



P.L.RAJ IAS & IPS ACADEMY

Building Bureaucrats Since 2006

1. Supreme Court on Right to Protest – Balancing Constitutional Freedom with Public Order – Polity

1. Why in News

1. Supreme Court reiterated peaceful protest is constitutional right but should not disrupt public order or inconvenience ordinary citizens
2. Hearing related to petition seeking protection against registration of criminal cases against young people protesting naming of newly operational Navi Mumbai International Airport
3. Court affirmed citizens' right to express dissent through peaceful, lawful protests in democracy
4. Stressed protests should not create law-and-order problems, threaten peace, or obstruct public convenience
5. Emphasized balanced approach – protest rights must coexist with commuters' and residents' rights to live peacefully

2. Background of the Case

Navi Mumbai International Airport Naming Controversy

1. Newly operational Navi Mumbai International Airport naming triggered protests
2. Young people demonstrated against naming decision
3. Criminal cases registered against protesters
4. Petition filed in Supreme Court seeking protection against these criminal cases
5. SC used this case to reiterate principles governing right to protest

Court's Jurisdiction

1. Supreme Court exercising jurisdiction under Article 32 (fundamental rights enforcement)
2. Balancing fundamental rights with public order concerns
3. Providing guidelines for future protest-related cases

3. Key Highlights of the Case

Constitutional Right Affirmed

1. Supreme Court affirmed citizens have right to express dissent through peaceful and lawful protests in democracy
2. Protest = essential feature of democratic governance

Democracy requires –

3. Freedom to criticize government policies
4. Space for dissenting voices
5. Mechanism for collective expression of grievances
6. Court recognized protests as legitimate democratic tool
7. Not criminal activity per se but exercise of fundamental rights

Public Order Concerns

1. Court observed protests should not create law-and-order problems

Should not –

2. Threaten peace (violence, riots, clashes)

3. Obstruct public convenience (blocking roads, disrupting transport, preventing access to essential services)
4. Damage public or private property
5. Endanger lives
6. **Public order = State's legitimate interest** under Article 19(2), 19(3)
7. Distinction between peaceful protest and violent agitation

Balanced Approach Emphasized

1. Court stressed right to protest must coexist with rights of commuters and residents to live peacefully
- Balancing competing rights -**
2. **Protesters' rights** - Freedom of speech, expression, assembly
 3. **Other citizens' rights** - Movement, livelihood, access to emergency services, peaceful living
 4. Neither right absolute; both subject to reasonable restrictions
 5. **Proportionality principle** - Restrictions must be proportionate to legitimate aim (public order, safety)
 6. **Time, place, manner restrictions** - Protests can be regulated regarding when, where, how conducted (not whether allowed)

Implications

1. Protection against arbitrary arrest (protests per se not criminal)
2. But no immunity for violence, property damage, prolonged blockades
3. Police must distinguish peaceful protesters from violent elements
4. Guidelines for future cases balancing fundamental rights with public order

4. About the Right to Protest

Nature of Right

1. Right to protest = implied fundamental right derived from freedoms guaranteed by Constitution
2. Not explicitly mentioned as "right to protest" in Constitution

Derived from -

3. Article 19(1)(a) - Freedom of speech and expression
4. Article 19(1)(b) - Right to peaceful assembly
5. Article 19(1)(c) - Right to form associations
6. Combination of these rights = comprehensive right to protest
7. Peaceful protest emphasized (violence not protected)

5. Constitutional Provisions

Article 19(1)(a) - Freedom of Speech and Expression

1. Guarantees citizens right to express opinions, criticism, dissent against government actions

Scope -

2. Express views on public issues
3. Criticize government policies, actions
4. Dissent from mainstream opinion
5. Advocate for change
6. Forms of expression - Speech, writing, symbolic acts, demonstrations, slogans, placards
7. Protests = collective exercise of freedom of speech
8. Not limited to verbal/written expression; includes demonstrative expression

Article 19(1)(b) - Right to Peaceful Assembly

1. Allows citizens to assemble peacefully and without arms for demonstrations and public protests
2. "Peaceful" - Non-violent, not threatening public order

3. "Without arms" – No weapons; distinguishes from armed rebellion
4. Forms – Public meetings, rallies, marches, sit-ins, dharnas, demonstrations
5. State cannot prohibit assemblies altogether; can regulate time, place, manner
6. Prior permission/notice requirements subject to judicial scrutiny (should facilitate, not suppress)

Article 19(1)(c) – Right to Form Associations

1. Enables citizens to collectively organize unions, groups, movements for pursuing common causes

Forms –

2. Trade unions (workers' rights)
3. Political parties (electoral politics)
4. Civil society organizations (advocacy, service delivery)
5. Social movements (environmental, rights-based)
6. Collective action more effective than individual protest
7. Organizational capacity strengthening dissent
8. Right to form but also right to join, participate, promote associations

Article 19(2) and 19(3) – Reasonable Restrictions

1. State may impose restrictions in interest of –
 1. **Sovereignty and integrity of India** – Preventing secessionist movements
 2. **Security of State** – National security, defense
 3. **Friendly relations with foreign states** – Diplomatic considerations
 4. **Public order** – Preventing riots, violence, large-scale disruptions
 5. **Decency or morality** – Obscene, immoral conduct
 6. **Contempt of court** – Sub-judice matters
 7. **Defamation** – False statements damaging reputation
 8. **Incitement to offence** – Speeches provoking crimes
2. **"Reasonable" = key term** – Restrictions must be proportionate, necessary, not arbitrary
3. Judicial review tests reasonableness
4. Restrictions cannot destroy fundamental right itself (essential content must remain)

Article 51A – Fundamental Duties

1. Citizens expected to safeguard public property and avoid violence during protests and agitations
2. **Article 51A(b)** – Cherish and follow noble ideals which inspired national struggle for freedom
3. **Article 51A(f)** – Value and preserve rich heritage of composite culture
4. **Article 51A(g)** – Protect and improve natural environment
5. **Article 51A(h)** – Develop scientific temper, humanism, spirit of inquiry and reform
6. **Article 51A(i)** – Safeguard public property and abjure violence
7. **Article 51A(j)** – Strive towards excellence in individual and collective activity
8. Fundamental duties provide moral framework; not legally enforceable but interpretative guide
9. Courts invoke Article 51A limiting fundamental rights exercise (e.g., protests damaging public property violate duty)

6. Key Judicial Precedents

Himat Lal K. Shah vs Commissioner of Police (1973)

1. Supreme Court held State can regulate public meetings but cannot impose arbitrary bans on assembly
2. **Facts** – Blanket ban on public meetings in Ahmedabad
3. **Ruling** – Regulation permissible, total prohibition impermissible

4. State must show specific, imminent threat justifying ban
5. Reasonable regulation (time, place, manner) allowed; complete suppression not allowed
6. Balancing public order with fundamental rights

Ramlila Maidan Incident Case (2012)

1. Court recognized peaceful protest as fundamental democratic right protected from arbitrary executive action
2. **Facts** – Police crackdown on Baba Ramdev's protest at Ramlila Maidan, Delhi; midnight eviction, violence
3. **Ruling** – Peaceful protest = fundamental right; executive cannot arbitrarily suppress using force
4. Police action disproportionate, violated protesters' rights
5. Necessity of prior warning, dialogue, graduated response
6. Force = last resort, proportionate
7. Democracy requires tolerance of dissent

Mazdoor Kisan Shakti Sangathan vs Union of India (2018)

1. Court ruled protests should be conducted in designated places while balancing public convenience
2. **Context** – Right to Information (RTI) movement protests
3. **Ruling** – Right to protest not absolute; must consider –
 1. Public convenience (commuters' rights)
 2. Designated protest sites balancing interests
 3. Time limits preventing indefinite occupation
4. Protestors' rights coexist with others' rights
5. Protests cannot paralyze public life indefinitely

Amit Sahni vs Commissioner of Police, Shaheen Bagh Case (2020)

1. Court held public spaces cannot be occupied indefinitely and protest rights must coexist with commuter rights
2. **Facts** – Shaheen Bagh (Delhi) protests against Citizenship Amendment Act (CAA) 2019-20; road blocked for months

Ruling –

3. Peaceful protest = fundamental right but not absolute
4. Public spaces cannot be occupied indefinitely blocking roads
5. Protest rights must coexist with commuter rights (movement, livelihood, emergency access)
6. Democracy = dissent without disruption
7. Administration duty – provide designated protest sites, negotiate, ensure roads open
8. Balance between protest and public order
9. Criticism – Some viewed ruling as restricting protest rights; others saw it as necessary balance

Other Relevant Cases

1. **In Re – Ramlila Maidan Incident (2012)** – Guidelines for police dealing with protesters (dialogue, minimal force, medical aid)
2. **Kartar Singh vs State of Punjab (1994)** – Upheld TADA but emphasized fundamental rights not suspended even during terrorism
3. **Anuradha Bhasin vs Union of India (2020)** – Kashmir internet shutdown case; fundamental rights apply in conflict zones; restrictions must be proportionate, temporary, subject to judicial review

7. Significance of Ensuring Right to Protest

Strengthens Democratic Accountability

1. Peaceful protests act as democratic watchdog enabling citizens to question and monitor government policies

Mechanisms -

2. Highlighting policy failures (education, healthcare, employment)
3. Exposing corruption, misgovernance
4. Demanding transparency, accountability
5. Pressuring governments to respond
6. Protests = feedback mechanism between government and people beyond elections (which occur every 5 years)
7. **Examples -** Anti-corruption movement (2011), Nirbhaya protests (2012) leading to criminal law reforms

Provides Voice to Marginalized Groups

1. Protests allow weaker and excluded communities to bring social and economic grievances into public discourse

Marginalized groups -

2. Dalits, Adivasis, minorities (caste, religious discrimination)
3. Women (gender inequality, violence)
4. Workers (labor rights, wages, working conditions)
5. Farmers (land rights, crop prices, debt)
6. Urban poor (housing, eviction, livelihood)
7. Protests amplify voices otherwise ignored by mainstream politics/media
8. **Examples -** Dalit rights movements, tribal land rights protests (Narmada Bachao Andolan), farmers' protests (2020-21)

Promotes Social and Legal Reforms

1. Public movements often generate awareness and contribute to reforms in governance, environment, civil rights

Historical examples -

2. Civil Rights Movement (USA, 1960s) → Civil Rights Act, Voting Rights Act
3. Anti-apartheid movement (South Africa) → End of apartheid
4. Indian Independence Movement → Freedom from colonial rule

Recent examples -

5. RTI movement → Right to Information Act, 2005
6. Environmental movements → Forest Rights Act, 2006; National Green Tribunal
7. Women's movements → Protection of Women from Domestic Violence Act, 2005; Sexual Harassment of Women at Workplace Act, 2013
8. Protests = catalysts for legislative, policy, social change

Encourages Participatory Democracy

1. Right to dissent ensures active citizen participation beyond periodic elections

Democracy not limited to voting every 5 years -

2. Continuous engagement with governance
3. Holding elected representatives accountable between elections
4. Influencing policy during formulation, implementation
5. Protests = institutionalized form of participation
6. Vibrant civil society essential for healthy democracy

7. Prevents democratic backsliding, authoritarianism

Other Significance

1. **Safety valve** – Channeling grievances peacefully preventing violent uprisings
2. **Public education** – Protests raise awareness about issues (climate change, human rights)
3. **Solidarity building** – Bringing diverse groups together around common causes
4. **Cultural expression** – Protests as sites of creativity (songs, slogans, art, performance)

8. Need for Reasonable Restrictions

Maintenance of Public Order

1. Restrictions prevent protests from escalating into riots, violence, large-scale disruptions

Risks without regulation –

2. Mob violence, lynching
3. Clashes between protesters and counter-protesters or police
4. Riots destroying property, endangering lives
5. Breakdown of law and order
6. State's primary duty – Maintain peace, order, security
7. **Examples of violent protests** – 1992-93 communal riots, 2002 Gujarat riots, 2020 Delhi riots (CAA protests turned violent in some areas)
8. Restrictions allow state to prevent, contain violence

Protection of Public and Private Property

1. Regulations help prevent vandalism, destruction of infrastructure, economic losses during agitations

Property damage during protests –

2. Government buildings, vehicles set on fire
3. Private shops, businesses looted, destroyed
4. Public transport (buses, trains) damaged
5. Roads, bridges, public utilities vandalized
6. **Economic costs** – Lost productivity, repair expenses, investor confidence decline
7. **Article 51A(i)** – Fundamental duty to safeguard public property
8. Restrictions discourage property destruction, hold violators accountable

Safeguarding Rights of Other Citizens

1. Restrictions balance protest rights with citizens' rights to mobility, livelihood, emergency services

Other citizens' rights affected by protests –

2. **Right to movement (Article 19(1)(d))** – Roadblocks preventing commuting to work, school, hospital
3. **Right to livelihood (Article 19(1)(g))** – Businesses losing income due to bandhs, strikes
4. **Right to life (Article 21)** – Ambulances blocked, medical emergencies delayed, deaths
5. **Right to education (Article 21A)** – Schools closed, exams postponed
6. **Principle** – One person's right cannot violate another's right
7. Restrictions ensure coexistence of competing rights

Protection of National Security

1. Reasonable limits ensure protests not exploited to threaten sovereignty or internal stability

Security concerns –

2. Secessionist movements disguised as protests (Kashmir, Northeast insurgencies)
3. Foreign interference, funding destabilizing protests
4. Terrorism, sabotage during large gatherings

5. Spread of misinformation, hate speech inciting violence
6. **Balance** - Legitimate dissent vs security threats
7. Restrictions prevent abuse of protest rights for anti-national activities
8. **Safeguards needed** - Judicial oversight, transparency, accountability preventing misuse of "national security" to suppress legitimate dissent

Other Reasons

1. **Protect protesters themselves** - Crowd control preventing stampedes, accidents
2. **Facilitate effective policing** - Advance notice allowing adequate security arrangements
3. **Respect private property** - Protests on government land, not private property without permission
4. **Time limits** - Preventing indefinite occupation of public spaces

9. Global Practices and Standards

United Nations Human Rights Framework

1. UN Human Rights framework requires states to respect, facilitate, protect peaceful protests
2. **International Covenant on Civil and Political Rights (ICCPR), Article 21** - Right of peaceful assembly
3. India ratified ICCPR (1979); legally bound
4. **UN Human Rights Committee General Comment No. 37 (2020)** - Comprehensive guidance on Article 21
5. **UN Special Rapporteur on Rights to Freedom of Peaceful Assembly and Association** - Monitors violations, issues reports

States must -

1. Presume assemblies peaceful; burden on state to prove otherwise
2. Facilitate assemblies, not obstruct
3. Protect participants from violence (counter-protesters, third parties)
4. Minimize restrictions; use force only as last resort

Advance Notification as Facilitation, Not Permission

1. International standards treat prior notice mainly as traffic-management measure rather than tool for suppression

Notification vs Permission -

2. **Notification** - Informing authorities to facilitate (security, traffic management)
3. **Permission** - Seeking approval; authorities can deny arbitrarily
4. **International best practice** - Notification sufficient; permission systems restrictive
5. **Spontaneous protests** - Should be allowed without prior notice (reacting to sudden events)
6. Notification helps authorities prepare but should not empower them to ban protests

Limited and Proportionate Use of Force

1. Global norms permit police force only as last resort and in proportion to threat posed

UN Basic Principles on Use of Force and Firearms (1990) -

2. Non-violent means first (dialogue, negotiation)
3. Force only when unavoidable
4. Minimum force necessary
5. Lethal force only to protect life when unavoidable
6. **Graduated response** - Verbal warnings → physical presence → non-lethal force (batons, water cannons, tear gas) → lethal force (extreme, rare)
7. Accountability - Independent investigations into excessive force, prosecutions

United States

1. First Amendment protects protests
2. **First Amendment** – "Congress shall make no law... abridging freedom of speech... or right of people peaceably to assemble"
3. Restrictions must remain "content-neutral" and non-discriminatory
4. **Content-neutral** – Government cannot favor/suppress based on message (e.g., cannot allow pro-government protests but ban anti-government protests)
5. **Time, place, manner restrictions allowed** – Reasonable regulations (permit systems, designated areas, noise limits) if –
 1. Content-neutral
 2. Narrowly tailored
 3. Serve significant government interest
 4. Leave ample alternative channels for communication
6. **Examples** – Protests near abortion clinics regulated (buffer zones); permits required for large gatherings on public property

European Human Rights Framework

1. UK and European nations recognize assembly rights under human rights conventions while balancing public order concerns
2. **European Convention on Human Rights (ECHR), Article 11** – Freedom of assembly and association
3. **European Court of Human Rights (ECtHR)** – Interprets, enforces Article 11
4. **UK** – Public Order Act 1986 regulates protests; Police, Crime, Sentencing and Courts Act 2022 (controversial; criticized for restricting protests)
5. **France** – Yellow Vest protests (2018-19) raised questions about police violence, right to protest
6. **Balance** – Strong tradition of protest rights but increasing restrictions in recent years (terrorism, public order concerns)

Role of Global Civil Society Organizations

1. Groups such as Amnesty International and International Commission of Jurists monitor violations and defend protest rights globally
2. **Amnesty International** – Documents police violence, arbitrary arrests, restrictions on protests worldwide; campaigns for release of prisoners of conscience
3. **International Commission of Jurists** – Legal experts defending rule of law, human rights; issues report on protest rights violations
4. **Human Rights Watch, CIVICUS, other NGOs** – Monitoring, advocacy, litigation supporting protest rights
5. **Naming and shaming** – Publicizing violations pressuring governments to reform
6. **Solidarity networks** – International support for activists, protesters facing repression

10. Challenges to Right to Protest in India

Legal and Regulatory Restrictions

1. **Section 144 CrPC (now BNSS Section 163)** – Prohibitory orders banning assemblies; frequently misused
2. **Unlawful Activities (Prevention) Act (UAPA)** – Vague definitions ("unlawful association," "terrorist act") used against activists, protesters
3. **Sedition (Section 124A IPC, now BNSS Section 152)** – Despite SC's 2022 stay, legacy effect; chilling effect on dissent

4. **Public order laws** – Various state laws restricting protests (e.g., UP Public Property Damage Recovery Act, Karnataka Public Property Damage Act)

Police Excesses

1. **Use of force** – Lathi-charges, tear gas, water cannons against peaceful protesters
2. **Arbitrary arrests** – Mass arrests under vague charges
3. **Custodial violence** – Torture, illegal detention
4. **Lack of accountability** – Impunity for police violence
5. **Examples** – Jamia Millia Islamia, JNU crackdowns during CAA protests (2019–20)

Criminalization of Dissent

1. Labelling protesters as "anti-national," "urban Naxals," "tukde-tukde gang"
2. Invoking stringent laws (UAPA, sedition) against peaceful protesters
3. Prolonged incarceration without trial (undertrial detention)
4. **Examples** – Bhima Koregaon activists, climate activist Disha Ravi, students protesting CAA

Restrictions on Public Spaces

1. Denial of permission for protests in public spaces
2. Forcing protests to distant, inconvenient locations
3. Barricading, cordoning off protest sites
4. Internet shutdowns preventing mobilization – India leads globally in internet shutdowns (Kashmir, farmer protests, communal tensions)

Surveillance and Intimidation

1. **Digital surveillance** – Monitoring social media, messaging apps
2. **Pegasus spyware** – Targeting activists, journalists, opposition leaders
3. **Raids on activists, NGOs** – Income tax, ED raids intimidating dissent
4. **Freezing of funds** – FCRA violations alleged against NGOs critical of government

COVID-19 Pandemic Impact

1. Lockdowns, prohibitions on gatherings restricting protests
2. Health concerns used to deny permission
3. Online protests limited impact compared to physical mobilization

11. Way Forward

Clear Legal Framework

1. Enact comprehensive legislation codifying right to protest (instead of relying on court interpretations)
2. Define "reasonable restrictions" clearly preventing arbitrary interpretation
3. Repeal/amend colonial-era laws (Section 144 CrPC, sedition) misused against protesters
4. Reform UAPA, other stringent laws ensuring human rights protections

Police Reforms

1. Train police in crowd management, de-escalation, human rights
2. Equip with non-lethal crowd control equipment
3. Body cameras for accountability
4. Independent complaints mechanisms for police excesses
5. Prosecute officers guilty of excessive force

Designated Protest Spaces

1. Designate accessible, visible public spaces for protests in every city (like Jantar Mantar, Delhi)
2. Allow protests near seats of power (Parliament, state assemblies, government offices) with reasonable regulations
3. Facilitate, not obstruct, protests through infrastructure (toilets, water, medical aid)

Balanced Approach

1. Authorities should engage in dialogue with protesters (address grievances, negotiate)
2. Court-mandated mediation before coercive action
3. Time-bound responses to protesters' demands
4. Distinguish peaceful protests from violent elements (arrest violent individuals, not entire groups)

Judicial Oversight

1. Fast-track courts for protest-related cases (prevent prolonged incarceration)
2. Stringent judicial review of Section 144 orders, protest bans
3. Suo motu cognizance by courts in cases of police violence
4. Compensate victims of excessive force, wrongful arrest

Civic Education

1. Educate citizens about right to protest, responsibilities (non-violence, respecting others' rights)
2. Awareness campaigns on democratic values, dissent
3. Include in school curricula (civics, political science)

International Norms

1. Align Indian laws, practices with international human rights standards (ICCPR, UN guidelines)
2. Invite UN Special Rapporteurs to assess protest rights situation
3. Learn from global best practices (notification vs permission, proportionate force)

Technology and Transparency

1. Online platforms for filing protest notifications (simplify procedures)
2. Real-time information on permissions granted/denied (transparency)
3. Live streaming of protests by authorities (accountability, preventing fake news)
4. Data on police actions (arrests, force used) publicly available

12. Conclusion

Supreme Court's reiteration that peaceful protest is constitutional right but should not disrupt public order reflects delicate balance between fundamental freedoms and collective welfare. Right to protest derives from Articles 19(1)(a) freedom of speech, 19(1)(b) peaceful assembly, 19(1)(c) associations, subject to reasonable restrictions under Articles 19(2), 19(3) for public order, security. Judicial precedents—Himat Lal Shah, Ramlila Maidan, Mazdoor Kisan Shakti Sangathan, Shaheen Bagh—establish protests cannot be arbitrarily banned but cannot indefinitely occupy public spaces disrupting commuters' rights. Significance includes strengthening democratic accountability, providing voice to marginalized groups, promoting social-legal reforms, encouraging participatory democracy. Reasonable restrictions needed for public order maintenance, property protection, safeguarding other citizens' rights, national security. Global standards emphasize facilitation not suppression, advance notification not permission, proportionate force. Way forward requires clear legal framework, police reforms, designated protest spaces, balanced approach, judicial oversight, civic education ensuring democracy accommodates dissent while protecting public interest, commuter rights, peaceful coexistence.

Source - <https://www.thehindu.com/news/national/protest-is-a-right-as-long-as-it-does-not-break-the-peace-supreme-court/article70998507.ece>