BLOGS

# Important Cases for CLAT 2023: Amit Sahni vs. Commissioner of Police

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**The following article analyses the landmark case of Amit Sahni vs. Commissioner of Police for CLAT 2023.**

**Dated – 7th October 2020**

**Court – The Supreme Court of India**

**Bench – Justice Sanjay Kishan Kaul, Justice Aniruddha Bose and Justice Krishna Murari**

In a democracy, citizens manifest the inherent part of the nation and they should be protected by legislation as a country can operate congruously only when the citizens of the country are rapturous and are not troubled by the constant interference of its government.

The rules and regulations, the ordinance, the directives, and all the statue are being issued by the government for the welfare of its citizens and towards this end, the Constitution of India accord its citizens some rights which are labelled as Fundamental Rights which safeguards the interest of the citizen.

Thus, if citizens are not satisfied with the government's functioning and any of the government's policies, they have the right to debate, disparage and denounce it through peaceful protest.

The right to peaceful protest is like a cap on a democratic water bottle, just like the cap holds the water in the bottle in the same way it upholds the very spirit of democracy. The right to protest is secured under Article 19(1)(a) which states that all citizens have the right to freedom of speech and expression, Article 19(1)(b) which gives the right to assemble peacefully and without arms, Article 19(1)(c) which states the right to form associations or unions.

The Chipko Movement is one of the demonstrations of peaceful protest. Countries whose foremost concern is the formation of a democratic society will always uphold the essence of the right to

protest for their rights.

However, all fundamental rights are not absolute and one should always utilize their right accordingly so that the rights of others are not curtailed. In the case of **Mazdoor Kisan Shakti Sangathan v. Union of India**, National Green Tribunal held that the "right to hold demonstration or protest does not include the right to hold a demonstration at one particular place.

Protest at Jantar Mantar Road in New Delhi, on the ground of nuisance and causing air and noise pollution to the residents of the area. The supreme court directed to devise a proper mechanism for limited use of the area for such purpose because guarded and regulated peaceful protests would not violate the rights of protestors."

The same restrictions are laid down in the recent case of **Amit Sahni v. Commissioner of Police** where the protesters assembled at Shaheen Bagh against the Citizenship Amendment Act and the National Register of Citizens. It was held that the rights to freedom of expression and protest under Article 19 of the Constitution are subject to reasonable restrictions about the sovereignty and integrity of India, public order and the regulation by the concerned police authorities.

## Facts of the Case

1. In December 2019, the Indian Parliament passed the Citizenship (Amendment) Act, 2019 which led to protests in different parts of the One such protest led to the closure of the district Shaheen Bagh in Delhi.
2. On January 14, 2020, a writ petition was filed in the High Court of Delhi against the protest, contending that the public roads could not be permitted to be encroached upon in this manner. The High Court directed the respondent authorities to take the necessary steps but gave no specific order or direction and the situation remained the same.
3. Thereafter, advocate Amit Sahni (the appellant) filed the present appeal in Supreme Court against the order of the High Court, arguing for removal of the protest site. Meanwhile intervention applications were also filed by parties who sympathized with the protestors.
4. The Supreme Court appointed two interlocutors to mediate the issue with the protestors but their efforts were unsuccessful, however with the spread of Coronavirus, the site was cleared. The Court nevertheless decided to go ahead with the appeal because of the case's wider

ramifications and for the sake of clarity.

5. The applicants contended that they had an absolute right to protest both in respect of number and space, under Article 19(1)(a) and 19(1)(b) of the Constitution of India. Article 19(1)(a) of the Constitution states that: “all citizens shall have the right to freedom of speech and expression and article 19(1)(b) states that: “all citizens shall have the right to assemble peaceably and without arms”.

## Issues

- Whether there is an absolute right of peaceful protest under article 19(1)(a) and 19(1)(b) of the Constitution of India?
- Whether the protests can be carried out without blocking the public roads?
- Whether the protestors can occupy public places indefinitely?

## Petitioner’s Arguments

- The petitioner argued that the right to protest is not an absolute right and reasonable restrictions should be imposed on the exercise of this right.
- The petitioner also stated that the Shaheen Bagh protest obstructed the public roadways through the huge crowd assembled along with tents, a library, a large replica of the India Gate and the Map of India.
- The petitioner also argued that the blockage of the main roads not only caused inconvenience to the commuters but also obstructed the smooth movement of traffic.
- The petitioner filed an appeal to the Delhi High Court and in turn, the Delhi Court directed the appropriate officials to take necessary steps. However, the petitioner stated that the situation remained the same and the authorities failed to take the necessary steps. Despite a lapse of a considerable peri, there was neither any negotiations nor any action by the Therefore, the petitioner knocked on the door of the Supreme Court.

## Respondent’s Arguments

- The respondent authority argued that Article 19(1)(a), 19(1)(b), 19(1)(c) of the Indian Constitution guarantees all citizens their right to freedom of speech and expression, right to assemble peacefully and without arms, and the right to form associations and unions

respectively and therefore, it would be inappropriate to remove the protestors from the site.

- The authorities also asserted that the Court ordered them to act according to the larger public interests and should not be contrary to the law and order.
- It was also stated that they had the power to vacant the site if the situation changes but the Shaheen Bagh protest was peaceful and there were no agitations or violence.

### Supreme Court's Observation

1. The Supreme Court observed that the public ways and public spaces cannot be occupied indefinitely, the rationale being that although Article 19 enables every citizen to assemble peacefully and protest against the actions or inactions of the State, the right comes with certain obligations and duties.
2. Furthermore, reiterating its position taken in the case of Mazdoor Kisan Shakti Sangathan v. Union of India [2 (2018) 17 SCC 324], the Justices ruled that "each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with every other contrasting right." In this case, an attempt was made to reach a solution where the rights of protestors were to be balanced with that of commuters.
3. The Supreme Court further observed that if democracy and dissent were to go hand in hand, the State had to respect and encourage the constitutional rights of the people. Similarly, the people had to oblige the reasonable restrictions placed on their rights by the State, pertaining to the sovereignty and integrity of India, and public order. To strike a balance between the two, the Court stressed that the demonstrations expressing dissent had to be organized in designated places.
4. The Top Court noted that in the present case, the protest was not only held in an "undesignated area", but there was an additional "blockage of a public way which caused grave inconvenience to commuters". The Supreme Court observed that the disputed area was completely occupied by tents on one side and a makeshift library, large model of India Gate and a big metallic three-dimensional map of India on the other.
5. The Apex Court referred to Himat Lal K. Shah v. Commissioner of Police [(1973) 1 SCC 227], where the Justices had observed that "Streets and public parks exist primarily for other purposes and the social interest promoted by the untrammelled exercise of freedom of utterance and assembly in public street[s] must yield to social interest which prohibition and

regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion."

6. The Supreme Court deliberated the paradoxical nature of technology and the internet which according to it, "both empowers digitally fuelled movements and at the same time, contributes to their apparent weaknesses." It said that technology has enabled movements to scale up quickly and evade censorship but that social media channels are often fraught with danger and can lead to the creation of highly polarized environments, "which often see parallel conversations running with no constructive outcome evident." The Court observed that both these scenarios were witnessed in Shaheen Bagh, which started out as a protest against the Citizenship Amendment Act, gained momentum across cities to become a movement of solidarity for the women and their cause, but came with its fair share of chinks and caused inconvenience to commuters.

## Judgement

1. The Supreme Court bench of Justice Sanjay Kishan Kaul, Justice Aniruddha Bose and Justice Krishna Murari held that no hesitation in concluding that such kind of occupation of public ways, whether at the site in question or anywhere else for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions.
2. The Supreme Court further held that it has no doubt, it is the responsibility of the respondent authorities to take suitable action, but then such suitable action should produce results. In what manner the administration should act is their responsibility and they should not hide behind the court orders or seek support therefrom for carrying out their administrative functions. The courts adjudicate the legality of the actions and are not meant to give shoulder to the administration to fire their guns from. Unfortunately, despite a lapse of a considerable period of time, there was neither any negotiations nor any action by the administration, thus warranting our intervention.

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