performed by public to show their disagreements with government superiors, In democratic societies peaceful assembly is essential or one of the foundation of democratic society and an contraption by which people revolt against or bring before their need, raise voice in front of dumb authorities to bring change in society when their natural right is in danger peacefully people can form association with common goal to fulfill in private or public or gather together in public or privately, to act against any discrimination or cruelty. Right to Freedom of Peaceful Assembly is natural right guarded by many important International Treaties and Treaty bodies likewise Human Rights Committee(HRC), Committee on Economic, Social and Cultural Right(CESCR), Committee on the Elimination of Racial Discrimination(CERD), Committee on the Elimination of Discrimination against Women(CEDAW), Committee on Right of Child(CRC)<sup>(3)</sup> Articles in mentioned treaties acts as guardian of each individual of signatory country and guard this natural right, further gives security from discrimination, opportunity to minority and unmarginalized sectors of society in case they feel discomfort. “Non-violent participation in public affairs and equal political participation and steps to overcome those challenges”<sup>(3)</sup> and strengthen issue of public interest. Non-violent public assemblies plays key role in social change and generally when people gather for any motive or point out lacunae in governmental schemes these gathering may be called protest but these also gives accounts of public bodies, governmental bodies and corporate functioning and become useful, public protest to bring up their demands and their right when they have been deprived of fundamental human right. Right to Freedom of expression and peaceful assembly must be provided to all citizens and must not be hampered

Many political tactics are played by leaders in power to save their political carrier and weaken their voice of protest, some protest become social movement like struggle of India for independence not only India worldwide British Empire Infact , United states of America is born from protest and it will not be wrong to say that protest is in DNA of America whether against East India company or against slavery, whether rights of Anglo-American civil rights recently against racism people protested peacefully and LGBTQ mass protest etcetera, above mentioned each protests fulfilled its purpose and brought social change neither without casualties or great massacres . Arab spring is set example of why authoritarian state hates right to freedom of

Expression and peaceful assembly nevertheless protest against China in Hong Kong there are accusations on Chinese government by people of Hong Kong and turning of protest into violent act by police authorities is extremely unpleasant sagging people from protest sites causes repulsion against humans natural rights in the history of Hong Kong after arrangements between Britain and China and recently Hong Kong protests began out in 2019 April when extradition bill was triggered though it was withdrawn in September but protest continued as protesters were in fear that bill could be revived police shot one 18 years old in chest as protesters fought back officers on 1 October clashes among police and grown to be increasing in number of violence with police authority firing stay bullets and demonstrators attacking police authority with petrol bombs the invoice turned into withdrawn in September and now call for complete democracy and inquiry and International peace keeping bodies must interfere into and ensure freedom and safety to people demanding for human right and demolish "one country, two systems" arrangement between china and Britain .<sup>(4)</sup> farmers in European countries are protesting for new agricultural policies.

\*status of right to protest in India

World's largest democracy have crucial history in protest of independence from British colony and even from more than 70 years of independence the welfare and security of citizen and democracy is at high risk by their own statespersons and in every sort lapse of time country witness mass protest for instance chipko movement(1973) to Anna hazare's fight against corruption and yet corruption did not extinct as far as security of people mass rape in twin village of Kashmir valley kulan and poshpora is horrid example of own security forces , 2012 December 21 in capital young girl was brutal raped popularly nirbhaya rape case promises of security of women is still is still unsettle after 2012 the index of crime against women is rising according to 2019 annual report of National Crime Records Bureau on an average 88 cases daily 32033 rape cases were recorded as violence against women is not concerned by authorities the protest against brutal rape of 2012 became mass protest as being supported by different states and protesters were baton charged instead of their peaceful assemblance at India gate the question of concern is are the rights of citizens guarded and protected as Free Speech and Expression is fundamental right of citizens as protected by Constitution of India under Article 19(1)(a) with certain reasonable restrictions in Article 19(2) which does not directly provide Right to Protest but this art. Comes within golden triangle of fundamental rights of citizens Art. 19 protects certain rights regarding to freedom of speech and expression; to assemble without arms and peaceably; to form union or association indirectly provides right to protest and India being signatory country of United Nations it has obligations towards its treaties

International aspect and before independence struggle of India for independence Mohandas Gandhi in 1917 built strong root to independence through peaceful protest and many independence fighters in their regions started joining his movement as farmers all over country were in suffering and were forced for plantation of indigo it will not be wrong to say history repeats itself 26 November 2020 Farmers from many states brought their protest to capital many

states Farmers Association and Union leaders of farmers representing their voice through peaceful protest against three Agricultural Reform Bills passed during pandemic ongoing over world and Indian parliament's passed are namely:

1. The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020
2. The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services bill, 2020
3. The Essential Commodities (Amendment) Bill, 2020

On 5<sup>th</sup> June 2020, these three above mentioned bills aimed transformation in Agricultural sector and raising income of farmers and proving inter-state trade and intra-state trade and to which farmers of majorly from agricultural state of India opposed bill and protested and ongoing peaceful protest ;

**\*Right to Protest as Human Right –**

Article 21 of the International Convention on Civil and Political Rights (ICCPR) the Right of Peaceful Assembly Article 20(1) of Universal Declaration on Human Rights and many important treaties and convention guard right to peaceful assembly in case of issue regarded their human right on International Standards protects Right to freedom of peaceful assembly and of association, there is nowhere directly mentioned right to protest as human right but indirectly the right to freedom of association, peaceful assembly and expression are recognized by several international treaties and conventions and these rights indirectly gives human right to protest against in case where there human right is in danger these conventions and treaties are guardian of human right at international level United Nation Commission of Human Right body of United nation established by United Nation to guard human rights globally and right to protest as human right must be protected without discrimination on basis of race, caste, religion, sex, language, social origin additionally, where Law of Land collapses with right to protest ambiguous provisions of Law of Land must be interpreted in such a manner allowing protesters police protection and states should without any discrimination allow peaceful protest it is necessary for state to provide necessary support and sufficient protection and other authorities must be involved in managing protest. Right to protest is inalienable human right a right that can not be lost or be hampered right to protest is Human right and anyone can participate or protest provided that is lawful and for lawful purpose. All protests should be presumed to be lawful and broad interpretation of term peaceful must be afforded to protestors. Protests should be facilitated within sight and sound of their target and no person should be held criminally, civilly, or administratively responsible on mere act of organising or participating in protest on certain reasonable or limited restrictions can be applied to protestors and those restriction must be applied only if protestors involve with right of non-protestors as right of movement and others fundamental rights and such restrictions must be lawful, necessary, appropriate and be carried out without any discrimination charge to impose limitation is upon authority like administrative

authority of state including police where protestors are restricted by limitations they must be provided with judicial review or tribunal for enforcement of their right and court or tribunals must be unbiased in nature<sup>(5)</sup>

The right to protest is key to find lacunae in democracy. Democracy is direct self-government over all the people, by all the people and for all the people<sup>(6)</sup> as protest is medium of awareness for people and among people to communicate to government about their issues toward their functioning and can question at their safety, liberty, freedom in unacceptable situations and claim socio-economical and political change protest make change happen and India has remarkable history in protest pre-independence and post-independence “Non-violence is the greatest force at the disposal of mankind. It is mightier than the mightiest weapon of destruction devised by ingenuity of man.”<sup>(7)</sup> In fact, United nation International Day of Non-violence is celebrated in honor of his birth on 2<sup>nd</sup> October. In 1906 Mohandas Gandhi’s first non-violence movement against racist government in East Africa and in 1917 in India he was peaceful protestor whereas into struggle of independence India witnessed violent protests and non-violence as they were also necessary for situation of country. Therefore protest is inalienable human right worldwide and must be protected by obligatory states where protest happens safeguarding right to protest without any discrimination for functioning and providing privilege of democracy and liberty states must provide and protect individual freedom and uplift equality among all as it is most suitable for functioning of governance to counter the concentration of power in the hands of few and prevent abuse of human right that ensues therefrom<sup>(8)</sup>, the muse of recognizing and pioneering human right in democracy unearth its roots in early nineteenth century during motion to abolish the transatlantic slave trade, which operated alongside as status quo in democratic states and resolution of countries dealing with elimination of hunger, poverty, discrimination of any kind led to innovation toward humanity in era of post world war .

\*Right to protest is fundamental right-

Many International treaties and law mentions provision recognising right to freedom of peaceful assembly as fundamental right without interference in liberty of other individuals right throughout world. Right to protest is inalienable fundamental right in India post independence it witnessed 40 historic protests majorly all over country<sup>(9)</sup> Anti-corruption movement 2011 and Farmers protest ongoing it will not be wrong to say history repeats itself and struggle of independence from colonial with all type of protest violent as well as non-violent protest occurred as of voice of free India: with this context at the drafting of Constitution of India citizen of country are guaranteed with inalienable Fundamental Right in the basic structure of constitution no right granted in part 3 of Constitution of India can be hampered this part provided protection to citizen and allows for remedies in case their right is violated whereas all right are essential, but amongst all, Article 19 of the Constitution of India the right to freedom of speech and expression , freedom to assemble peacefully, freedom to form association which in

somewhere regulates right to protest as fundamental right of citizen and guard the basic structure of soul of constitution.

\*Case laws

In Re: Ramlila Maidan Incident V.The Union of India & bears, (2012) 5 SCC 1, 2012 AIR SCW 3660 Supreme court took suo moto, when government imposed section 144 of the Code of Criminal Procedure, 1973 and attempted to suppress a peaceful crowd of sleeping protest in ramlila maidan court held passing such orders did not only breached fundamental right of peaceful protest but also violated contemplation of reasonable restriction in Article 19(2) and 19(3). Further court said there was no imminent need to intervene and therefore restriction imposed of section 144 was unreasonable. The court accordingly ordered for criminal cases to be instituted against both member of protest and police personnel who indulged in destruction of property and against police personnel for using excessive force and said, 'Citizens have fundamental right to assemble and peaceful protest that cannot be removed from arbitrary executive or legislative action.'

In Maneka Gandhi V. Union of India, 1978 AIR 597, 1978 SCR(2) 621

Justice Bhagwati observed, 'if democracy means the government of the people, on the part of the people, it is obvious that every citizen must have right to participate in democratic process & allow him to intelligently exercise their rights to make choice, a free and general discussion of public issues is absolutely essential.'

Conclusion-



Right to protest is heart and soul of democracy whereas democratic government is elected by people, for the people and to report the misconduct of government and its agencies voice of people in form of peaceful protest it is key for democracy and if right to protest peacefully is absent in democracy or is violated it is danger for citizens security and imbalance in society in free democratic society right to protest is granted to citizen and Indian democracy grants fundamental right to gather peacefully without arms or weapons and not in condition for unfair means or to abuse protest while this is also duty of government to guard protest from violent acts on other hand its job of state to bring balance between society and can impose reasonable restriction in case necessary, this is duty of citizen to accept policy of government and obey law and order but where those polices or law violates or hampers basic human right of its own people they have right to protest and raise their demand in front of government and government must be obligatory toward need of people instead of their own personal welfare. So lastly I would conclude right to protest is human right whether democratic or authoritarian state as no human being must be deprived of their freedom, liberty, security and dignity.

