The Right to Protest in India

Mains: *GS II – Polity*

Why in News?

The recent protests in Delhi by the Cockroach Janta Party (CJP), have once again brought the right to protest into national focus.

What is the historical evolution of protest in india?

- **Pre independence** – The country's struggle for independence itself was driven by organised, non-violent mass movements.
- Mahatma Gandhi's **Dandi March (Salt Satyagraha)** demonstrated how peaceful protest could challenge colonial authority.
- **Post-independence movements**
- Chipko Movement for environmental conservation
- Mandal Commission protests relating to caste-based reservations
- Anna Hazare's anti-corruption movement (2011)
- Farmers' Protest (2020–21), which eventually led to the withdrawal of the three farm laws
- These movements demonstrate that protest has historically functioned as a democratic instrument for expressing public grievances, demanding accountability and influencing government policy.

*India's democratic culture is deeply rooted in the tradition of **peaceful public dissent.***

What is the Constitutional basis of the Right to Protest?

- **Major provision** – Although the Constitution does not explicitly mention the "right to protest", it derives constitutional protection from **Article 19**.

Constitutional Provision	Significance
Article 19(1)(a)	Guarantees freedom of speech and expression, enabling citizens to criticise government actions and mobilise public opinion.

Article 19(1)(b)	Guarantees the right to assemble peacefully and without arms, facilitating collective democratic action.
Article 19(2)	Permits reasonable restrictions on freedom of speech in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation and incitement to an offence.
Article 19(3)	Permits reasonable restrictions on peaceful assembly in the interests of sovereignty, integrity and public order.

- Thus, the Constitution balances individual liberty with collective public interest.
- **Restriction –** While protest is a fundamental right, it is **not absolute**.
- The Constitution permits the State to impose **reasonable restrictions** for maintaining:
  - Sovereignty and integrity of India
  - Security of the State
  - Public order
  - Decency or morality
  - Friendly relations with foreign States
  - Prevention of contempt of court
  - Prevention of defamation
  - Prevention of incitement to offences
- Therefore, constitutional freedoms must always be exercised in a manner that does not threaten public order or infringe upon the rights of others.

What is the government's position on peaceful assembly?

- **International commitment** – At the **47th Session of the UN Human Rights Council (2021)**, India stated that "Organised, non-violent and popular marches by the people of India were the key weapon in the struggle for independence."
- It emphasized that while the Government has a duty to protect citizens' right to life and public safety, it has always respected the freedom of peaceful assembly and association guaranteed under the Constitution.
- This reflects the constitutional approach of maintaining a careful balance between democratic freedoms and public order.
- **Legal Regulation –** Although protests are constitutionally protected, they are regulated through statutory mechanisms to ensure public safety and orderly administration.
- **Major Regulatory Measures –** Designation of specific protest sites.
- Mandatory police permission for public demonstrations.
- Imposition of prohibitory orders under **Section 163 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)** (earlier Section 144 of the Criminal Procedure Code).
- Restrictions on assemblies that may threaten public order.
- The **Unlawful Activities (Prevention) Act (UAPA)** has also been invoked in certain

cases involving activists and protesters. However, its application in such situations has been widely debated and legally challenged.

What is Supreme Court's interpretation of the right to protest?

- **Himat Lal K. Shah v. Commissioner of Police (1973) –** The Court recognised freedom of assembly as an essential component of democracy.
- It observed that "At the root of this concept lies the citizens' right to meet face to face with others for the discussion of their ideas and problems—religious, political, economic or social."
- This judgment established that peaceful assembly forms an integral part of democratic governance.
- **Mazdoor Kisan Shakti Sangathan (MKSS) v. Union of India (2018) –** The Supreme Court framed guidelines for regulating protests around central administrative areas.
- The Court directed regulation regarding:
    - Intended number of participants
    - Minimum distance from Parliament House
    - Distance from North and South Blocks
    - Distance from the Supreme Court
    - Distance from residences of constitutional dignitaries
- It also prohibited demonstrators from carrying, firearms, lathi's, spears, swords and other weapons
- Importantly, the judgment reaffirmed **Jantar Mantar** as Delhi's designated protest site and clarified that **regulation should not become prohibition**.
- **Shaheen Bagh Judgment (2020) –** During the Shaheen Bagh protests, the Supreme Court held that while citizens possess the right to protest, they **cannot indefinitely occupy public roads**.
- The Court observed: "You cannot block public roads. There cannot be an indefinite period of protest in such an area. If you want to protest, it must be in an area designated for protests."
- The judgment clarified that protests must not create prolonged inconvenience to the general public.

How balancing fundamental rights and public order is crucial?

- **Rights of Citizens**
    - Freedom of speech and expression
    - Peaceful assembly
    - Democratic participation
    - Public accountability
- **Responsibilities of the State**
    - Maintain public order
    - Protect lives and property
    - Ensure uninterrupted movement of citizens
    - Safeguard national security
    - Regulate time, place and manner of demonstrations

- Restrictions imposed by authorities must therefore satisfy the test of reasonableness and proportionality, without resulting in a blanket prohibition on peaceful dissent.

What lies ahead?

- The way forward for the right to protest in India requires striking a sustainable balance between constitutional democratic freedoms and public order.
- The path forward is anchored in establishing structured institutional dialogues, strictly adhering to judicial guidelines on public space, and reforming state responses to dissent.

Reference

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