

---

## AN ANALYSIS ON RIGHT TO ASSEMBLE PEACEABLY WITH REFERENCE TO MAJOR PROTESTS IN INDIA

---

**Palak Agarwal & Divyanshu Chaurasia**  
**Hidayatullah NLU & Dr. Ram Manohar Lohia NLU**

### ABSTRACT

*In India, we are experiencing phenomenal public protests. Thousands of individuals keep on going to the roads to demand that the public authority rethink the Citizenship (Amendment) Act and the National Register of Citizens. Such public showings are the quintessence of a liberal, majority rule country, whose reasoning expects that individuals' voice be perceived by those in power and that decisions be made after itemized conversation and deliberation. The right to free expression, association, and peaceful assembly are expected for this. Any unreasonable limitation on the pleasure in such rights, for example, enforcing Section 144, exhibits the public authority's unwillingness to tolerate disagree. It exhibits the public authority's inability to impart, break down, or understand, instead of individuals' affinity to revolt. An outlandish limitation on fight is lack of regard to the very individuals in whose behalf an administration is briefly approved to manage.*

*The Indian Constitution ensures the right to peaceful assembly. According to Article 19 (1)(b), all citizens have the freedom to assemble peacefully and without arms. The Court has utilized a made to order assessment to make law based on gatherings or arrangements of holders of honours and resistances. The Supreme Court managed in Ramlila Maidan Incident versus Home Secretary, Union of India and others (2012) that citizens have a key right to assemble and peacefully fight, that can't be removed by arbitrary leader or regulative action, and that the action taken by the police authorities was erroneous. The public authority of India should act promptly to guarantee that its citizens have the freedom to communicate their thoughts and take part in peaceful protests unafraid of being detained, seriously attacked, tortured, or killed.*

## INTRODUCTION

Citizens form a vital element of the country, whose rights and liberties have to be protected by legislation, since if the country's citizen is not disturbed and is distant from the arbitrary government, a country can work correctly. Since the rules and regulations are the legal framework, every effort must be made for citizens' prosperity. The Constitution of India therefore gives the citizens of India different rights which are called fundamental rights to protect the interests of citizens such as freedom of assembly (Article 19). Therefore, if citizens have established that any government action, policy, or law is inappropriate, or unjust, they have the right, through peaceful protests, to object, question, and voice their opinions towards the government. Reflecting on the background of Indian history, freedom fighters employed nonviolent protests as a means of fighting for freedom in India. Mahatma Gandhi, the father of the nation, has also believed in nonviolent protest, the Ahimsa Principles, the execution of various Dhana movements, protests against colonial politics, and India's independence from the British.

After reviewing history, it can be concluded that there is no better way to oppose government policies and laws than to demonstrate peacefully. Protesting peacefully is one of the most effective ways for people to voice their thoughts and speak out against the government when necessary. There are many things that go into organizing a protest rally, such as money, proper planning, time, and so on, but one of the most important things that protesters emphasize is that it be held in accordance with the laws, because the protest's very spirit is lost if any illegal material is connected to it. Many protest rallies can be seen in modern India, with different challenges prevailing as per the needs of the times, because in a democratic system of government, individuals have the right to express their opinions and ask the government to step, because laws are created for the citizens, and in a situation where the public's ideology and the government's clash, the public has the right to protest peacefully.

## Freedom of assembly

“Article 19 (1)(b) guarantees to all citizens of India rights to assemble peaceably and without arms. The right of assembly includes the rights to hold meetings and to take out processions. The right is however subject to the following restrictions. :----

- 1) the assembly must be peaceable;
- 2) it must be unarmed;
- 3) reasonable restrictions can be imposed under clause 3 of article 19.”<sup>1</sup>

The democratic government's very concept includes the right to peacefully assemble. As a result, the freedom to assemble also encompasses the ability to hold meetings and processions. The right, like every other individual right, isn't absolute, but rather restricted. The gathering must be peaceful and shouldn't upset the public order. Assuming that the assembly is turbulent or rioting, it isn't safeguarded by article 19(1)(b), and reasonable requirements might be forced in light of a legitimate concern for "Indian sovereignty and integrity" or "public order" under clause (3) of article 19.

Article 19(1)(b) safeguards existing Indian regulation regulating public meetings in the purpose of public order on the off chance that the cut-off points are acceptable when a legal assembly becomes unlawful. Assuming a gathering becomes unlawful, it very well might be scattered. The grounds under which a gathering becomes "unlawful" are spread out in Chapter viii of the Indian corrective code. An assembly of at least five persons becomes an unlawful assembly under section 141 of the Indian corrective code assuming the shared objective of the people composing assembly is:

- “to resist the execution of any law or legal process ,
- to commit any mischief or criminal trespass,

---

<sup>1</sup> The Constitution of India,1950.

- obtaining possession of any property by force,
- to compel a person to do what he is not legally bound to do or omit which he is legally entitled to do,
- to overawe the government by means of criminal force or show of criminal force or any public servant in the exercise of his lawful powers”<sup>2</sup>

### **Major protests in recent times**

In recent years, all types of demonstrators in India have been condemned, including the anti-CAA movement, Kashmiris, and even farmers. Even the right to peaceful assembly was infringed. Often, violence breaks out during a nonviolent protest or parade. The authorities then obtain a permit to use baton charges on the protesters.

Usually, when violence occurs, the government responds by enforcing Section 144 or shutting down internet access in order to silence opposition. While demonstrators blame anti-social elements for the failure, ordinary people doubt the validity of movements.

There has been a significant increase in the number of internet shutdowns and the use of Section 144, particularly in Kashmir.

In India, contradict has been increasingly fiercely smothered, with the state arbitrary detaining and harassing activists and common freedoms activists for participating in peaceful protests against the Citizenship Amendment Act 2019 (CAA), the National Population Register, the National Register of Citizens, and the Farms Bills 2020.

Anti- CAA protests have been viciously smothered, with police supposedly employing unreasonable power against protestors, including firing unpredictably into swarms, using teargas and water guns, abusing bystanders, and arresting and assaulting nonconformists,

---

<sup>2</sup> The Constitution of India,1950.

---

including kids. During these protests, a huge number of individuals were killed, and various more were harmed. To this day, there has been no objective or straightforward examinations of the savagery.

Activists and common freedoms protectors taking part in the protests have allegedly been accused of rebellion, psychological warfare, and murder under severe enemy of fear and national security regulations such the Unlawful Activities (Prevention) Act and the National Security Act. Gulfisha Fatima, Haider, Shifa ur Rehman, Khalid Saifi, Meeran Dr Kafeel Khan, Sharjeel Imam are among those captured and imprisoned. In spite of rehashed allures for their delivery from international and national common liberties associations, as well as the United Nations, they stay detained.

With regards to the Covid-19 crisis, extreme limitations on freedom of peaceful assembly and association have been forced. These incorporate the blanket conclusion of internet providers and the utilization of Section 144 of the Criminal Procedure Code, a frontier rule prohibiting public protests and gatherings of in excess of five people, in a number of spots. While we praise India's endeavours to forestall the spread of Covid-19, we ask the specialists that prohibitions should be legitimate, essential, and relative, and can't be utilized to smother disagree.

### **Could the state at any point confine a citizen's right to protest?**

By and large involving Article 19(1)(b), the inquiry is whether the state can restrict a citizens' right to peaceful assembly. The Supreme Court handed down a significant ruling on the incident that happened the evening of June 4-5, 2011 at Ramlila Maidan in Delhi, where Baba Ramdev and his devotees were protesting against black cash and debasement. Their protest was aimed at the Indian government, which has neglected to go to meaningful lengths to combat the issue of black cash and debasement in the country. The meeting was considered peaceful by the Supreme Court. The substance of a vote based system is satyagraha, which goes beyond the idea of "detached resistance." Saytagraha is peacefulness, not forcefulness, and its power lies in truth and the ability to battle for it. The right to peaceful protest is a protected right, and the freedom to congregate and exhibit by staging dharnas is one of the vital parts of a utilitarian vote based framework, according to the Supreme Court. Individuals in a majority rules system have the freedom to take a stand in opposition to the public authority's decisions and actions,

as well as to communicate their perspectives on any topic of national concern. The public authority has a responsibility to regard and advance the activity of such rights. As of late, notwithstanding, political powers have utilized police abilities to keep citizens from enjoying their basic right to peaceful assembly. In this present circumstance, police powers were additionally utilized to mandate that the exhibit be restricted and not extremely tremendous. What's more, section 144 of the Criminal Procedure Code was wrongly applied. In such manner, the Supreme Court stated that the choice to forcibly oust those sleeping at the Ramlila Maidan at 12 PM on the fourth and fifth of June 2011 by either the police or the Ministry of Home Affairs was arbitrarily utilized, an abuse of force, and inaccurate. It was an infringement of the legitimate insurances stood to those present. Subsequently, the limitation was forced without cause and exhibited the state's power.

Notwithstanding, after these observations, the decision took a startling turn, declaring that each protestor has a legitimate obligation to obey any legitimate command. For what reason ought to the protestors have acknowledged such an order when neither the utilization of section 144, the withdrawal of approval, nor the forcible removal of the protestors was lawful? A protestor who arranges a peaceful protest inside the bounds of his protected rights has a similar right to decline to acknowledge an unlawful order that limits his freedom to protest.

Assuming the order is viewed as illegal, he ought not to be rebuffed. Nonetheless, the decision suggests that at whatever point an individual's crucial right to protest is disregarded by the public authority, he should immediately follow the public authority's commands or face the outcomes.

Notwithstanding, a citizen can't be compelled to surrender his essential right just because the public authority chooses to restrict his ability to protest. The ruling avowed the right to protest as an essential freedom of expression and assembly, but it likewise made the exceptionally dubious case that if the right to exhibit is denied, the protestor should acknowledge it or face being accused of contributory carelessness to police oppression. This section of the choice ought to be completely checked on and dissected to recognize its shortcomings, and it ought to in all likelihood be returned to.

Citizens have a basic right to assemble and peaceful protest, which can't be removed by arbitrary authoritative or official action, the Supreme Court stated in **Ramlila Maidan Incident v. Home Secretary, Union of India and Ors. (2012)**.

In **Maneka Gandhi v. Union of India**, Justice Bhagwati stated, If a vote based system implies individuals' administration, it's obvious that each citizen ought to reserve the privilege to partake in the majority rule cycle and grant him to sensibly practice his rights to settle on a decision, an open and free conversation of public issues is absolutely essential.

Another notable decision is the one in the matter of **Anita Thakur & Ors. vs. State of J&K & Ors.** In this decision, the Supreme Court said explicitly that the space provided for legitimate dissent is an important characteristic of a democracy. However, the Supreme Court underlined that, like any other fundamental right, the right to peaceful protest is not absolute and can be limited if it violates India's sovereignty and integrity, as well as public order and public safety.

In **Anuradha Bhasin versus Union of India**, the Supreme Court decided that Section 144 orders had direct ramifications for fundamental rights. It would be extremely illegal if it were implemented in a casual and cavalier manner. The danger envisioned should be comparable to an "emergency," and its provision must be invoked to prevent any legitimately employed person from being obstructed, irritated, or injured. Section 144's powers are not intended to stifle genuine expression of opinion, grievances, or democratic rights.

Section 144, internet blackouts, and rail service disruptions all violate the right to peaceful assembly. These decisions by the Supreme Court reaffirm constitutional provisions that citizens have the freedom to demonstrate whenever they see fit. These protests contribute to the strengthening of Indian democracy and the creation of space for nonviolent adversity, which not only defends citizens' rights but also helps close a loophole. According to the court's findings, the freedom to peacefully assemble is a necessary component of a free democracy in order to protect citizens' interests.

### **Suggestions and Conclusion**

Protests position the public as the government's watchdog. People function as watchdogs, constantly monitoring government actions and providing feedback to governments on their policies and actions, after which the concerned government recognizes and corrects its mistakes through consultation, meetings, and discussion.

Using brutality at a protest, then again, is an infringement of a basic key obligation of individuals. According to Article 51A of the Constitution, each citizen has a key responsibility to "protect public property and to abjure brutality."

States have a responsibility to protect the right to freedom of assembly, particularly when individuals gather to protest government arrangements and defy the public authority.

The right to peacefully assemble incorporates the freedom to pick the spot and season of the gathering, which incorporates public streets.

The right to assemble online should be totally safeguarded too.

For the purpose of repressing difference and basic voices, state run administrations as often as possible disregard the right to freedom of assembly. The right to peaceful protest is a significant piece of the right to peaceful assembly. Be that as it may, peaceful activists are habitually captured and subjected to viciousness.

In certain conditions, legitimate regulations make it against the law to arrange and partake in peaceful protests, while in others, legitimate understandings can be adjusted to legitimize the capture of peaceful protestors. These sorts of terrorizing tactics every now and again bring about a culture of self-control.

Therefore, infringement of the right to freedom of assembly have major cultural results, as they forestall an open and pluralistic talk and smother one of common society's most amazing assets for questioning power. Furthermore, an increasing number of states are attempting to ban online entertainment and correspondence innovations to frustrate the association of protests. Such impediments ought not to be tolerated.

States should not utilize affections to limit the freedom to protest in a severe way, for as by exploiting against psychological warfare or national safety efforts. Rather, they ought to disclose space more accessible and guarantee that protests run as expected without the utilization of unreasonable power by regulation police.

Viable, unambiguous, and reasonable guidelines on the freedom to protest should be remembered for every country's lawful design; imperatives ought to just be utilized if all else fails. The affirmation and security of rights like freedoms of expression and assessment, association, and peaceful assembly are all essential for the right to protest. We demand that India's administration make a prompt move to guarantee that its citizens have



the freedom to articulate their thoughts and engage in peaceful protests unafraid of being detained, brutally beaten, tormented, or killed. The right to life, as well as the rights to freedom of expression, association, and assembly, are safeguarded under international regulation, notably the International Covenant on Civil and Political Rights, to which India is a signatory.

We likewise demand a full, quick, public, and fair-minded investigation into charges of police offense, as well as the prompt arrival of all unjustifiably held people.