BLOGS

Right to Protest: Recent Developments for CLAT

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Introduction

The right to protest invariably flows from the rights to freedoms guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution of India, which has been reiterated by the Courts as well. Naturally, the grounds and manner of restrictions on these rights also are to be found in Articles 19(2), 19(3) and 19(4), respectively—all of which can be perused by looking at the constitutional provisions.

However, the democratic discourse in our country has allowed the law to evolve and develop at the forefront of the judiciary; the landmark and recent developments relating to this right are worth noting:

Leading Cases on the Right to Protest

1. Himmatlal K Shah v. Commissioner of Police[i], the Court upheld the right to protest and disregarded rules that prohibited protests unreasonably, arbitrarily or totally. The authority of the State to place reasonable restrictions were also upheld. The Court noted, “public streets are the ‘natural’ places for expression of opinion and dissemination of ideas.”
2. Mazdoor Kisan Shakti Sangathan v. Union of India[ii], the Court explained the contours of legitimate protest and emphasized the principle of balancing the interests of the residents and the protestors to hold demonstrations. The Court also noted that the “question is not whether the issue raised by the protestors is right or wrong…justified or unjustified” but whether the freedoms and their exercise were balanced correctly.
3. In re Ramlila Maidan Incident[iii]: This case pertained to the application of Section 144, Cr.P.C. to effectuate the ‘forceful’ evacuation of a protesting crowd while they were asleep. Commenting on the mode of protest (i.e., assembly, hunger strike) undertaken by the lead protestors, the Court said that such “form of protest which has been accepted, both historically and legally in our constitutional jurisprudence”.



Recent Developments

1. Amit Sahni v. Commissioner of Police[iv] [‘Shaheen Bagh Protests case’]

The Court in its judgment limited the boundaries of right to protest, making these observations, cautioning that protests mustn’t be allowed to go “out of hand”:

“*We have, thus, no hesitation in concluding that such kind of occupation of public ways (…) for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions.*”

A review petition against this judgment was rejected.[v]

1. Asif Iqbal Tanha v. NCT of Delhi[vi]

The Court protected the right to protest as a legitimate means of dissent, noting, *“In its anxiety to suppress dissent, in the mind of the State, the line between the constitutionally guaranteed right to protest and terrorist activity seems to be getting somewhat* ***blurred***”.

1. Rakesh Vaishnav & Ors. v. Union of India[vii]

In the Farmers Protest case, the Court upheld the right to protest, *“…the right to protest is part of a fundamental right and can be exercised subject to public order”*—adding that the protests must remain non-violent, without impediment to life and property.

4. ***Tabassum* v. *NCT of Delhi*** ***[viii]***

The Delhi High Court while granting bail noted that "the right to protest and express dissent is a right which occupies a fundamental stature in a democratic polity…the sole act of protesting should not be employed as a weapon to justify the incarceration of those who are exercising this right", thus upholding the status of protest as a Fundamental Right.

Latest Controversy

Recently, in ***Kisan Mahapanchayat* v. *Union of India*[ix]**, an important question is being taken up by the Supreme Court regarding this right. It is set to examine "whether right to protest is an *absolute* right" and whether a petitioner "having already invoked the legal remedy before the Constitutional Court can be permitted to urge that they can still resort to protest in respect of the same subject matter". In other words, the Court will decide whether litigants are permitted to protest regarding a matter which is *sub judice.*

The Court's previous observations are notable in ***Sahni*[x]**, where it said "despite the law facing a constitutional challenge before this Court, that by itself will not take away the right to protest of the persons who feel aggrieved by the legislation". Also, in ***Vaishnav*[xi]**, while staying the farm laws, which were under a Constitutional challenge, the Court did not dissuade the ongoing protests.

The upcoming decision, hence, will be of immense legal significance and relevant for examination purposes as well. Some cases mentioned above are yet to be finally decided. Students and entrance exam aspirants must focus on the development of the substantive aspects of the right for clarity in understanding.

[i] (1973) 1 SCC 277

[ii] (2018) 17 SCC 324

[iii] (2012) 5 SCC 1

[iv] (2020) 10 SCC 439

[v] Kaniz Fatima v. Commissioner of Police., Review Petition (Civil) No. 24552/2020 (Decided on 09.02.2021, Supreme Court)

[vi] Crl. A. 39/2021; Natasha Narwal v. NCT of Delhi Crl. A. 82/2021, Devangana Kalita v. NCT of Delhi, Crl. A. 90/2021 (All decided on 15.06.2021, High Court of Delhi)

[vii] Writ Petition(s)(Civil) No(s). 1118/2020 (Decided on 17.12.2021, Supreme Court)

[viii] Bail Appln. 2775/2021 (Decided on 03.09.2021, High Court of Delhi)

[ix] WP(C) No.854/2021, (Decided on 04.10.2021, Supreme Court)

[x] Supra note 4

[xi] Supra note 7, Decided on 12.01.2021

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