

# The Shaheen Bagh Judgment: An Attack on Democratic Dissent or a Reasonable Restriction on Public Demonstration? An Analysis

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## Abstract

The passage of the Citizenship Amendment Act, 2019 saw several large-scale protests. With parallel demonstrations happening throughout the country, the Shaheen Bagh agitation, which lasted from 14 December 2019 to 24 March 2020, attracted international attention. The 101-day protest, being one of a kind, received applaud as well as criticism from around the world. Some praised this exercise of democratic dissent, whereas some were not impressed by the inconvenience it dragged along. One of the major inconveniences involved the alleged blockage of a busy road used by thousands on a daily basis.

Subsequently, in the judgment, *Amit Sahni v Commissioner of Police & Others* ('the Shaheen Bagh Case'), the Hon'ble Supreme Court observed that the right to protest must be balanced with the public's right to movement. The Court made it very clear that such protests should occur in some designated areas and cannot be continued indefinitely. It will be fascinating to see if the judgment will be treated as binding, persuasive, or merely fact-based.

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Meanwhile, the large-scale farmers protest is testing the bounds of Indian demonstration mechanism. It is therefore pertinent to understand how and where the Shaheen Bagh judgment fits in the prism of a political atmosphere where democratic dissent is needed more than ever. The paper will explore the following areas— first, the meaning and scope of the right to protest under the Indian Constitution; second, an analysis of the Shaheen Bagh case; and finally, the paper will end with concluding remarks by the authors.

### **Meaning and scope of the right to protest**

*"Protest beyond the law is not a departure from democracy; it is essential to it."*

— **Howard Zinn**

The general public acts as the watchdog of the Government. They act as a guardian against inefficient, illegal, or corrupt practices. From the Nirbhaya Movement to the ongoing farmers' protest, people have always found ways to express their emotions and concerns on essential matters. There has been an upsurge in the number of these staging of expressions in recent times. Article 19(1)(a) read with Article 19(1)(b) confer upon the citizens of India freedom of speech and expression and to assemble peacefully without arms. This right is not absolute and is subject to reasonable restrictions under Articles 19(2) and 19(3).

The 101-day Shaheen Bagh protest survived a very vindictive state election and one of India's worst riots in years. The protest soon became an epitome of courage and determination. The admiration went as far as "Bilkis Dadi," an eighty-two-year-old Indian woman who was the face of the protest being listed on 100 "Most Influential People of 2020" of Time magazine.

One of the significant inconveniences involved the alleged blockage of a busy road used by thousands daily. The anti-CAA protest was alleged to be politically motivated, aimless with no tangible motive, and rented. These allegations were not working in favor of the protestors,

mostly women and children, who did not understand the stakes when inquired. The protest finally came to an end because of the onset of the Covid-19 pandemic. The critical discussion here is the conflict of fundamental rights between two groups of people. If a particular group has the right to protest, the other group is well within its means to move or travel freely. Thus, there is a need to find the right balance in terms of these protests' scope and duration to safeguard the right to democratic dissent without curbing other fundamental rights of other people.

Democratic dissent is indispensable to a functional democracy. The right to protest has been guaranteed under Part III of the Indian Constitution. Article 19(1)(a) reads as, "*all citizens shall have the right to freedom of speech and expression*,"<sup>1</sup> and Article 19(1)(b) reads as, "*all citizens shall have the right to assemble peaceably and without arms*."<sup>2</sup> These two articles, read together, make demonstrations, processions, and meetings in protests and public agitation, a fundamental right. Democratic dissent also falls within the same ambit. In India, citizens had the right to hold discussions on public streets way before the Constitution, subject to the control of appropriate authority regarding time and place of the meeting and public order considerations. The rule in question gave no guidelines in which permission to hold a meeting could be refused, thereby giving arbitrary powers.<sup>3</sup> Article 19(2) and Article 19(3) talks about reasonable restrictions. It lays down that any curtailment on the exercise of this right can be done only based on the interests of public order and India's sovereignty and integrity.<sup>4</sup>

In *Mazdoor Kisan Shakti's* case<sup>5</sup>, the Hon'ble Supreme Court held that a certain level of regulation over the Jantar Mantar demonstrations is acceptable. The authorities were asked to make proper arrangements for protests in an earmarked space. In the present case, the National Green

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<sup>1</sup> INDIA CONST. art 19, cl. 1(a).

<sup>2</sup> INDIA CONST. art 19, cl. 1(b).

<sup>3</sup> *Mathai v. State*, AIR 1954 TC 47.

<sup>4</sup> *Kedar Nath Singh vs State of Bihar*, 1962 AIR 955.

<sup>5</sup> *Mazdoor Kisan Shakti Sangathan v. Union of India and Anr*, 2018 17 SCC 324.

Tribunal (NGT) had imposed a ban on demonstrations held at Jantar Mantar, citing noise and air pollution issues. The same was lifted by the Supreme Court reiterating the importance of the right to protest. The Hon'ble Court observed that the "right to protest is essential in a vibrant democracy like India, but it plays a bigger role in India by asserting the rights of the marginalized and poorly represented minorities."<sup>6</sup>

### **The Shaheen Bagh judgment analysis**

Background: The petition was filed by Amit Sahni, an advocate against the then ongoing public demonstration in the city of Delhi. The protest was organized at Shaheen Bagh, which is situated along the banks of the Yamuna River. The Shaheen Bagh protest commenced on 15 December 2019 against the Citizenship Amendment Act (CAA), 2019. The main issue was that the protesters blocked the Kalindi Kunj-Shaheen Bagh stretch, including the Okhla underpass, which caused great inconvenience to the public.

The present writ petition was initially filed in the Delhi High Court against the protests arguing that the public roads could not be allowed to be invaded in such a way. The Court instructed the Respondents- the Authorities to take necessary measures without giving any specific order or directions and disposed of the petition. The Court directed the authorities to consider the petitioner's grievances, particularly about the usage of Road Number 13A (lying in the middle of Mathura Road and Kalindi Kunj) and Okhala underpass while taking the necessary action. This action is to be observed in accordance with the applicable laws and policies while keeping in mind the larger public interest and maintenance of law and order. The High Court also observed that these protests invite a fluid situation where the temperament and resistance of people change the circumstances more often than not. At the same time, police and other forces are required to maintain law and order. Therefore, the Respondents have the necessary power, jurisdiction, and authority to deal with and control such situations while preserving larger

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<sup>6</sup> Callout: When Voice Against Oppression Metamorphoses to an Instrument of Collective Bullying, 2021 SCC OnLine Blog OpEd 55.

public interests.<sup>7</sup> The Court essentially tried to explain how it believes that a court-mandated order cannot handle these situations, and ground realities are better understood by the authorities in force.

Given that the situation kept on deteriorating and several intervention applications were also filed in support of the protestors. This led to the present petition being filed in the Hon'ble Supreme Court.

Issue: The question was how and where these protests should be carried on without public ways getting affected.<sup>8</sup>

Order: The Bench comprised of Sanjay Kishan Kaul, Aniruddha Bose, and Krishna Murari, JJ. The judgment was delivered by Justice Sanjay Kishan Kaul. While disposing of the petition, the Hon'ble Court held that "public ways and public spaces cannot be occupied in such a manner and that too indefinitely and should be in designated places alone."<sup>9</sup>

### **Need and Time of the Judgment**

The protest commenced on 15 December 2020. There were various petitions against this agitation and the problems it continued to cause. The Delhi High Court disposed of the petition on the first day, i.e., 14 January 2020. After this, there were various attempts to reach a consensus between the agitators and the administration. The Supreme Court had its first hearing on 10 February 2020, and it was very clear from day one that the protests could not continue indefinitely. The Supreme Court received two reports on 24 February 2020 and on 22 March 2020 by the interlocutors who met protestors at sight, and when no middle path could be reached, Supreme Court gave a relatively straightforward solution on 7 October 2020. Now the critical date to be noted here is 24 March 2020. Due to the pandemic's onset, the protests were disbanded. Other facilities and obstacles like a library, a three-dimensional map of India, a model of India Gate, etc., were also

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<sup>7</sup> Amit Sahni v. Commissioner of Police, 2020 SCC OnLine Del 117, ¶ 6

<sup>8</sup> *id.* at para. 4

<sup>9</sup> *id.* at para.17

removed. The Hon'ble Court itself noted that "really speaking, the reliefs in the present proceedings have worked themselves out."<sup>10</sup> So the judgment was pronounced in October, more than six months later, after the issue was already resolved. The higher judiciary is, as we all know, overwhelmed with the burden of critical pending matters. But this cannot be an excuse every time we fail to deliver in or on time—for example, the leading judgment of *Anuradha Bhasin v. Union of India & Ors.*<sup>11</sup>, the internet shutdown case which upheld that access to the medium of the internet for enjoying fundamental rights given under Article 19(1)(a) and Article 19(1)(g) and the internet services cannot be suspended indefinitely<sup>12</sup> came after six whole months of no internet, no communication in the Kashmir region. This is a very recent epitome of justice delayed is justice denied.

### **Method of Protest: A Constitutional Question?**

The Hon'ble Court made some strong comments about democracy and the kind of dissent it permits. While appreciating the role protests played in the country's freedom struggle and accepting that democracy and dissent go hand in hand, it also made it very clear that demonstrations of this magnitude and intensity do not have a place in a self-ruled democracy.<sup>13</sup> It clearly said that any assembly of an indeterminable number of people protesting anywhere they want is unacceptable. Simultaneously, referring to the *Himat Lal* case<sup>14</sup> where streets and public parks' primary function was discussed along with the constitutional difference between regulation and arbitrary exclusion.<sup>15</sup> In the present case, as the Supreme Court pointed out, the question was not

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<sup>10</sup> *id.* at para. 12

<sup>11</sup> AIR 2020 SC 1308.

<sup>12</sup> *Anuradha Bhasin v. Union of India & Ors*, AIR 2020 SC 1308.

<sup>13</sup> *supra* n. 10

<sup>14</sup> *Himat Lal K. Shah v Commissioner of Police*, 1973 SCR (2) 266.

<sup>15</sup> *id.*

about how and where the agitations should be staged. It was about the blockage of public ways.<sup>16</sup>

In the present case, the Court practically put a blanket ban on protests in public places, especially public roads. But is this blanket ban possible? In *Himat Lal*<sup>17</sup>, the Constitution Bench discussed how streets and functions were not only for walks and recreation but protests and public demonstrations would also be regarded as a primary function of these places. The Court held that the freedom to assemble could not be extended to every place wanted, but at the same time, the authorities cannot regulate or abridge these rights at their whims and fancies.<sup>18</sup> The Court, as it seems, went well beyond the issue of public inconvenience and suggested some relatively strong opinions about how they feel about democracy and democratic dissent.

### **The Rhetoric Tone for The Protests**

The same Hon'ble Court in *Anita Thakur and Ors. v State of Jammu and Kashmir*<sup>19</sup> said that one of the most crucial features of any democracy is the space offered and provided for genuine dissent. The judgment further highlighted the importance of protests and the role of non-violent protest as a weapon in our freedom struggle. It makes sense that it has been added as a fundamental right in our Constitution.<sup>20</sup> Democratic dissent has always been one of the strongest tools to safeguard the Constitution and the rights conferred by it. A peaceful dissent acts as a strong opposition every time there is a threat to the Constitution's spirit. But at the same time, it faces the wrath of

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<sup>16</sup> *supra* n. 10

<sup>17</sup> *supra* n. 14

<sup>18</sup> Vakasha Sachdeva, *What Does SC's Shaheen Bagh Verdict Mean for Our Right to Protest? Legal Experts Suggest Judgment Violates Previous Judgment, International Law*, <https://www.thequint.com/news/law/supreme-court-shaheen-bagh-judgment-impact-right-to-protest-violation-of-sc-judgment-international-law-experts> (last visited May 21, 2021).

<sup>19</sup> AIR 2016 SC 3803.

<sup>20</sup> Information and Fundamental Rights, (2009) 10 SCC J-49.

conspiracies and political vendetta. These allegations might as well be very accurate because, honestly, the interested parties tag along and contribute heavily to making these unparalleled movements about them and their agendas. All of this is yet, very political. No one authority distributes the certificate of authenticity to these protests. Therefore, it becomes of utmost importance that the courts are free from these biases. Even when the Indian judiciary had a jury system, it was ensured that the jury could not access any news articles or other sources that might color their opinion about what the truth ought to be.

The judges must hear the case open-mindedly, with a clean slate and zero prejudices. Neutrality and unbiasedness must be warranted in every case that the highest Court of the land decides. Constitutional morality cannot be compromised. One of the essential principles of natural justice is the rule against bias, whether conscious or unconscious. "Justice should not only be done but should manifestly and undoubtedly be seen to be done."<sup>21</sup>

In the present case, for some reason, the Hon'ble Court spoke about how technology is positively and adversely influencing modern-day movements. While talking about the latter, the Supreme Court discussed how the Shaheen Bagh movement became a highly polarized environment with parallel conversations and zero outcomes. "*.... which started as a protest against the Citizenship Amendment Act, gained momentum across cities to become a movement of solidarity for the women and their cause, but came with its fair share of chinks-as has been opined by the interlocutors and caused inconvenience of commuters*"<sup>22</sup>, is what the Hon'ble Court observed.

Although well-intentioned, the text's tone seems to give the impression that the Court no longer believed in the agitation's credibility. This would have been okay if there were proper evidence submitted to the Court supporting these observations, which there were not.

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<sup>21</sup> Per Lord Hewart CJ in *R. v. Sussex Justices, ex p McCarthy*, (1924) 1 KB 256, 259.

<sup>22</sup> *supra* n. 10



### **Insufficient Guidelines?**

The very crux of the judgment seems to be left open-ended. A Supreme Court judgment sound be founded on solid legal principles with the Hon'ble Court's explicit intention to be very clear in its words. We have judgments like the Ram Janmabhoomi case and the Kesavananda Bharti case. The judgments ran in hundreds of pages and laid down proper guidelines regarding the concerning law and what was expected from the parties. In the present case, the judgment seems insufficient or incomplete because of the use of some rather generic phrases which have not been dwelled upon by the Court:

- i. "In such a manner": what was that manner? Was the Hon'ble Court talking about the permanent nature of the protest or the place of the protest?
- ii. 'Indefinitely': protest starts for an indefinite period. It is relatively rare to fix a demonstration timeline when they do not know when the authorities will hear them out, or a compromise would be settled with. The Court vaguely directed that the public spaces cannot be occupied indefinitely. What span of time would be considered indefinite?
- iii. "Designated places": Article 19(b) confers about India's citizens, the right to assemble peacefully and without arms. Nowhere is the location of such assembly been talked about. But the common understanding goes that such assemblies will take place in public places. Such dissents are held in private properties or within one's houses, defeating the right's entire purpose. The Court did not say it has to take place in a private or public space. It, although mentioned, that holding the public agitation can take place in designated areas alone. But it refrained from probing into what those designated places are or who decides it. No guidelines whatsoever have been provided to understand the features or requisites of such designated

spaces. Specific procedures that could have been laid down in this respect are:

- a. Does it have to be a government-owned property, does the local or State administration declare a list of such places;
- b. does the administration has the authority to grant approval or permission before such protests;
- c. who seeks these permissions;
- d. Does the authority designate such places also have the power to authorize the number of people protesting or the protest duration?
- e.

There is a genuine fear of this ambiguity and gaps in the judgment being used in the administration's favor. For example, during the farmers' protests of 2020-21, the Delhi police out in an application to convert certain city stadiums into temporary jails to keep the arrested protestors with the Delhi Government, which was denied by the latter.<sup>23</sup>

Thus, if the motive were to strike a balance between different fundamental rights like the freedom of dissent and the freedom to continue with day-to-day life without hiccups, the Court should have primarily evaluated the grounds on which such demarcation would be done and if it is reasonable.<sup>24</sup> No such assessment was done in the present case.

In *Mathai v State*<sup>25</sup>, the Kerala High Court held that where rules were made by authorities to govern permissions in relation to time and place of demonstrations, the same was arbitrary curbing the rights of the citizens to assemble in public streets.

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<sup>23</sup>Arghya Sengupta, *Supreme Court's Shaheen Bagh judgment is well-meaning judicial anguish, not binding law*, THE PRINT, <https://theprint.in/opinion/supreme-courts-shaheen-bagh-judgment-is-well-meaning-judicial-anguish-not-binding-law/548468/> (last visited May 21, 2021).

<sup>24</sup> *id.*

<sup>25</sup> *Mathai v. State*, AIR 1954 TC 47.

## Binding v Persuasive?

The articulation of the justification or theory on which the Court decides any question of law is considered a ratio and alone binding as a precedent. This ratio decidendi is the fundamental principle, namely, the general reasons for the decision.<sup>26</sup> A decision does not become binding because of what it concluded. It becomes binding because of the principles and ratio it lays down. This ratio is the fundamental principle on which the entire judgment is based. This ratio is the grounds and reasons different from the special oddities of the case's decision emancipates.<sup>27</sup> Supreme Court can declare the law of the land under Article 141<sup>28</sup>, which talks about its verdicts' binding nature. Any case to be binding under Article 141 needs to properly appreciate the facts, the situation, and the question of law concerned, without any ambiguity.<sup>29</sup>

Applying the conclusion of a case only to the parties involved would hamper the value and reliability of the judgment and make the mandate of Article 141 illusory while contradicting the doctrine of stare decisis simultaneously. It is important that while deciding the precedent, the true legal principle of the case is ascertained.<sup>30</sup> In *Rajiv Dalal v. CDU*<sup>31</sup>, the Supreme Court held that a decision is only binding if it is followed by some legal principles based on logic and reasons. Just because there is a passing connection between the decision and the facts without any principles of law would not make it binding.

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<sup>26</sup> Krishna Kumar v. Union of India and others, (1990) 4 SCC 207.

<sup>27</sup> B. Shama Rao v. Union Territory of Pondicherry, A.I.R. 1967 S.C. 1480.

<sup>28</sup> INDIA CONST. art. 141.

<sup>29</sup> Observations made by the Supreme Court in a judgment, <https://www.barandbench.com/columns/observations-made-by-the-supreme-court-in-a-judgment-binding-or-not> (last visited May 21, 2021).

<sup>30</sup> Commissioner of Income Tax v. M/s Sun Engineering Works Private Limited, AIR 1993 SC 43.

<sup>31</sup> (2008) 9 SCC 284.

These true legal principles upon which the case was decided to form the binding part of any judgment known as the ratio decidendi. While confirming the actual ratio decidendi and separating it from the obiter dictum of any judgment, a proper analysis of the facts and the impugned law must be made. Where the ratio is unclear, it becomes imperative that the Court spells it out and eliminates ambiguity.<sup>32</sup>

This rather straightforward judgment is not without its share of ambiguity and confusion. While many legal questions have been left unanswered by the Court and will again have to revisit similar issues in the coming years, it is uncertain if the judgment would be considered binding. A decision would be rendered as a precedent when it decides on some question of law.<sup>33</sup> A thorough reading of the judgment's text clarifies that there were issues formed and no question of law dwelled into; therefore, there was no legal principle spelled out. The biggest question that comes across is if the issue was already resolved (as so admittedly observed by the Court), what was there to decide? The Court was supposed to decide upon the legality of these protests and, with its disbandment, ended the very merit of the case, and hence there was no ratio. The present judgment is neither founded on reasons nor advances on consideration of issues and therefore, cannot have a binding effect as is given under Article 141.<sup>34</sup> Further, if we try to understand if the judgment holds any persuasive value, we need to see if the opinions given would qualify as obiter dicta.

### **The Position in International Law**

Apart from defying many basic principles of the Indian Constitution, the judgment could not satisfy international law standards. A UN Special Rapporteurs' report that deals with freedom of peaceful assembly establish that national security and public order restrictions can be made. But these restrictions should be lawful, imperative, and

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<sup>32</sup> *supra* n. 26

<sup>33</sup> State of Punjab v. Surinder Kumar and others, AIR 1992 SC 1593.

<sup>34</sup> State of UP v. Synthetics & Chemicals Ltd, (1990) 1 SCC 109.

proportionate to the objective. These restrictions are not the rule but an exception where the situation gets harsh. Further, the report holds that public spaces can be legitimately used for many purposes. A certain amount of inconvenience and disruption in this use must be tolerated to ensure the right to dissent. Therefore, a blanket ban goes against the principles of the report.

Moreover, many human bodies have given a very narrow interpretation of situations where such restrictions can be imposed on the right to protest. These protests are necessary for a democratic society.<sup>35</sup> The phrase, according to the ECHR, means "pluralism, tolerance, and broadmindedness."<sup>36</sup>

### **The Farmer's Protest Paradox**

One of the newer trends that might find its place in the existing protests and demonstration framework of India is the tendency of political bargaining by the Constitutional Courts of the land. This can be seen from the attempt of the Hon'ble Supreme Court to resolve the farm laws protest by putting a stay on the implementation of the impugned laws with the reasoning that it is done to prevent loss of life and property as well as to assuage the hurt feelings of the farmers and bring them to the negotiating table.<sup>37</sup>

This brings us to the pertinent question as to when and to what extent should the highest Court of the land interfere in these protests because, for these protests to not continue indefinitely, it is important that the validity of the challenged laws is determined in the quickest way possible which is not very practical when it comes to the judicial system of India. The Courts can stay any piece of legislation under Article 142 only after providing substantial reasons to do so. In the present case, the

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<sup>35</sup> Toby Mendel, A Guide to the Interpretation and Meaning of Article 10 of the European Convention on Human Rights 91.

<sup>36</sup> Castells v. Spain, 1992, Global Freedom of Expression, <https://globalfreedomofexpression.columbia.edu/cases/castells-v-spain/> (last visited May 22, 2021).

<sup>37</sup> Rakesh Vaishnav v Union of India (2021) 1 SCC 590, ¶ 8.

Court neither stated any irregularity or illegality in the passing of these laws nor commented on the presumption of constitutional validity. This corrective administrative action does seem to be more than its constitutional capacity. The only reasoning that the Court provided for this day was to instill confidence amongst the protesters to initiate negotiations. But such tactics or compromises are nowhere empowered within the Constitution and are way beyond the exercise of registration read jurisdiction.

Apart from all the legal technicalities, the leading demonstration-related issue here is the act of political bargaining that the Supreme Court has initiated. The Constitution does not provide any such provision, which sets out a dangerous precedent for future protests. This particular relief of stay on the implementation was neither demanded by the protesters nor well received by them. The rally continued despite honest efforts by the Court to resolve this deadlock.

If we try and apply the Amit Sahni judgment in the present situation, the Court has already ignored its guidelines in several respects:

- i. Several requests seeking permission for the protests to occur at the Ramlila Maidan were refused by the Government, thus overlooking the 'definite place' requirement of the judgment.
- ii. 'Such protests cannot continue indefinitely,' and yet, the Supreme Court proposed a solution that was not amicable and did not budge the protests even a bit.

One of the categories of a petition filed dealt with complaints by the area residents on the alleged infringement of their right to move freely and interruption in carrying on trade. These are the same issues that were dealt with in the Amit Sahni judgment, and point-blank non-application of the same guidelines for such protests pronounced by the very same Court has essentially rendered the judgment infructuous.

### **A Novel Method of Adjudication**

The entire Shaheen Bagh debacle witnessed a newer method of adjudication adopted by the apex court. While hearing the two PILs, filed by Ami Sahni and former BJP leader Nand Kishore Garg, the Supreme Court, with the hope for reason to prevail, appointed two interlocutors, senior advocates Sanjay Hedge and Sujata Ramachandran. When it was seventy days old, the standoff was tried to be resolved by these intermediaries by reaching an amicable solution. The main idea behind the attempt was to convince the protestors to move to a more convenient location. Solicitor General Tushar Mehta, who was appearing for the Delhi Police, urged that the protestors should in no way get the message that the institutions are on their knees and have no other resort. The protestors held their ground and made it very clear that they were ready to negotiate but were not going to vacate the land. Subsequently, two sealed cover reports containing the details were submitted to the Court on 24 February 2020. Although this exercise could not achieve what it intended, it still stands as a laudable effort on the part of the Court and the interlocutors to try and bridge the gap between the protestors and the system. Moreover, the reports helped the Court study the situation more closely with a fair chance of representation been given to both parties.

### **Striking a Balance between the Right to Protest and Public's Right to Movement**

Dissent is never supposed to be tasteful or pleasant for the other party. As earlier established, the right to peaceful protest is a fundamental right subject to certain reasonable restrictions as laid down. But at the same time, it must be understood that certain rights of such nature are bound to interfere with someone else's rights. Therefore, a sound balance must be sought. The Hon'ble Court said that it feared that such a demonstration would again occur every time two groups have different views, which would only result in chaos and inconvenience. These protests, therefore, need not take place in public ways.<sup>38</sup> This is what was expected of the Court in this particular judgment. This 101-day

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<sup>38</sup> *supra* n. 10

demonstration exposed the gaps between the rights conferred and the bridge which needs to be built for the smooth exercise of the right to democratic dissent without making the real struggle about who is suffering more. A safe environment needs to be ensured so that any display of democratic dissent can occur without hurting any other group of people.

Preservation of public order is one of the reasons to restrict any demonstration. But to do so, the exact nature of the threat and the anticipated risks have to be substantiated with evidence. Blocking a road for an indefinite or a very long time is bound to create a problem and become an unacceptable obstruction to the freedom to move freely, but this cannot be the sole reason for restricting the right to protest. As long as the principles laid down in the Himat Lal case are valid, it will be difficult to impose this judgment.

Moreover, the judgment cannot have a universal application. It will only be applicable in cases where the assembly is significantly large, probably like Shaheen Bagh. Even the impediment imposed and the time involved are of a similar scale. The entire circumstance is purely subjective and would mainly depend on the protestor and the kind of fight they are willing to put up.<sup>39</sup> It is important to understand which protests would be considered peaceful. If there is a large group of people without arms and using slogans, would that be enough to feel the demonstration peaceful? Probably not. Because thousands and lakhs of people cannot be subjected to the discretion of a couple of thousands occupying any public street, these rights are subject to reasonable restrictions with a balance between these two rights. No right can be exercised in isolation to ignore the duties and responsibilities it brings with it.

The Madras High Court, in the case of *Government of Tamil Nadu v. P. Ayyakannu*<sup>40</sup>, denied permission to a group of people who intended to stage a demonstration at Marina Beach. The Division Bench held that the protestors often forget that their right to dissent cannot infringe

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<sup>39</sup> K Sivananda Kumar, Right to Protest, 55 Economic and Political Weekly 7–8 (2015).

<sup>40</sup> *Government of Tamil Nadu v. P. Ayyakannu*, 2018-4-LW558.



someone else's right to free movement. They cannot even force anyone to be captive listeners.

In the present judgment, the Hon'ble Court discussed how a balance needs to be maintained and how no "grave inconvenience" should be caused to the commuters. But the Court did not elaborate on what that grave inconvenience was. The Court did not examine the alleged inconvenience during the proceedings. The Court did not dwell on alternative routes available to the commuters or the actual number of people being affected. There was a presumption of nexus between the Shaheen Bagh protest, and the disruptions faced by the commuters. The Hon'ble Court dismissed a review petition and reiterated that the right to dissent could not be at the protesters' whims and fancies. There can be spontaneous protests, but where there is prolonged protest, public places' functioning needs to be kept in mind.<sup>41</sup>

### **Conclusion and Suggestions**

The Hon'ble Supreme Court is what holds this country's democracy together. At various dire times, it had acted as a buffer when the people's faith was shaken in their elected ruling Government. Democratic dissent is way too significant a feature of the Indian Constitution to be dismissed this bluntly. Any decision related to it should not be dispensed in such a hurry. The Hon'ble Court had its heart in the right place, which can be seen by interlocutors' appointment to talk to the protestors and understand the issue at hand. The judgment, however, had so much more potential. Many avenues were left untouched. The problem is a grave one. There is suddenly an upsurge in the number of these demonstrations, which happen every other day. Given the fragility of the political climate and the destruction it has been causing in the form of communal riots, it would have been helpful if

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<sup>41</sup> Rangin Pallav Tripathy, *With Shaheen Bagh ruling, Supreme Court gifts state more powers to control democratic dissent*, <https://scroll.in/article/975627/with-shaheen-bagh-ruling-supreme-court-gifts-state-more-powers-to-control-democratic-dissent> (last visited May 21, 2021).

some of the discrepancies were solved by the Court in the form of proper guidelines.

Reasonable restrictions play an important role in limiting people's rights to become a problem for other people. The conflict between a group of people's fundamental rights versus the community's fundamental rights at large is an age-old debate. The bottom line is a person is to enjoy his share of rights but not at others' cost. But can this principle be applied even when larger objectives, such as the breach of democracy and equality, are dealt with? Thus, we need consistency and equitableness. Any protest that is peaceful and does not disturb public order cannot be restricted to any particular place. With utmost gratitude and respect, the present judgment, the Shaheen Bagh Judgment, though well-intentioned, lacks balance. This lack of guidelines to balance or to give alternative suggestions to balance both dissents as well as protest within the constitutional framework rather than looking into mere larger interest theory of the community interest might lead to curbing of democratic dissent. The courts must need to formulate more concrete steps to balance democracy and dissent for nurturing democratic values more pragmatically.