

# INTRODUCTION TO ARTICLE 19(b) OF THE INDIAN CONSTITUTION

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## HISTORY OF FREEDOM OF SPEECH

### *Global Perspective*

Article 19b states that “All citizens have the right to assemble peaceably and without arms”. The right to protest has always been an integral part of every democratic country and finds its roots in their respective constitutions. It is guaranteed in the Bill of Rights in the United States of America, in the article 11 in the United Kingdom and in other countries as well. Every country that has seen a protest, has seen a change in ideology, social shift in mindset and often cultural norms. As Martin Luther King Jr said, “one has a moral responsibility to disobey unjust laws and to sin by silence when one has a moral responsibility to speak makes cowards of men”. History is fraught with examples of protests that brought massive socio-political changes, for example the Montgomery protests following the Montgomery legislations, the White Rose movement etc. A protest or an upheaval signifies more than just a particular person or groups dissatisfaction, it signifies a new mindset, thought process, ideology and a belief system. Similarly quelling of protests has again been an indication of an authoritative regime, incapable of listening to criticisms. This is seen in cases of the Chinese subversion of Taiwan and Hong Kong, Martial laws in Pakistan and the Colonial rule of the British. In all the cases, the authoritative regime tried to stop and silence the dissenting voices before they spread. This is done using various different means such as placing rules and laws banning protests, using police and armed forces etc.

### ***Indian Perspective***

Historically speaking, India has had a rich heritage of using protests and public demonstrations as a means of putting forth their demands. Born out of the freedom struggle, which saw the widest scale movements including the civil disobedience movement, Non-Co-operation movement and the Salt satyagraha, protests have been an extremely effective way of showing dissatisfaction against the rulers, putting forth their own ideologies and getting people together to achieve their common goal. Such assemblies often represent a change in the citizenry and hold the government accountable for their actions. As Gandhiji said, “silence becomes cowardice when occasion demands speaking out and acting the whole truth” this was further shown in the later courses of the freedom struggle when the non-violent protests ultimately lead to India’s freedom. The freedom to protest becomes an invaluable part of Indian culture and hence finds itself an inalienable part of the Indian constitution.

Article 19 1 (b) is not an absolute right and is subject to reasonable restrictions given under article 19 (2) which states that the right can be suspended if it infringes -

- a) The sovereignty of the country
- b) Friendly relations with other nations
- c) Security of the state
- d) Public order
- e) Decency
- f) Morality
- g) Contempt of court
- h) Defamation

### **ANALYSIS**

Article 19 1(b) can be analysed from two broad perspectives – political, social

#### ***Political Perspective***

Article 19 1 (b) not only upholds the spirit of democracy but also adds value to it as with this citizen not only get the power to choose the government but also to question and if needed,

also remove it by popular protests and mass rallies. This forms the foundation of democracy, and makes it democracy is government for the people, by the people and for the people. Similarly, it also supports the preamble and its pillars of “Liberty, Equality and Fraternity”. B.R Ambedkar had said, “liberty is only upheld when people are free to criticise and protest against the government”. To put this in perspective, if we take a hypothetical situation where the right to protest is not there, we see a situation where the government can’t be held accountable for their actions, minorities cannot put forth their problems and the government can easily compromise the interests of the people and the only accountability they will face is 5 years later in an election. When this happens the ultimate objective of democracy, that is welfare of the people will be long lost. Examples of that can be seen when Jai Prakash Narayan and the socialist party protested against the rule of Indira Gandhi. This gathered massive support, creating a domino effect, leading to Indira Gandhi’s defeat. This shows the public’s dissatisfaction with Indira Gandhi’s policies and its protests and electoral verdict made it amply clear.

It is often seen that protests and rallies are also used to create something in the political spectrum. For example, Potti Srimaramulu, protesting and going on a hunger strike to create a new state. His protest gathered momentum and ultimately lead to the creation of Andhra Pradesh. This case is a classic example of protests being used to create a new political entity.

In political theory, it is often said that the dominance of the dominant increases not just with their power but also with the acquiescence of the less powerful and their hesitation to protest. This gives the powerful the feeling of invulnerability, that is, nothing can touch them. This is very harmful for a healthy democracy and makes it important to have an inalienable right to protest. Indian history is littered with examples where a protest led to alteration of a bill. For example, the state of Tamil Nadu passed a bill legalising their traditional sport, Jalaikattu after it had been banned. This shows the power of protests leading to alteration of bills if they do not go in consonance with public rights.

However, on the flipside, protests are also used as a means by opposition political parties to disturb the healthy functioning of a government to play the dirty game of politics and win by points by using the inefficacy as a propoganda. This was seen in the case of the socialist party when they organised protests leading to less efficacy in the Indira Gandhi tenure and used it as

a propaganda. This reduces the essence of the right to protest which is meant to act in the welfare of the citizens, ultimately becomes a hassle for the citizens.

Often protests lead to formation of political parties which personify the ideology of the protest. When the protest becomes successful, the party inhabits the ideologies of the protest. This was seen in the formalisation of the INC, born out of the national struggle. This was also seen in the case of the formation of the Aam Admi Party. It was born from the movement, India Against Corruption and ultimately went on to defeat Congress. This shows the changing ideology which takes power as it is popular and has come through public demonstrations. This again reaffirms the role of protests bringing out popular sentiment out in public.

### ***Social perspective***

The right to protest also has several societal implications as a protest is, at the end of the day a demonstration and resurgence of public interest.

There can be two types of societal impacts – positive and negative.

### ***Positive impacts***

Protests help in bringing out the societal interests and are a manifestation of the desires of the people. These then get noticed by the authorities who take proper actions to help them. For example, a protest was launched in Bengaluru against the dismal state of city's roads and overflowing potholes. These caused severe problems to people such as diseases, commuting problems and also lead to several people falling into them. After several days of protests, the municipal corporation took action on it and started to work on it. This shows that when the public interest is put to fore, they can be heard and action can be taken on it.

Similarly, once a problem is reported, the problem and region are put into the limelight and its seen that the problem doesn't usually occur.

It also serves as an indirect way of checks and balances on the government as any unpopular policy by the government is then criticised publicly. This again, holds true the foundations of democracy.

It also acts as a unifying bond between people of all colours, castes, creeds and races. This happens when they get together in the spirit of brotherhood and fight for a common cause. This

is particularly important in a culturally heterogeneous country like India. The freedom struggle is the biggest example where people of all ethnicities gathered together to fight the British. This was also seen in the recent protests in Jamia Milia where students of all cultures were protesting together. This reaffirms the ideals of Fraternity enshrined in the Preamble

It also leads to positive changes such as the protests which happened after the Nirbhaya gang rape case led to serious pressure on the legislators to act on it. That led to conviction and the subsequent death penalty. The genesis of the Juvenile Justice Act 2016 was due to this protest and was a big step towards deterring juveniles from doing grave crimes. Another example is the Chipko Andolan which led to stronger legislations against cutting of trees. All these examples show that protests can lead to a lot of positive changes that have wide reaching effects.

### ***Negative impacts***

There are several negative impacts which can come from protests and such assemblies

- ***Slippery slope***

this problem deals with a situation when the protests go out of the hand and take a violent turn. This subverts the essence of a peaceful protest and then becomes not a right enshrined in the constitution but an act driven by mob mentality. Mob mentality refers to a group driven impulsive urge to destroy and demolish whatever comes its way, thereby totally forgetting the true purpose of the protest. That ultimately leads to the police dispelling the crowds using forceful means and the purpose of the protest is defeated. This was seen in the case of the [Ramlila Maidan Incident v. Home Secretary, Union Of India & Ors.](#) It was seen that the police dispelled the crowds with excessive and disproportionate force. Same was seen in the present case of the protest in Jamia Milia where the police used Lathi charge and water cannons on the students. It led to several casualties and immense pressure from the people. It also has several other collateral damages such as damage to public property and infrastructure. It was seen in the recent protests that over 45-60 buses of the DTC were burnt and many other buildings vandalised. Furthermore, the miscreants also cause significant damage to the functioning of the city. For example, metro and road connectivity was drastically hit. In the recent Shaheen Bagh protestors had created a traffic blockade because of which commuters had to travel 20kms for a 2 km distance. It's often seen that even education, office also suffer

as they are closed due to imminent threats. Over a long course of time, that causes significant problems.

Similarly, it is often seen that ruling parties often use sec 144 in a way to arbitrarily stop unfavourable protests. Sec 144 is imposed when the any of the reasonable restrictions are met and it prohibits more than 5 people from meeting in one place.

## **CONCLUSIONS AND RECOMMENDATIONS**

Conclusion/ recommendation – from the above analysis, I infer that it has been significantly proved that the right to assemble peaceably and without arms is extremely important as it helps the citizens give voice to their problems and issues. However, the words, ‘peaceably’ and ‘without arms’ is very important as that indicates the non -violent aspect of this article. The non -violent aspects give the article 19 1 (b) its constitutional validity.

However, there are certain recommendations –

- 1) The article 19 1 (b) should continue to be zealously protected as that is the only hope citizens have for voicing their opinions in a majoritarian government. The article should be protected in letter and spirit so that it doesn’t become just a remnant of what it was supposed to be. This includes not quelling the protests under arbitrary reasons and allowing them a fair manner of voicing their concerns
- 2) As Atal Bihari Vajpayee, the late ex-prime minister of India said, “Parties may come and go, governments may rise and fall but this country should always rise, this constitution should always stay eternal” we need to ensure that the article is enjoyed freely and fairly by all without any political or societal pressure.
- 3) The permissions required to organise protests must be reduced as they create obstacles in the process of protests. However, the police must also do a thorough check on the validity of the people behind the protests to ensure that there is no ulterior motive behind it

- 4) Judicial activism must be increased on arbitrary usage of section 144
- 5) Police must not resort to violence unless provoked as this significantly reduces the collateral damage. This also ensures that the protests stay as non- violent as possible

