



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

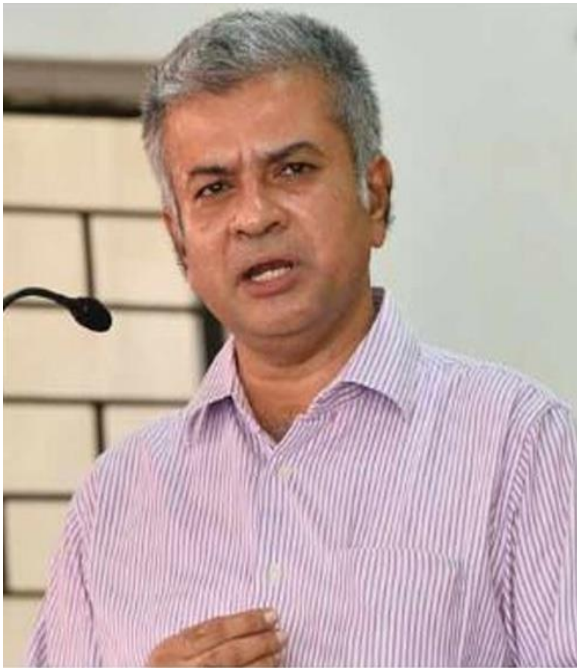
[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

# **EDITORIAL** **TEAM**

## **Raju Narayana Swamy (IAS ) Indian Administrative Service** **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional Procurement from the World Bank.

diploma in Public

## **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.





## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



### **Dr. Rinu Saraswat**

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

### **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



### **Subhrajit Chanda**

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **“FREEDOM TO ASSEMBLE VIS-A-VIS RIGHT TO PROTEST: A STUDY”**

AUTHORED BY - DEEPSHIKHA RANJAN

## **Abstract**

*A country is not able to function properly if its citizens are neither disturbed nor subject to the arbitrary policies of its government. Citizens' rights and freedoms must be protected by law. The Constitution of India grants different rights to the citizens of India, which are called fundamental rights to protect the interests of citizens. This is because the rules and regulations, the legal framework, are made for the well-being of citizens and to make a civilized society for the citizen. Citizens therefore have the right to oppose, criticize and voice their concerns to the government, which can be done by peacefully protesting government actions, policies, or legislation.*

## **I. Introduction**

Article 19<sup>1</sup> of our constitution talks about two types of rights. On one hand it gives the citizen the following rights-

- i. freedom of speech and expression
- ii. Freedom to assemble peacefully and without arms
- iii. Freedom to form associations and unions
- iv. Freedom to move freely throughout the territory of India
- v. Freedom to reside and settle in any part of the territory of India
- vi. Freedom to practice any profession or carry on any occupation trade or business

(These right under article 19 is available only to the citizens.)

while on the other hand it gives the state the power of restrictions to curtail the rights given to the citizen under Article 19 (1) in the interest of sovereignty and integrity of nation, its security and friendly relations with other countries, public order, decency and in relation to defamation, contempt of court, incitement to an offence etc.

---

<sup>1</sup> “Article 19 in The Constitution Of India 1949”, Indian Kanoon.  
<https://indiankanoon.org/doc/1218090/>. (accessed on July 1, 2021)

But before we dive into what these rights and restrictions are, let us know briefly about the background of article 19.

Our country, India, was under the colonial rule of Britain for more than over two hundred years before the constitution was drafted. During that time of British raj in India the citizen of our country did not have any fundamental rights. Therefore, while making of the Constitution of India in the constitutional debate of article 19, there were a number of things to be discussed like what rights should be given under article 19 and what not. During discussion in the constituent assembly H.V Kamath (the then member of lower house of the parliament) proposed that like US citizen, Indian citizens should also be given the right to bear arms which was also supported by Maulana Hasrat Mohani. But B.R Ambedkar opposed the idea of including right to bear arms in the constitution of India. Ultimately this idea of Kamath got rejected by the Assembly and this right was not included in the constitution.

If we look back to the period of Emergency<sup>2</sup> in India which was declared under the rule of Indira Gandhi, we will come to know how the rights were curtailed by the government arbitrarily. On 26th June 1975, Indira Gandhi declared Internal Emergency in India and this period is said to be the darkest period of a democracy of our country since independence. During 1971 newspapers were the only medium through which mass communications were done or made possible and the government made a rule that they cannot publish any political or domestic news without the prior permission of the government.

Now let us deal with the current position of Article 19 of the Indian Constitution, while dealing with this article we need to focus on two important features of this article, that is, this Article is only available to the citizens and it can be exercised only and only against the state. This article can further be divided into two categories the first category being article 19 clause (1) which gives the citizens six types of freedom to enjoy various liberties and article 19 clause (2) which gives rights to the state to formulate various reasonable restrictions so that nobody takes undue advantage of the freedom given under article 19(1).

NOTE: Article 19 is also known as the backbone of Part III of the Constitution of India.

---

<sup>2</sup> “The darkest phase in Indira's tenure as PM”, The Economic Times.  
<https://economictimes.indiatimes.com/news/politics-and-nation/democracy-interrupted-some-lesser-known-facts-about-emergency-1975-77/emergency/slideshow/69940337.cms>. (accessed on July 1, 2021).



Here we are dealing with article 19 clause (1) subclause (b) that is Freedom to Assemble Peacefully without Arms. Every citizen has a right to assemble peacefully and without arms under this article. This article is regulated by Article 19(3), which lays down that state has power to curtail rights of citizen to assemble in case of violation of SIP where-

S stands for Sovereignty of India

I stands for Integrity of India, and

P stands for Public order

An assembly becomes unlawful when any of these five acts given below is committed-

1. obstructing any legal process
2. doing criminal trespass
3. using criminal force against public officer
4. using criminal force against any person to make him do anything and lawful forcefully
5. taking possession over someone else's property

Any of the given acts if committed by the assembly, can make it an unlawful assembly and as soon as the police authority and gets the knowledge of such unlawful assembly it will ask the assembly to disperse under section 129<sup>3</sup> of the CrPC and if the assembly refuses to disperse then they would be committing an offence under section 151<sup>4</sup> of IPC. This is the reason why when any rally or procession has to be carried out by any political party or otherwise then they are required to take prior permission or permit from the police mentioning objective of their procession.

The right to freedom of assembly is a very valued and precious right, it is an absolutely necessary right for any individual person, group or a society. This right helps in preserving the democracy of a country. However, we can see that even the constitution of our country as well as Human Rights law have put some reasonable restrictions and limits on this right which makes this right very constrained. The type of restrictions which the government put on the freedom of assembly are like taking permits, bans, putting conditions and restrictions in the manner of assembly, restrictions regarding place of the assembly and in fact some restrictions as to freedom of speech even can also be inflicted upon, within the framework of right to assembly.

---

<sup>3</sup> “Section 129 in The Code Of Criminal Procedure, 1973”, Indian Kanoon. <https://indiankanoon.org/doc/1216752/>. (accessed on July 1, 2021).

<sup>4</sup> “Section 151 in The Code Of Criminal Procedure, 1973”, Indian Kanoon. <https://indiankanoon.org/doc/1228992/>. (accessed on July 1, 2021).

No doubt that gathering of people does bear the risk of invading the peace and harmony of the society. It can go beyond the range or limits of field or what is morally and socially acceptable. It can even disturb the normalcy and political, religious and psychological status quo. But nevertheless, all the revolution starts with an assembly only. People participating in an assembly have both fear and hope they have lived their past but they want to change their future. The protests may look like people against the government or a war between people of minority with majority. "it threatens but does not kill." But limits have to be drawn even on such activity. Article 19 of Constitution of India is one of the very significant right guaranteed to citizen which also forms part of the basic freedom. However, this is also subjected to the following restrictions, they are-

- i. that the assembly formed must be peaceful and harmonious,
- ii. no arms should be used and it should not threaten the safety of the society as a whole, and

apart from these conditions reasonable restrictions are also imposed by article 19 clause 3 of the constitution on the freedom of assembly. The government itself is also not free from such restrictions since the procession taken out by them should not be violent in nature and they must not breach the public peace. A procession which is disruptive or riotous in nature will not be protected under 19(1)(b).

Q 1. Why these restrictions are so important and needed?

The answer to this question is that these restrictions help in protecting the interest of sovereignty and integrity of India and it also maintains the public order. Apart from Article 19(1)(b), section 144 of the Code of Criminal Procedure also talks about unlawful assemblies. The government is empowered under section 144 to declare an assembly as unlawful consisting of four or more than four people in certain cases where the objective of such group is to stop the government from executing law or legal process, or to commit any kind of criminal trespass or mischief or even obtaining the property which belongs to someone else forcefully etc.

Q 2. The next question that arises is why do people need to protest or carry on any procession?

By way of a peaceful protest people can express their disapproval or raise objection to any action taken by the government or any policy made by them. Mostly, a protest is taken out against any political issue and people want their views and demand to be heard by the government by way of it.

Protest helps in influencing other people and seeking support from them.

Protests also help the organization to interrogate the government and question their action. It helps in receiving a systematic answer to their questions. With the help of a protest a government can also identify loopholes in their policy making which ultimately leads them to improve their work. A well democratic country, like India, should always be open to criticism and protest is a way by which people can criticize the government. People express their feelings and raise voices on any matter which is of social interest or in the interest of National welfare.

## **II. Power of state to restrict the right to protest-**

The constitution gives the state the power to regulate the rights available to the citizen. But mere written words can't help, it is the spirit of the law that helps more in a democratic society like ours. In recent times we have seen arbitrary actions taken against the peaceful protesters, so in a way, it can be said that criticism against the government or their policies is uncalled for. The misuse of some provisions of CrPC and IPC also affects the peaceful protest or assembly of people. For example, section 144 of the CrPC restricts rallies and meetings. The arbitrary use of provisions of IPC in order to arrest the peaceful protesters even when there is no danger to public order for safety has also been noticed. Therefore, it is suggested that those power should be used sparingly only. No sweeping power is granted to the state to infringe the citizen's right of freedom to assemble either by the constitution or by any other law.

In the case of, '*Re-Ramlila Maidan incident*<sup>5</sup>', the Supreme Court observed that it must be kept in mind that section 144 of CrPC is attracted only in the situation of emergency, such power can be exercised for the purpose of maintaining public order only. But the question arises as to what constitutes public order.

Further in the case of '*Romesh Thapar vs State of Madras*<sup>6</sup> (1950)', the Supreme Court laid down that the constitution needs to draw a boundary between public order and tranquillity. Because, a lack of public order may attack the security of state whereas a mere breach of peace, which is not of aggravated degree is not of much significance.

---

<sup>5</sup> Re-Ramlila Maidan Incident Dt ... vs Home Secretary And Ors. (2012).

<sup>6</sup> Romesh Thappar vs The State Of Madras. 1950 AIR 124, 1950 SCR 594.

herefore, there needs to be a balancing of interest which should be applied very carefully. like any other rights freedom to assembly is also not absolute in nature and state exercises some reasonable restrictions over them too. In the case of '*Himmatlal K Shah vs Commissioner of police Ahmedabad and another*<sup>7</sup> (1973)', the supreme court observed the following-

".....It is not surprising that the Constitution makers conferred a fundamental right on all citizens 'to assemble peaceably and without arms.' While prior to the coming into force of the Constitution the right to assemble could have been abridged or taken away by law, now that cannot be done except by imposing reasonable restrictions within Article 19(3)...".

while denying a person the permission to hold public meeting only on the ground that under similar instance where the permission was granted, the public ended up indulging into riots which caused breach of peace and harmony.

But in '*Maneka Gandhi VS union of India (1978)*', the Supreme Court stated that the test of reasonableness should be fair, just, right and not arbitrary. It should not be fanciful and oppressive.

Therefore, by summing up it can be said that by affecting security of some does not constitutes a breach of public order, by merely perceiving a challenge to law and order cannot be equated with threat to public order as well. And these should not be used to justify the restrictions. In the case of '*Ram Manohar Lohia vs State of Bihar (1966)*', the court observed that any act which attacks the law and order may not necessarily attack public order also.

### **III. Case laws on Right to Protest**

#### *i. Re Ramleela Maidan incident vs Home Secretary and others (2012)*

Facts:

On June 4th and 5<sup>th</sup> of 2011, the supreme court had given a landmark judgement in Ramleela maidan case. In this case a protest was being carried out by Baba Ramdev and his adherents in the Ramlila maidan of Delhi. The protest was against the matter of corruption and black money. They had raised the question that government had failed to curb the peril which has arisen due to black money and corruption in the country. Late at night on the same day the policemen either independently or with the consultation of ministry of home affairs evicted all the people forcibly who was sleeping in the premise of Ramlila Maidan.

---

<sup>7</sup> Himat Lal K. Shah vs Commissioner Of Police. 1973 AIR 87, 1973 SCR (2) 266.



Judgement:

The supreme court held that that the protest was peaceful. It also held that the right to assemble peacefully and hold protest without arms is a constitutional right and it forms the basic feature of a democratic state. On one hand in democracy, people are given the right to speak out loudly against the policies and activities of the government which they think is unreasonable and in order to do so they express their opinion and show disapproval they can hold peaceful protests. Whereas, on the other hand state is bound to respect and encourage such exercise of constitutional rights instead of forbidding it.

However, this is not being done so. Recently, political powers have dissipated the power given to police authorities in a very capricious and whimsical manner. They use these powers to stop people from exercising the constitutional rights guaranteed to them by the constitution. In this case it was also held that the action taken by the police was an abuse of power and improper. Thus, the restriction imposed by the state was unjustified and it manifested the vigour of the state and nothing more.

### *Amit sahni vs commissioner of police and others*<sup>8</sup>

Facts:

On 12th December 2019 the Citizen Amendment Act was passed. This amendment excluded Muslims from the grant of citizenship, due to which hundreds of protests were organised. The initiation of the protest took place from two universities in New Delhi and later on took a bigger shape at Shaheen Bagh, New Delhi. The protestors were challenging the legality of the citizenship amendment act. Such protest against CAA was being carried out in different parts of the country yet the Supreme Court did not allow any stay on such legislation.

Different strategies were being applied by the political parties to uproot these protests, like inciting a group or class of people to attack the protestors. The incidents were seen where youth was seeing firing at protestors while the police kept resting on their oars and watching inactively.

Even the government did not take any fruitful initiative to resolve their issues peacefully. Later on, police blocked clear side of the road of Shaheen Bagh to show that the inconvenience

---

<sup>8</sup> Amit Sahni vs Commissioner Of Police (2020).

caused to people was very excessive.

This case was appealed in the SC by advocate Amit Sahni against the order passed by the HC. It was decided by a three judges bench comprising of justice Sanjay Kishan Kaul, justice Aniruddha Bose and justice Krishna Murari.

**Jugement:**

The supreme court held that the right to protest in public places is not an absolute right and such places cannot be occupied for an indefinite period of time because it may cause inconvenience to general public at large. It is the duty of the authority to make sure that occupation of such public places by the protesters has been removed. Court orders may also be sought in order to remove search occupancy. The court also said that even though the right to dissent and democracy go hand-in-hand but protest must be carried out in a designated place only.

This decision can be seen in a sharp contrast with many other previous decisions by the Supreme Court where it had wholeheartedly protected the rights of citizen of freedom of peaceful assembly under article 19. However, in this case the decision was held in the favour of Amit Sahni. He had contended that protestors opposing Citizenship Amendment Act are causing inconvenience to other citizen by blocking the roads. His arguments were dismissed by the High Court earlier but the Supreme Court overruled the decision of the High Court.

#### **IV. Legality of section 144 of CrPC vis-s-vis Right to Protest**

Section 144<sup>9</sup> of CrPC is one which vests broad powers in the hands of administrative authorities. This section has always remained under controversies as it is very prone to be misused. As discussed earlier, we can see that it has already been misused in Ramleela incident (in the case of '*Re-Ramlila Maidan Incident Dt ... vs Home Secretary And Ors*')<sup>10</sup> which took place in 2011. This section is so vital that it can directly curtail the right to protest.

However, in the case of *Mazdoor Kisan Shakti Sangathan vs union of India*, it was held that section 144 is an emergency provision and it should be utilised in case of absolute necessity

---

<sup>9</sup> "Section 144 in The Code Of Criminal Procedure, 1973", Indian Kanoon.

<https://indiankanoon.org/doc/930621/>. (accessed on July 1, 2021).

<sup>10</sup> *Re-Ramlila Maidan Incident Dt ... vs Home Secretary And Ors* (2012).

only.

Previously in the case of '*Madhu limaye v. Sub-divisional magistrate, Monghyr & ors*', the supreme court had decided the constitutional validity of section 144 under chapter 8 of the CrPC.

The contention of majority petitioners in this case was that the applicability of section 144 lies on the urgency of the situation. This section should be used to safeguard the society from grave disorders. It should be used against those people who are engaged in endangering the public safety or health. Even though the power rests in the hand of administrative authority but the use of this power should be judicious so that it can endure judicial scrutiny. Also, the order passed under section 144 should be speaking order which means, it should be based on reasonable grounds. Therefore, the submission of petitioners was that that a proper enquiry should be made before passing of such orders.

The supreme court disagreed with their contentions and held that mere act of disobedience is not sufficient to constitutes an offence under section 188 of the IPC. In addition to such disobedience there should also be a threat to human life, public safety and the presence of obstruction is necessary.

All the order under section 144 should be directed towards an individual who has caused such danger or obstructions. However, where the mass is involved and the distinction cannot be made between them and the and general public, a general order is justified.

The court upheld the constitutional validity of section 144 of CrPC and said that in case of ambiguity and discontentment, proper safeguards are made available to the aggrieved party. Restrictions imposed by section 144 are reasonable. This section cannot be made unconstitutional based on the fact that it is prone to being misused and even in the case of misuse remedy is available to the party aggrieved. They can question the exercise of such administrative power as being ultra-virus, in the courts.

## V. Conclusion

It is a cornerstone of Indian democracy that every citizen has the right to peacefully protest without being threatened by firearms. The government needs to respect certain fundamental values even as it protects civilians against violent protests.

Protests are a key reason why democracy survives and thrives. As a result, violent protests, such as those in recent weeks, defeat the movement's goals. Keeping one's rights and fulfilling one's responsibilities are equally important in a democracy.

The legality of any protest depends on its nonviolent nature and its compliance with appropriate permits. In addition to upholding the rule of law, the constitution requires that public property not be destroyed.

Unlike absolute freedom, fundamental rights can be subjected to reasonable restrictions, as if people had unrestricted freedom without any impact on society at large. Accordingly, under sections 2 to 6 of the Indian Constitution, that right is subject to reasonable restrictions that are imposed by the States in order to safeguard public policy.

There are laws that allow police to restrict such gatherings in many states. The court found that the police cannot restrict people's right to demonstrate unless there's a good reason in *Himmat Lal K Shah vs. Commissioner of Police*<sup>11</sup> Ahmedabad.

Demonstrations are evidence of a free, democratic society, in which people's voices are heard and decisions are properly made, and they are a fundamental right and the lifeblood of democracy. Without protests, the democratic system loses its effective functioning. Indian democracy is built on the freedom of citizens to peacefully protest and congregate without weapons. In order to protect civilians from violent protests, the government must adhere to some fundamental principles.

A demonstration's conduct can be restricted in order to prevent its abuse, but it is the state's responsibility to regulate the efficient use of that right and to ensure that the people don't abuse it. Thus, the government's role is to maintain a balance between the two and to restore social

---

<sup>11</sup> Himat Lal K. Shah vs Commissioner Of Police, 1973 AIR 87, 1973 SCR (2) 266.



stability. Public criticism should be welcomed by the government, and the right not to submit should not be curtailed, as protests are one way for society, as the watchdog of government activities, to signal their discontent with the government.

Nevertheless, every responsible citizen must exercise his or her right when appropriate and not unconditionally oppose government acts and policies, for this leads to societal instability as well as a negative impact on the overall functioning of the country.

A democratic society requires freedom to protest to be an important component, and the government should assist citizens in exercising their rights instead of restricting them.