

Farmers' Protests: Right to Protest , Violence & Damages To Public Property

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The Supreme Court had said farmers have a constitutional right to continue with their “absolutely perfect” protest as long as their dissent against the three controversial agricultural laws did not slip into violence. However, groups of protesting farmers broke off from planned Republic Day tractor parade routes and swarmed into the heart of Delhi, hoisting a farm union flag and a Sikh religious flag on the ramparts of Red Fort.

In news: Delhi Republic Day unrest: FIR filed against rioters involved in farmers' tractor rally violence

Placing it in syllabus: Law & Policy

Dimensions:

- Right to Protest: Constitutional Provisions
- SC judgements on Right to Protest
- Provisions against Damages to Public Property
- Prevention of Damages to Public Property Act
- SC rulings on Recovery of Damages
- Nariman and KT Thomas Committee recommendations

Content:

Right to Protest: Constitutional Provisions

- The word 'protest' is not explicitly mentioned in the constitution
- The right to protest peacefully is derived from the following articles in the Indian Constitution:
 - Article 19(1)(a) guarantees the freedom of speech

- and expression;
- Article 19(1)(b) assures citizens the right to assemble peaceably and without arms.
- However, Articles 19(2) and 19(3) place reasonable restrictions on such freedom of speech. sovereignty and integrity of India
- Reasonable restrictions can be applied in case:
 - If the security of the state is in jeopardy;
 - If the friendly relationship we share with a neighbouring country is at stake;
 - If public order is disturbed;
 - If there is contempt of court;
 - If the sovereignty and integrity of India are threatened.
- the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, or defamation or incitement to an offence
- Thus, Article 19 is meant for protection of freedoms of citizens against the actions of State only not Private Individuals
- It is critical to remember that all protests are legal only if they are non-violent and carried out with appropriate permissions.
- Fundamental duties that are enshrined in the constitution require that the rule of law is followed and that public property is not destroyed.

Legal restrictions on Right to Protest

- The legal provisions and avenue available to police for handling agitations, protests, and unlawful assemblies are covered by:
 - the Code of Criminal Procedure (CrPC), 1973
 - the Indian Penal Code (IPC), 1860, and
 - The Police Act, 1861.
- The CrPC's Sections 129-132 deal with "Dispersal of

assembly by use of civil force”, use of the armed forces in situations of civil unrest, and protection against prosecution for acts done under these sections.

- The IPC’s Sections 141-158 deal with unlawful assembly, and the responsibilities, liabilities, and punishments related to this offence.

SC judgements on Right to Protest

- Supreme court in numerous cases has time and again interpreted the constitution preferring a political reading of Article 19 to include the implicit right of protest
- In the case of Ramlila Maidan Incident v. Home Secretary, Union Of India & Ors.(2012), the Supreme Court had stated, “Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action.”

Other examples where the Supreme Court clarified the Right for Peaceful protest as a fundamental right are as follows:

- R.M. Lohia Vs. State of Bihar case
- Ramesh Thapar Vs. State of Madras
- Himmat Lal vs. Commissioner of Ahmedabad
- Babulal Parekh Vs. State of Maharashtra

Right to Strike

- Right to strike is **not a fundamental right** but **a legal right**.
- Several statutory restrictions are placed on the right to strike under the Industrial dispute Act, 1947.
- The trade union Act, 1926 for the first time provided limited right to strike by legalizing certain activities of a registered trade union in furtherance of a trade dispute which otherwise breach of common economic law.
- The right to strike in the Indian constitution set up is

not absolute right but it flow from the fundamental right to form union under Article 19(1)(c)

- Under the Industrial Dispute Act, 1947 the grounds and conditions are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal.

Provisions against Damages to Public Property

- Incidents of rioting, vandalism, and arson have been common during protests across India.
- The state governments have regularly resorted to stricter provisions of IPC to book the offenders in such cases despite the existence of a specific law to punish these offences.
- Many states felt that an agitation invariably takes a violent turn because of the wide coverage by TV channels with news bulletins flashing the faces of agitators while in the act of destruction of public property.
- A bench headed by Justice Arijit Pasayat, before constituting the Thomas and Nariman committees, had said: "The offenders feel, as is shown in the TV channels, that they have done something very heroic or laudable because when the TV cameras focus on them, they show their beaming faces."

Prevention of Damages to Public Property Act, 1984

- The Prevention of Damage to Public Property Act, 1984 punishes anyone "who commits mischief by doing any act in respect of any public property".
- Public property under this Act includes:
 - any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy, oil;
 - any sewage works;
 - any mine or factory;

- any means of public transportation or of telecommunications, or any other property used in connection therewith”.
- The Act also prescribes a jail term of up to five years and a fine.
- Provisions of this law can be coupled with those under the IPC.
- However, the Supreme Court has on several earlier occasions found the law inadequate, and has attempted to fill the gaps through guidelines.

SC rulings on Recovery of Damages

- In 2007, the Supreme Court took suo motu cognizance on the issue of public and private properties’ destruction and set up two committees to suggest changes to the law.
- The Committees were headed by former Supreme Court judge Justice K T Thomas and senior advocate Fali Nariman.
- In 2009, in the case of In Re: Destruction of Public & Private Properties v State of AP and Ors, the Supreme Court issued guidelines based on the recommendations of the two expert Committees.
- Apart from holding rioters liable and imposing costs, the court also issued guidelines including:
 - directing High Courts to order suo motu action, and
 - to set up a machinery to investigate the damage caused and award compensation wherever mass destruction to property takes place due to protests.

KT Thomas Committee recommendations

- The Committee recommended reversing the burden of proof against protesters.
- It suggested that burden can be shifted to the accused to prove his innocence.

- The prosecution should be required to prove that public property had been damaged in direct action called by an organisation and that the accused also participated in such direct action.
- The Supreme Court accepted this recommendation.
- It added that the law must be amended to give the court the power to draw a presumption that the accused is guilty of destroying public property, and it would then be open to the accused to rebut such presumption. (this is similar to burden of proof applicable in cases of sexual violence cases)

Nariman Committee Recommendations

- Committee's recommendations dealt with extracting damages for destruction.
- It suggested that the rioters should be made strictly liable for the damage, and compensation would be collected to "make good" the damage.
- The Supreme Court accepted these recommendations.
- Now, persons who are part of a protest which turns violent and results in damage to private or public property are deemed to be strictly liable for the damage caused.
- The damage may be assessed by the ordinary courts or by any special procedure created to enforce the right.

Mould your thought: Is Right to Protest a fundamental right? Discuss the statutory provisions and Supreme Court observations related to damages caused during violent protests.

Approach to the answer:

- Introduction
- Discuss the Article 19 and reasonable restrictions regarding Right to protest
- Discuss Prevention of Damages to Public Property Act,

1984

- Write about Thomas and Nariman Committee Recommendations and Supreme Court judgements
- Conclusion