

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

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**Volume 3 | Issue 6**

**2020**

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# The Protest against “CAA” and the Farmers’ Acts, 2020: Is it an Abuse and Interference with the Fundamental Rights of the Citizens?

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## ABSTRACT

*We, the people of India are committed to the Constitutionalism and to the rule of law. In recent times, there have been occurrences of many violent protests in the form of demonstrations, processions and call for ‘bandh’ etc. for certain cause, by means of blockade of public roads, railways and causing destruction to the public property. Such protests are being done against the laws enacted by the Parliament, like the Citizenship (Amendment) Act, 2019 (CAA) and the Farmers’ Acts, 2020. The aforesaid, unlawful demonstrations, processions and call for ‘bandh’ etc. in exercise of the supposed implied right to protest, under Article 19 (1) (a) & (b) of the Constitution, are abuse of right to protest and interference with the fundamental rights of the citizens. We have fundamental right to protest by peaceful means, but such right is subject to reasonable restrictions and it should be exercised in good faith, by taking care of the fundamental rights of the others. In this paper there is an endeavour to examine the compelling reasons and justifications before the State to enact the “CAA” and the Farmers’ Acts, 2020; the scope of the right to protest and its abuse; and its effect on fundamental rights of the citizens.*

## I. INTRODUCTION

We, the people of India have resolved to constitute a sovereign, socialist and secular democratic republic, by securing Justice, Liberty, and Equality to all its citizens and by promoting fraternity, assuring the dignity of individual and the unity and integrity of the Nation. We have religious, social, cultural and linguistic diversity, but unity in diversity is our uniqueness. We may not agree on certain matters but have faith on Constitutional values, representing the will of Indian people through the Constitution of India. The governance of the State is being carried out by the constitutional institutions, in accordance with the provision of the Constitution. We may have disagreement with the law made by the legislature; the judgments delivered by the judiciary and the policies made by the executive;

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but such dissensions shall be expressed, in accordance with the letter and spirit of the Constitutional provisions only. We have rights to freedom of speech and expression and freedom to assemble peaceably without arms, which include right to protest in the form of demonstrations, processions etc. for certain cause but such right, is not absolute and subject to reasonable restrictions.

The CAA<sup>2</sup> and the Farmers' Acts, 2020<sup>3</sup>; are enacted by the Parliament in exercise of its legislative power conferred by the Constitution of India. The State has certain compelling reasons to enact such laws for fulfilling, its obligation under the Constitution and the legitimate expectations and aspirations of the people of India. Several petitions, by challenging the constitutional validity of the "CAA" and the Farmers' Acts, 2020; have been filed before the Supreme Court and the matters are sub-judice. We should have faith on our institutions like Parliament and Supreme Court. The Parliament enacted the aforesaid Acts, in her own best wisdom and the petitions against such enactments have already been filed and we can wait for the decision of the Supreme Court. But, there has been large scale demonstrations and protest also, by certain section of people led by certain political parties by unlawful means. In the course of such protest, the roads and railways have been blocked and acts of vandalism committed like destructions of public and private properties by some anti-social elements. Recently, the farmers protest is going on against the Farmers' Act, 2020 and they have blocked all the highways leading to the national capital New Delhi. The citizens are prevented from being engaged in their usual avocations, students are prevented from attending their educational institutions, the shopkeepers are forced to close their shops. Daily commuters by trains, by public and private transports are prevented to carry on their important works, due to road and rail blockades. Serious patients are prevented to consult their doctors and to seek medical aids. There is interference with the fundamental rights of the citizens due to such illegal protest and agitations and this is abuse of right to protest by exceeding their limits. The protesters in no way justify the blockade of rail and highways by defying the instructions of the administrative authorities. It is submitted that the aforesaid protesters led by certain political parties have no legitimate right to interfere with the fundamental rights of common citizens and their right to protest has limitations.

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<sup>2</sup> The Citizenship (Amendment) Act, 2019.

<sup>3</sup> It consist of three Acts viz. the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020; the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and the Essential Commodities (Amendment) Act, 2020.

## II. COMPELLING REASONS AND JUSTIFICATIONS BEFORE THE STATE FOR ENACTING “CAA” AND THE FARMERS’ ACTS, 2020

### The Citizenship (Amendment) Act, 2019 (CAA)

The competent Parliament, in exercise of its sovereign power enacted the Citizenship (Amendment) Act, 2019 for amending certain provisions of the Citizenship Act, 1955; hereinafter will be referred as “CAA”. The compelling reasons and justification for enacting the CAA may be discussed as follows:

When, we got independence, after partition many people migrated from Pakistan<sup>4</sup> as they were religiously persecuted.<sup>5</sup> The people belonging to minority community in neighboring countries were discriminated and they did not get fair and equal treatment like that of majority community, consequently, they were forced to migrate into India from Pakistan, Bangladesh and Afghanistan. These States are theocratic state and the people belonging to minority communities like Hindu, Sikh, Buddhist, Jain, Parsi and Christian, had to suffer a lot and they had been restrained to practice their religion, in accordance with their religious tenets, rituals and belief.<sup>6</sup> There has been news in the newspapers that the girls belonging to minority community were abducted and forcefully converted to Islam for marriages and several incidents of rape against them were also reported.<sup>7</sup> The places of worship of the minority community were destroyed by the members of the majority communities.<sup>8</sup> The victimized people had no fault, they were lawful citizens of the undivided India but after partition the new States opted for theocratic Islamic State and India remained secular state. The amendment Act, 2019 does not disturb any existing provisions of the Citizenship Act, 1955. This amendment is only a remedial measure against long standing injustice caused to the people belonging to minority communities in the theocratic Islamic states over several decades. There are ample justifications for enacting CAA.

The protesters in India against the CAA, had apprehension in their mind that the citizenship of certain section of the society would be lost by virtue of provisions of the CAA but nothing has happened like so, as their apprehensions were false and baseless. The misleading informations were disseminated regarding CAA to the people belonging to certain section of the society by some people who have vested interest, which caused unnecessary protest,

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<sup>4</sup> At the time of partition, the present Pakistan and Bangladesh together constituted the Pakistan.

<sup>5</sup> The Citizenship (Amendment) Act, 2019; the Statement of Objects and Reasons.

<sup>6</sup> *Id.*

<sup>7</sup> <https://timesofindia.indiatimes.com/topic/Pakistan-Muslim-League>;

<https://timesofindia.indiatimes.com/topic/Nankana-Shahib-Sikh-Yatri-Jatha> (last visited on November 2, 2020).

<sup>8</sup> <https://www.dawn.com/news/1069111/dawn-opinion-june-18-2006> (last visited on November 2, 2020).

resultantly, the public properties were damaged or destroyed and there was national loss due to such agitations.

### **The Farmers' Acts, 2020**

The Parliament in exercise of its sovereign power enacted the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020; the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; and the Essential Commodities (Amendment) Act, 2020. These Acts will be collectively referred to as the Farmers' Acts, 2020. The compelling reasons and justification for enacting such provisions may be discussed as follows:

There have been long standing requirements for wide ranging farming reform regarding farming agreement, assurance of fair price of agricultural produce, efficient farming services, promotion and facilitation of trade and commerce of farming produce; and removal of undesirable restrictions in supply of essential commodities. In order to carry out the aforesaid reforms, the Central Government provided the basic legal framework through certain legislations, with an objective to ameliorate the economic conditions of the farmers, by doubling their present income in farming sector. The existing legal framework regarding trading and commerce of agricultural produce is infested with certain corrupt malpractices and thereby, eroding the fair returns to the farmers. The commission agents and intermediaries, in the commerce and trading of the agricultural produce, channelizes the substantial part of the fair returns of the farmers through corrupt practices and causing hindrance in raising the income of the farmers. The minimum support price (MSP) has been provided by the Central government for supporting the farmers, with a view that the farmers should get fair return against the cost inputs of their agricultural produce but due to corrupt practices prevailing in the existing market conditions, the benefits of MSP has not percolated to the marginal farmers.

Therefore, the basic national legal framework has been provided on farming agreements and assurance of remunerative prices, in fair and transparent manner, of the agricultural produce with an objective to protect and empower the farmers to engage with agri-business entities.<sup>9</sup> There are provisions in the aforesaid enactment, for providing an ecosystem where the farmers and traders may have freedom of alternative choice to the existing marketing system, regarding sale and purchase of farmers' produce, for seeking remunerative prices through fair and healthy competition in the market; for hassle free inter-state and intra-state trade and

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<sup>9</sup> The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020: Its preamble.

commerce of the agricultural produce outside the existing premises of the markets notified by the state under any existing law of the State; and also for providing legal frame work for facilitating electronic trading of such farming produce.<sup>10</sup> The amendments have been made in the Essential Commodities Act, 1955 for removing unnecessary restrictions in the supply of farming produce of the farmers throughout the territories of the India as per wishes of the interested persons.<sup>11</sup>

There are ample justifications for enacting the aforesaid enactments. The Farmers' Acts, 2020 simply provide an alternative legal mechanism to the existing legal framework and the practices prevailing in the area of farming sector; and in no way, it causes any detrimental impact against the interest of the farmers. The Central Government has categorically, gave assurance to the farmers that MSP facility will continue and would not be replaced and existing agricultural marketing system would also continue. But there are apprehensions in the mind of some sections of the farmers in India due misleading informations disseminated by group of persons having vested interest against the Farmers' Acts, 2020.

### III. THE RIGHT TO PROTEST

The right to protest has not been explicitly mentioned under the provisions of the Constitutions of India but it is very much implicit under Articles 19 (1) (a) and 19 (1) (b) of the Constitution. All citizens are entitled to freedom of speech and expressions.<sup>12</sup> The citizens are also entitled to assemble peaceably and without arms.<sup>13</sup> The Supreme Court in 'Shaheen Bagh' (New Delhi) protest case against "CAA" explained, the entitlement of citizens regarding right to protest under Articles 19 (1) (a) and 19 (1) (b) of the Constitution in the following words: "*These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State.*"<sup>14</sup> The Supreme Court also clarified that such right to protest and expression of dissent against the State is annexed *with an obligation towards certain duties*.<sup>15</sup> It is duty of every citizen to conduct a peaceful protest without committing any illegal acts or omission, so that there should not be any interference over fundamental rights of other citizens. The Supreme Court has reminded the propriety and significance of such rights in following words: "*Seeds of protest were sown deep*" during

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<sup>10</sup> The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020: Its preamble.

<sup>11</sup> The provisions of the Essential Commodities Act, 1955 have been amended by the Essential Commodities (Amendment) Act, 2020.

<sup>12</sup> INDIA CONST., art. 19 (1) (a).

<sup>13</sup> *Id.* art. 19 (1) (b).

<sup>14</sup> Amit Sahni v. Commissioner of Police & Ors.; Civil Appeal No. 3282 of 2020; Date of Judgement: October 7, 2020; para-16 (India).

<sup>15</sup> *Id.*

“*freedom struggle and flowered into a democracy,*” but we should keep in mind that such dissent was against colonial rule, but now, against our own elected government.<sup>16</sup> The right to freedom of speech and expression is mother of all liberties.<sup>17</sup> The right to freedom of speech and expressions encourages free discourses regarding public matters and enables citizen to participate in democratic process.<sup>18</sup> Picketing or demonstration is manifestation of the right to freedom of speech and expression. Peaceful picketing or demonstration is free speech and is a non-violent act of expression, with an objective to convince and justify others with your demands.<sup>19</sup> The Supreme Court has reminded the mandatory duty of the State, regarding the encouragement and honoring of, the right to protest of the citizens in very recent rulings. The citizen’s peaceful and lawful right to protest “*must be respected and encouraged by the State, for the strength of a democracy.*”<sup>20</sup> Indian citizens have right to assemble peacefully and without arms, for the purpose of expression of protest against any action or inaction of the State, at designated public places subject to permission of public authorities. Any such assembly at public places without prior police permission has been held as illegal.<sup>21</sup> The democratic and constitutional system requires a judicious restraint over certain rights. The fundamental rights conferred on citizens also expect certain duties under our Constitution. The citizens are supposed to *safeguard public property and to abjure violence.*<sup>22</sup>

#### IV. SCOPE OF RIGHT TO PROTEST AND ITS ABUSE

The fundamental right to protest is not an absolute right but subject to reasonable restrictions as provided under Articles 19 (2) and 19 (3) of the Constitution. Article 19 (2), enables the State to impose reasonable restrictions through a valid law, in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign State, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. Article 19 (3), enables the State to impose reasonable restrictions through a valid law, in the interest of the sovereignty and integrity of India or public order.

Such restrictions are said to be reasonable when the same is not *arbitrary or excessive* and have a *direct and proximate nexus with object sought to be achieved and must be within the framework of the prescribed law, as subscribed by Article 19 (2) of the Constitution.*<sup>23</sup> The

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<sup>16</sup> *Id.*

<sup>17</sup> Report of the Second Press Comm., Vol. I, 34-35.

<sup>18</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597 (India).

<sup>19</sup> Thornhill v. Alabama, 310 US 88 (1940) (USA).

<sup>20</sup> *Supra* note 16;

<sup>21</sup> Himmat Lal v. Police Commissioner AIR 1973 SC 87 (India).

<sup>22</sup> INDIA CONST., art. 51A (i).

<sup>23</sup> Re Ramlia Maidan Incident, (2012) 5 SCC 1; para-29 (India).

Supreme Court has held that “*the State would have to satisfy the Court that the imposition of such restrictions is not only in the interest of the security of the State but is also within the framework of Articles 19 (2) and 19 (3) of the Constitution.*”<sup>24</sup>

The right to protest is not permissible by committing breach of ‘public order’. The Supreme Court has explained that the term ‘public order’ includes riot, an affray, breach of peace, disturbance in public peace & tranquility.<sup>25</sup>

The rights to protest have been abused by certain section of society and political parties by using unlawful means. It is submitted that the protest against the “CAA” and the Farmers’ Acts, 2020 are abuse of right to protest by using unlawful means. Assertion of rights has implied duty to honour the freedom of other citizens and therefore, while asserting right to protest we should take care of the liberties of the others. The right to protest means a peaceful protest by using lawful means. Violent protest like blockade of public roads, railways, calling for ‘bandh’ and causing destruction of public property are not permissible and are abuse of the fundamental right to protest. In ‘Shaheen Bagh’ (New Delhi) protest case, the Supreme Court held that the right to protest cannot be exercised at public ways and administrative authorities should take appropriate action for clearing such *encroachments or obstructions*.<sup>26</sup>

Therefore, the scope of right to protest is subject to reasonable restrictions through a valid law, on the grounds permissible under Articles 19 (2) and 19 (3) of the Constitution of India. The fundamental right to protest is said to be abused, when the same is exercised by using unlawful means, which causes interference with the fundamental rights of others.

## **V. INTERFERENCE WITH THE FUNDAMENTAL RIGHTS OF THE CITIZENS**

The abuse of right to protest causes the interference with the rights of other citizens. An unlawful protest involves blockade of public roads and railways and ceasing the normal functioning of the common citizens. Consequently, even a common citizen may be prevented from going to hospitals in case of any emergency medical needs. Daily commuters are prevented from their usual avocations. Traders are prevented to carry on trade and other important activities. The workers and employees are prevented to join their employment. Every citizen has fundamental right to life, personal liberty and certain freedoms under Articles 19 and 21 of the Constitution of India. The citizens are prevented from exercising their fundamental rights during the aforesaid unlawful protest.

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<sup>24</sup> *Ibid.* para-35.

<sup>25</sup> *Madhu Limaye v. S.D.M., Monghyr, AIR 1971 SC 2486 (India).*

<sup>26</sup> *Supra* note 16; para-19.

The Supreme Court of India has, while dealing with appeal case, related to call for 'bandh' by a political party, in exercise of her right to protest, held that "*There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of people.*"<sup>27</sup>

The citizens' right to freedom of speech and right to assemble peaceably, freedom to form association does not entitle them to carry on protest at any place of their choice and the exercise of such freedoms will be ceased as soon as there is intervention with others rights.<sup>28</sup>

The protest against "CAA" and The Farmers' Acts, 2020; led by political parties by using unlawful means like blockade of public ways, railways and calling for the 'bandh' etc. are the interference with the fundamental rights of the common citizens. The political parties or any organization cannot claim that they are entitled to interfere with fundamental rights of the common citizens, while exercising their fundamental right to protest.<sup>29</sup>

## VI. CONCLUSION

The enactment of the "CAA" and the Farmers' Acts, 2020; by the Parliament has been done in exercise of its sovereign power. The State has justifications and compelling reasons for enacting the aforesaid enactments. The constitutional validity of the aforesaid enactments has been challenged before the Supreme Court and the matters are sub-judice. There may be disagreement with such enactments by certain section of people or political parties. The disagreed people have fundamental right to protest peacefully and lawfully, subject to reasonable restrictions provided under the Constitution of India. The protest by using unlawful means like blockades of public ways & railways; calling for bandh; destruction of public properties etc. are abuse of right to protest. Such unlawful protest causes great deal of inconvenience to the common citizens and they have been restrained to exercise their fundamental rights conferred under part III of the Constitution. The Supreme Court has held that the fundamental rights of the common citizens cannot be subservient to the claim of fundamental rights of the individual or section of people. Therefore, we may conclude that the protest against "CAA" and the Farmers Acts, 2020; by using unlawful means, may be said as an abuse of fundamental rights and consequently, there is an interference with the fundamental rights of the citizens of India.

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<sup>27</sup> Communist Party of India v. Bharat Kumar, AIR 1998 SC 184; (1998) 1 SCC 201 (India).

<sup>28</sup> Railway Board, New Delhi v. Niranjan Singh, AIR 1969 SC 966; para-13 (India).

<sup>29</sup> Bharat Kumar K. Palicha v. State of Kerala, AIR 1997 Ker 291; para-17 (India).