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A Socio-Legal Study of Students' Right to Protest: Challenges and Remedies

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Introduction

There are times when in universities there are conflicts between students and administration. Students feel that the administration is unapproachable and thus conduct protests as a means to raise their concerns. Protests can either be peaceful which means there is no violence, hindrance or annoyance of any kind to the administration, students or passer-by or it can be violent involving any activity which might cause disruption, annoyance or hindrance to the daily administrative routine, classes and university activities. In addition it may also incite violent activities. In the former, there exists no conflict regarding legality concerning the scope of rights of students to protest however in the latter there are a number of issues that need to be dealt with such as what are the components of the scope of students right to protest, what is the scope of authority of the universities to control a situation, rights of students who are not involved in protests and what are the remedies available to all the above when their rights are infringed or authority disregarded. The courts have dealt with various aspects of protests balancing the rights of every stakeholder clarifying the scope of such rights which will be articulated in this article.

Prohibiting or Limiting protests to prevent obstruction

Courts have time and again reiterated that the right to protest is not an absolute right let alone the right to protest indefinitely on the campus premises or obstructing executive activities of the university. The courts in many cases have prohibited protesting in certain areas of the university campuses holding that the authorities have the power to limit any such activity culminating into disruption or obstruction of daily routine activities which was evident from the cases of a prominent central university protests in 2018 where court upheld the decision of authorities and directed that “protests must not take place anywhere near 100 meters of the main administrative block.”¹ Every student, employee or a worker has the right to organise a peaceful protest and a strike to raise its voice for their demands. But there exists absolutely no inherent right to disrupt the functioning of an institution or to use violent, illegal and aggressive methods to be able to reach the authorities. This right provided under Article 19 is not absolute and therefore the person inheriting such a right must assume the responsibilities that comes with it.

CCTV Installation

It is essential to understand the scope of authority of the administration to be able to regulate as well as to ensure proper law and order in the academic institution. The question came up in court whether the university administration has the authority to install CCTV cameras in the university premises, especially when there is unrest in university campuses during a protest. In JNU protests of 2018, the authorities were concerned with the growing violence and obstruction of university activities therefore in order to keep an eye on the miscreants the administration directed installation of CCTV cameras in some locations of the campus. This created further unrest among the students who further went to court contesting that their right to privacy was being infringed and the authorities had exceeded their authority. The court held that even though installing cameras in the campuses especially at this stage would amount to intrusion of their privacy, however, the same step is quintessential in order to supervise and control the activities of the students, therefore allowing installation of cameras in some areas.

The courts have every now and then held that with the changing dynamics of the society it has become essential to install CCTV cameras in university campuses. They have extended the authority to do so even in the examination halls and have upheld the validity of the authority of the vice chancellor to decide where and in what circumstances must the installation be done. It acts as deterrence and instils fear in the minds of students before engaging in any kind of malpractice. However the courts have held that “such authority is limited to sensitive places and not otherwise which will be treated as infringement of privacy of students and staff through continuous use at places and time.”² The authority of a vice chancellor and the jurisdiction of a university in this regard lies in the provisions of the act by

which the university came into being such as in a case the court said that Mahatma Gandhi University Act, 1985, Section 5(xa), empowers the institution to set the minimum standards for the infrastructure to be given to any unaided college. Therefore the contention that the administration does not have the authority was rejected in the court of law.

And in many cases the courts have directed the universities to take steps for the infrastructure despite the lack of financial and infrastructure amenities. Further the CCTV's will act as a means to assist and provide evidence to the police authorities while taking a decision to take cognizance of the same.

Police Cognizance

The most controversial question during protests is the authority of police to enter campuses to control the growing situation and maintain law and order. The court has extensively discussed the pros and cons of the same and further discussed the legal stance. It has been held that the police can only be allowed to enter the campuses to take cognizance of the situation when intimated by the authorities of ingress and egress. Further once the police authorities have been intimated, they shall only act on analysing the situation and must act only when there is evidence of obstruction to ingress or egress to the restricted area. "A Police Officer has no authority to register an FIR for an offence under section 188 without a complaint filed by a public servant." ³ The police can take cognizance under section 41 of Cr. P.C. of offences under section 188 IPC only when it is committed in its presence in order to prevent it and must inform the public servant concerned who shall file a complaint thereafter.

Contempt of Previous Orders of University Authorities

The age-old debate regarding the scope of rights of students to protest raises a number of dilemmas and legal issues. Sometimes as a preventive measure the university authorities decide to pass orders to restrict the activities of the students' procession to avert any situation from going out of hand. A gathering in a university forming human chains, vandalizing public property and making offensive speeches is a common sight when a protest goes haywire which is why authorities sometimes while analysing the heated situation foresee the dynamics of the protest and prohibit and restrict certain activities of the students. Such orders are generally overlooked and breached knowingly, therefore not adhering to the university code of conduct and decorum. In this case, can the authorities file charges against the students for contempt of orders and if so can such contempt order extend to any previous orders that were given in a different scenario. Further can the authorities perpetually restrict the rights of the students in order to maintain law and order.

The Vice Chancellor of Jawaharlal Nehru University had prohibited the students to call gatherings and to organise protests in front of the administrative block and

the Freedom Square. Despite this, students went on to raise slogans and wrongfully confined the movement of staff members in the restricted area as contended by the authorities. Such activities time and again bring universities to a standstill and prevent the employees from performing their duties due to the violent nature of the protests. The issue that came up in court here was that the order prohibiting the organisation of protests was dated back to 2017 which was passed during a different protest. "The contention is that the order does not stand operative beyond a certain period of time, and in a different protest."⁴ The notice need not be seen necessarily in a particular factual matrix in which an order was passed, it could be presumed to be extended to a similar situation for precaution and prevention. Moreover the plea of preservation of fundamental right to protest enshrined under article 19(1) (a) of the constitution is not maintainable in contempt proceedings. No citizen has an absolute fundamental right. Every right conferred upon an individual is bound by the duty to protect the rights of others which is why the court rejects the view. Right to education as well as the right to uninterrupted education is a fundamental right under article 21. Article 41 states that the government with time must make constant efforts to legitimise and confer fundamental right to work and education. Therefore, through the years, the state has made many provisions and passed schemes for achieving this goal. It has tried to conform to the principles of equality as well as rationality which has been enshrined in our constitution. Our country has invariably vast constraints pertaining to finances, which is why it was extremely difficult for our country to be able to provide free education to all. Further the fundamental right given to the citizens of this country under Article 19(1)(g) to practice, follow or carry on any profession, occupation, trade or business within the limits which have been effectively imposed by the governments for the public good and welfare of the people.

When the court is considering non-compliance of its order on purpose, and not merely by inadvertence or mistake, then the take of the courts changes drastically. The court reiterates that these students are educated students pursuing post graduate studies, and are well aware of the contents of the order and the intent with which it has been issued. "For a court to maintain discipline and sanctity of a court order, it is essential for the court to hold those guilty, who have purposely disregarded the court orders in a clandestine manner."⁵ The court's power and the Rule of law will only be upheld if compliance of such orders is ensured."⁶ "The High court is empowered with a special jurisdiction to punish for such contempt.

The maximum punishment has been restricted to six months of imprisonment or a fine of Rs.2000 under or both under, Contempt of Courts Act."⁷

Restrain on Location

In a seven-judge bench, the courts held "educational institution to be an 'industry', and its employees, 'workmen' under section 2 (j) for the purpose of the

Industrial Disputes Act, 1947. This is why it was contended that it is the right of every employee or workmen to organise a protest in any place of the university campus.”⁸ However this is not the correct stance. Firstly when we talk about protests being disruptive, leading to obstruction and violence, the courts have held that no such protest can be allowed to take place in campuses where the daily routine of the administration is hampered which is why the order to prohibit protests in the administrative block of JNU was upheld even beyond the contextual event.

Under the Industrial Dispute Act, there is no right of workers to hold demonstrations or to organise protests at the residence of the employer which in this case of a university exists on the campus making the situation even more vulnerable. “Holding such an event would amount to unfair labour practice of the workers.”⁹

The concept of such restraints and restrictions revolves around the idea that no demonstration can be allowed to become aggressive or intimidating. The rights of other stakeholders are equally important including students, workers, employees and passers-by who are not involved with the demonstration. Thus the courts have formulated certain guidelines which need to be adhered to while holding a demonstration with respect to physical proximity leading to obstruction. The faculty or workers involved with the students in a demonstration must not organise any such event within a particular distance from the employer’s premises. The protesters have no right to cause any kind of inconvenience to other people who may want to visit the employer. This method to achieve redressal of their issues cannot be legitimised and permitted which causes disruption to the functioning of the employer which in this case is the administration. In a case of protests in the hospital VIMHANS, the court held the protest to be illegal as it was causing grave inconvenience to the patients and other visitors therefore ordered them to take their demonstration 200 metres away from the premises so that no obstruction of activity would take place. “The university administration has the right to have an obstruction free ingress and egress of the staff, students, their parents, visitors etc”¹⁰

However, the court need not interfere in any administrative matter of any university as the academic authorities are deemed to be experts and specialists who have spent years gaining experience and are well aware of the intricacies and issues pertaining to administration. Therefore, such matters must be left to the discretion of institutional authorities. “Wednesbury principle will only apply to very few exceptional cases which enable petitioners to challenge any administrative decision on the basis of lack of reasonableness.”¹¹

Many state governments have been empowered to even permanently ban protests in certain public places and to designate places for conducting protests as it deems fit. Chennai Police Act states that permission to hold protests shall be given to any individual or group of people by Commissioner of the City Municipal

Corporation. This provision is widely criticised by many stating that it is violative of the fundamental rights granted under Article 19(1) of the Indian Constitution. If we have rights being a citizen of this country, we also have some fundamental duties. Article 51-A states that every individual must abide by law, protect public property, and to abjure violence. Article 38 was created for the welfare of the people with reference to maintenance of public order. It has also been held that, "such programmes can only be held during non-peak hours which will not cause inconvenience to passers-by."¹²

Right Against Compelled Listening

"As citizens have the right to conduct protests and profess as a matter of fundamental right conferred to them under the constitution, citizens also have the right to not to listen which must also be taken into account by the court of law."¹³ Jurisprudentially, the values underlying the right to speech, right to listen, right to compelled speech, also gives rise to right against compelled listening. Can a state compel citizens to watch a video about the ill effects of smoking? In the same manner, restricting the path of passers who have no interest in becoming a part of such processions cannot be forced to be a witness of the event." Conducting protests and processions on sidewalks of homes and residential areas will violate the privacy rights of individuals. One cannot captivate listeners and disrupt their peaceful living only to be heard. "Here the right to privacy can trump the right to speech." "Fundamental right does not empower anyone to conduct events at any place and any time."¹⁵ Every individual has the right to read whatever he wishes to, listen to any diverse content available, or decide not to read, listen or witness anything. One cannot restrict the voice and visuals of such a procession from reaching him. He cannot be forced to hear or see what he wishes not to. This will be a violation of one's right to be let alone. This right has been conferred as an essential right to be read into Article 19 of the constitution. "We cannot allow others to trespass the mind or ear of an individual and commit auricular or visual aggression. The State needs to protect the mute, the unorganised and inarticulate, against the onslaught of enthusiasm of the vocal or the vociferous." "¹⁶ Realities of life cannot and must not be ignored. Freedom and order go hand in hand. They are complementary to each other. Citizens have the right to raise their voice and opinions to the state and to individuals who wish to listen, however people who do not wish to witness it, have the right to peaceful living. "The choice is not between order and liberty. It is between liberty with order and anarchy without either."¹⁷

Role and Limitation of Political Organisation

The involvement of political organisations in the university system has its pros and cons. On one hand it helps to raise legitimate students' issues and demands

and enables them to have access to higher authorities for their grievances. On the other hand political organisations politicise their personal agendas and ideologies for their personal gains. They manipulate, influence and mobilise students for expansion. It is usually seen as a necessary evil in the university set up. The question however arises as to what is the extent of involvement and interference of such organisations in educational institutions. Where do we demarcate the line to maintain peace and an intellectual environment? This question was taken up by a court which held that no authority is against any particular political philosophy or ideology and neither do they wish to discourage discussions for the same. As a matter of fact such platforms and forums for discussions are necessary but not through political student organisations with which the management has no relation.

“Management of any educational institution also have their fundamental rights which cannot be interfered with by any student organisation Article 19(1)(g) of the Constitution.”¹⁸ The role of the head of an institution is to maintain the sanctity of the education institution and ensure the delivery of duties and responsibilities by the organisation and its employees. They need to maintain discipline which is the bedrock on which education flourishes.

Jurisprudentially we must understand the concept of, “Obedientia Est legis essentia” which states that discipline, compliance and is a must to ensure implementation of law. The courts have given power to the head of the institution to lay down not only the code of conduct but also to formulate necessary regulations as it deems fit. Rule 22

Rule 22 of the Service Rules states that it is essential to balance the interest of an individual and the authority of the institutions to create service rules and code of conduct of employees for smooth functioning of the organisations. Such rules are essential for any institution and is protectable under Article 19(1)(g) of the Constitution in public interest.”¹⁹

The code of conduct of a university authorises the administration to ban strikes, dharnas demonstrations, protests etc on the campus violation of which would culminate into initiation of disciplinary action.

“Collective bargaining, strike, go slow, dharna, agitation, gherao, absenteeism etc. are new concepts to the academia. As much as the court understands the need and power of such expression, it also emphasises on the need for limiting its use for an institution to thrive. Otherwise, they will end up engulfing the entire system and bring it to a halt.”²⁰ Grievances of the students must be attempted to be resolved by the grievance forum first before any student approaches the court of law.

Cognizance by Court

According to Section 195(1)(a) of Cr.P.C., judicial authorities cannot take

cognizance of an offence under Section 188 of IPC, until the concerned public servant or some other public servant to whom he is administratively subordinate has sent a written order confirming and affirming the same. Now the question is if the police is bound to register a case or investigate irrespective, even when they are barred to take cognizance of the same under section 195(a)(i) of Cr.P.C. Further whether section 188 would also include failure to take permission from authorities as directed by them to hold demonstrations. The petitioner must have taken prior consent or permission from the concerned authority before conducting any such protest, without which the police will level the charges under Sections 143, 188 and 341 of I.P.C. To constitute an offence of section 188 I.P.C., “the public servant must have made an order which he is authorised to make and the accused has with the knowledge of the existence of such published order to abstain from acting in a certain manner which is reasonable in nature must have intentionally disobeyed such an order causing obstruction, annoyance, threat to life, health, safety, riots and affray.”²¹

In Patna University, the leader of the agitation motivated the students to paralyse and bring to a standstill, the functioning of the government offices by performing Gherao Dharna. He was a part of a meeting of the Sanchalan Samiti wherein he forced this decision to assemble and perform Gherao with the motive to stop the Governor from participating in the Assembly. This was in defiance of the prohibitory orders under Section 144 Cr.P.C. In response to this information, the court directed the police officials to detain him for prevention of such violation which would uphold public order. There exists elements of compulsion in such a Gherao, and any retaliation on the person facing such resistance would affect public peace and order. Agitation in the times of orders passed under Section 144, Cr.P.C is not only illegal but will ultimately stir violence adversely affecting public order. Therefore such grounds are not only germane to such detention but are quintessential to uphold peace and law. However, for the court to pass such an order, it must establish a nexus between the acts of detenu which have been apprehended in the order and the objective of such detention. The main motive must be prevention of any act leading to disharmony and to uphold public peace and order. The “cumulative effect” of the activity in question has to be taken into consideration while discussing the merits of the case. “When the plaint is drafted on many separate grounds, then invalidation of any one ground would render the entire order ineffective.”²² The authority must be subjectively satisfied of the grounds for detention which will make it difficult to predict the success of such an order in the absence of mentioned data.

Usually the police is seen to take a plea that the demonstrators must have exhausted all possible remedies alternative of holding protests, to which court said that “It is not for the police to raise such an objection as though it is obligatory on the part of the petitioner to exhaust all the alternate remedies before he could hold

a public meeting.” If the people in question fail to prove that they have not approached appropriate authorities then their right cannot be treated as unconditional. However if they have then their right to hold demonstrations cannot be arbitrarily curtailed by the police if such demonstration is legal and peaceful. When protests are related to genuine issues of educational institutions such as fee hike, improper functioning of the system, unfair or arbitrary practices by authorities or reformatory appeals then it is obvious that such issues will not attract dissent from the public thus cannot be rejected solely on that ground. The ground for rejection of an application for holding demonstrations cannot merely be traffic congestion as there are innumerable instances where the police allow political parties and other organisations to conduct meetings.

Another ground that is often used to reject such applications is the existence of rival groups which will lead to a chaotic law and order situation. Such ground too cannot sustain as whenever there is dissent, there ought to be rival opinions and in a democracy such dissent must not be encouraged. If we consider this, then no demonstrations can ever be held. The fact that there are two rival groups can never be a reason for rejection of permission to any citizen for airing his views in public. It can never be expected that there is complete consensus between people nor is it desirable. The expression “public order” must have proximate and direct connection with the specific restrictions as contemplated under the Constitution and must not be on an indirect apprehension. “The restrictions must be real and proximate, not far-fetched or problematic. This is evident from clause 4 which talks about reasonableness.”²³ The components of it therefore suggest that the connection between the two must be rationally proximate and direct.

That being so, it is not desirable for the police to curtail freedom of speech by simply citing the reason that the rival group may create law and order problems. It is their duty to maintain law and order and mere apprehension of the rival group being displeased by the holding of a meeting by another rival group cannot result in the police refusing permission on the ground of law and order situation. That being said the police have the right to apprehend what issues may be sensitive and need to be restricted such as Vinayagar Chaturthi where court gave discretion to police to be able to limit the routes of procession. “Any statement or set of words that have the capability to provoke an individual into retaliation must be curbed by the police.”²⁴ “However this cannot be imported blindly with reference to the request which is made by a political party which feels duty bound to project its views and also to reply to some of the allegations which are said to have been made against the petitioner politic.” The restrictive grounds under Article 19(2) are exhaustive however must be construed strictly if on any ground beyond Article 19(2).

The police officer’s plea for one of the grounds of rejection of application to hold protest is that the issues to be highlighted in the demonstrations do not

conform with the general perception of the public. The court held that “it is not for the police to state whether the view point sought to be propagated by the applicant is correct or not. Neither the police nor even this Court can be concerned with the truth or merits of the issues which each of the political groups want to project in their respective meetings.”²⁵ Courts have given discretion to police in many circumstances “to decide the grounds for rejection as they deem fit, however, such discretion depends upon each case and cannot be treated as a blanket licence for the police to act in an arbitrary and dictatorial manner.”²⁶

Some protestors had decided to block the road through which the then education minister. The same was propagated through posters which was seen by the court as enough evidence for the police to have panicked. The police have to ensure that public order is maintained and the constitutional rights of the protestors are not infringed. To strike this balance is not an easy task. Police strike only when the situation goes out of control. When the situation went out of hand the policemen took cognizance of the same to which the protestors filed a suit contending that it was a breach of their rights. The court held that such action cannot be said to be illegal as they are protected under by Section 76 IPC. “Police are duty bound to obey the orders given to them by their superior and, the command from the superior was not an unlawful command.”²⁷ Therefore, their actions are protected by Section 76 IPC. which states that any act done by a person who is duty bound or who has mistakenly believed himself to be duty bound, by a mistake of fact and not law is not found guilty of such an act.”²⁸

Section 76 IPC

“Melee as a direct consequence of such boisterous agitations. In the helter-skelter and stampede, it is quite natural that even non-participants will get injured. The role of the police in such situations can only be imagined.”²⁹ “The intent of the unlawful assembly can only be decided from the circumstances of the particular situation by the court.”³⁰ The fact that the Assistant commissioner had given orders of lathi charge does not itself show that the decision was illegal and unwarranted. The tense situation of a given time is unimaginable. The anxiety of the police officers in charge of law and order at the site etc. are all matters which will have to be taken stock of by the sentinels of law and order. The defence of subordinates for action in lieu of its superiors is essential for the morale and discipline of the force. Acting strictly as per the order of one’s superior is a part of the discipline taught to forces. “If an order is illegal then the subordinate cannot be protected under the law.”³¹ There must be no political bearing on the decision whatsoever. There is however a paucity of decisions on this point and it will be useful to refer to some foreign authors. “Such a decision must be lawful in fact”³².

Soleman J, said, “If any soldier truly is of the view that he is duty bound and must obey the orders of his superior then he would be protected from any liability,

unless such an order is so gravely illegal that he must have known that they are unlawful.”³³ Mere adherence to the superior’s orders is not a sufficient ground for defence. This may prove absence of mens rea, establishing lack of motive, and that he was merely acting pursuant to the orders given to him, under mistake of fact. “If any government servant believes to have a claim of right to do the act that is in question, such establishment of lack of intent can dissolve one’s liability under negligence, owing to the fact that he was merely following orders. This will help him negate any such charge of negligence. Reasonable mistake of law is no defence. However, the absence of realisation of grave illegality will make one liable for executing any order.”³⁴

Colin Howard emphasised that the accused must not be aware of the illegality of the superior’s order or on the other hand, he may be aware but chooses to execute them nevertheless. Therefore the rule remains, that in case the accused is not held guilty for an order which he has executed and which he believes to be reasonable in nature, then the test of reasonability is the most liberal criteria to ascertain that the order must not have been so gravely and unlawful for the accused to have prima facie known the nature and illegality of the order.³⁵ In case it is proved that the act was in fact lawful, then the observance or understanding of the servant of the nature of the act becomes irrelevant. “Therefore, any investigation under section 76 IPC must be of the nature, where the order in question is found to be unlawful in nature.”³⁶

It is not necessary for the police officials to know each and every facet of a demonstration and to be accurate. In a situation of chaos and anxiety it is not prudent to expect the police to know the exact situation therefore reasonable apprehension of police is enough to take action. Order to remove agitators who were blocking the road of the minister is enough information to ensure no further damage is done. “Police cannot take the risk of waiting to see that the Minister was actually assaulted or attacked by the unruly mob ordering his subordinates to tackle the situation by removing the agitators who were obstructing the way of the Minister.”³⁷

“An extremely pernicious behaviour has been noticed in contemporary public courses of work. If a certain group of individuals, a student union, or an ideological group does not find itself palatable to the existing government or ideology, then it is commonly seen that they are not burdened or guilt stricken by the fact that they resort to extreme measures of expression and discontent. Destruction of property, restricting routine work of government offices, restraining public servants from attending events and even violence is commonly seen as an acceptable and justifiable practice in the name of freedom of expression.”³⁸ This has resulted in creation of extreme annoyance, discomfort among the public at large. Lives of common people are disrupted by agitators, and are forced to face hardships affecting their daily lives. Such protestors are unwilling to accept the court orders and

openly go against them as well only because their fair comments seem unpalatable to a certain section of society. Any vindictive reaction which leads to disruption of government offices or public at large cannot be accepted justifying them by criticising either the judicial authorities or the slow dispensation of justice.³⁹

Student organisations of a particular party assume the role of a supreme authority, having the right to constantly criticise the decisions of the administration without reasonable cause owing their allegiance to a particular ideology. A particular sect cannot decide for millions. And any legal remedy for violation lies in the court of law. Having said that, every individual has the right to voice their opinion and be heard which can be done within the garbs of law. Offensive military cannot be the standard of assessment of a student. This has seen to have slowed down procedures and routine functioning at the university levels. Rigidity becomes the norm of the authorities, aware of the grave consequences of any drastic changes for the benefit of students. With the New National Education Policy, university officials will be forced to become self-reliant in many ways. This will include generation of grants for projects and research and self-financing themselves as against the heavy annual budget which is currently being paid to the universities by the central and state government respectively. For universities to do so, will have to modify fee structures, even if it may be nominally. Moreover, fee structures have become redundant for universities to provide world class teaching experience. Considering that all EWS students are already exempted from giving fees, and there are many schemes that various universities have started to exempt anyone in need. Therefore, such legitimate causes need a free and fair environment to be able to benefit the students. Many such legitimate issues and decisions remain untouched for the fear of extreme consequences.

Political awareness is a necessity for a student's growth. However, the system cannot hamper the growth of these students by engaging them in constant political activities. Political parties have successfully allured students, enlisting support for their political ideology, which is why there is a need to restrict their role in university campuses. Hostility will hamper student's growth and make them rigid individuals at a stage where openness is a must. The Court has "deprecated and prohibited political activities among students within the College campus and has even gone to the extent of holding that there is no fundamental or other right for Students Unions to set up their units owing allegiance to political parties in the college campuses."⁴⁰ What the facts of this case have revealed is another species of student politics outside the college campus and it eventually turned out to be an unpleasant experience not only to the participating students but also to a few members of the Police force. "Peaceful environment is also expected from parents, family, political leaders and alma maters."⁴¹

Conclusion

Right to protest is a fundamental right which has been enshrined under Article 19 of the constitution. It is an inalienable right with wide limitations. Every individual has the right to voice their opinions and make themselves heard. However, other citizens of the country have concurrent rights to privacy, right against compelled listening, right to be left alone, right to peaceful living and right to not being interfered with. I cannot impose my rights at the cost of others' peaceful living. Courts have reiterated certain principles over a period of time for prevention of mishaps, violence and conflicts which people have chosen to not follow. Courts need to impose their authority which has been taken for granted by agitators for long. This may be because the judiciary has been liberally dealing with offenders or citizens who confidently disobey court orders knowing there will not be consequences for the same. Moreover, police officers have very less authority to *suo moto* take cognisance for any activity apprehending grave consequences. Police may do so if a public officer backs their initiative following the event. This acts as deterrence to police officials. University administration has been empowered to take decisions for maintaining peace and order. They can choose to refrain and limit locations for processions, install CCTV cameras, or even remove student unions from university systems if it deems fit. Courts have validated the university administration's power to take needed steps for ensuring smooth functioning of university activities and peaceful pathway to students, faculty and staff. Every student of the university has a fundamental right to education which must be ensured through implementing disciplinary strategies for dealing with students who have raised an issue through some form of agitation.

Recommendations

- Authority of Police Officials which has been restricted under section 41 of Cr. P.C can be loosened by exhaustively explaining circumstances for allowing *suo moto* cognisance by police officials. Even though they are allowed to intervene in an activity which may apprehend grave consequences, the same has to be ratified by the concerned public servant. Such validation only scares and limits the authority of police officials which has led to a laid back attitude in them. Therefore in order to strike a balance between one's right to protest and others rights to peaceful living, privacy rights, right against compelled listening, an exhaustive description of illustrations or events can be made increasing the authority of police officials and allowing them to take *suo moto* cognisance without the ratification of a public officer, except for allowing detention of any individual. In order to ensure that no executive exceeds their power, strict liability in case of non-adherence can be imposed.
- Guidelines designating locations by every educational authority can be

made. We are aware that courts allow such restrictions to be set by the university authorities. In order to ensure smooth functioning of an organisation and to ensure students' right to education, it is crucial to establish a system of discipline. Students must be able to access campuses, and its resources irrespective of any agitation taking place in an organisation. The ultimate aim of a university is to provide quality education which must be upheld at all costs. Therefore in order to refrain from entering into legal battles for the same, a list of locations on campus may be designated to ensure smooth functioning of the organisation.

- CCTV installation may be made compulsory on the university campuses to make it easier for university authorities to execute the same. It will become easier for the authorities to identify miscreants violating university rules or causing nuisance interfering with the routine university activities. Evidentiary proof of violations during such agitations will fasten judicial process in providing relief to the students and authorities.
- Students should be made to sign a social contract, imposing duties to adhere to legal obligations and norms of the university failing which they will be liable to be penalised. This can include destruction of public property, trespass, violation of passer-by rights, violation of rights of students to education and contempt of court orders. Students have been widely seen being involved in violating university norms which hampers the academic environment and interferes with routine activities of the educational institutions. Repeated violations may be penalised considering the gravity of the circumstances. Deterrence will prove to be a good instrument for prevention of future activities by setting up an example of penalisation.
- Rules prohibiting any student, faculty or student union representative from participating in any political event during their time in their said educational institution or holding any student union post in case of contempt of a court order should be made. Upholding the sanctity of any court order is the essence of a democratic system. It is the duty of every citizen and organisation to ensure adherence to the same. Such deterrence will ensure compliance of legal systems and court orders efficiently.
- Monetary penalty in case of public destruction of property may be imposed. Academic penalties may cause a student to lag behind and may ruin his career prospects and may only be resorted to in case of extreme disciplinary violations.
- Judiciary must stand by university administrative decisions in this regard acknowledging their experience and expertise unless any grave violation has been committed. Precedents of liberal handling of situations have set wrong examples encouraging students to take the authorities for granted.

Legal violations cannot be left unaccounted for.

- A committee guiding and counselling students to rightfully conduct agitations must be set up. Exposure to their rights and duties will enable them to express and voice their opinions in a lawful manner. Usually students are misguided and end up getting involved in activities which deviates them from their academic objectives. It is obvious that students are new to the system; they are unaware of the dynamics and rules of the university system which is why they must be informed and guided correctly for them to be able to lawfully voice their opinions.
- Misinformation and the lack of a grievance committee having direct access to the decision makers is a major cause for aggravation of such agitations. Majority times, this lack of communication and misinformation leads to agitations among students. Establishment of such a forum will decrease the chances of friction between students and the administration. Better communication will strengthen their relationship and help in prevention of any such discrepancy.

Notes

1. *Vidyasagar Institute of Mental Health and Neurosciences v. Vidyasagar Hospital Employees*, 124 (2005) DLT 640, (2006) ILLJ 781 Del, (2006) 142 PLR 9
2. *Kerala Self Financing v. Mahatma Gandhi University*, WP(C).No. 30126 of 2015 (M)
3. *Mahaboob Basha v. Sambanda Reddiar*, 1994(1) Crimes, 477
4. *Union of India v. Niranjan Singh* 1969 (1) SCC 502
5. *Rama Narang v. Ramesh Narang and another*, Contempt Petition (Civil) 148 of 2003
6. *Ibid*
7. *Sukhdev Singh v. Hon'ble C.J.S. Teja Singh & Ors.*, AIR, 1954, SCR 454
8. *Vidyasagar Institute of Mental Health and Neurosciences v. Vidyasagar Hospital Employees*, 124 (2005) DLT 640, (2006) ILLJ 781 Del, (2006) 142 PLR 9
9. provisions Page 1251 of the Industrial Disputes Act, (See Schedule V Entry 6.
10. *All India Central Government Health Scheme Employees' Association (Delhi Branch) v. Union of India and Ors.*, W.P.(C) 5471/2008
11. *Rama Muthuramalingam v. Deputy Superintendent of Police, Mannargudi*, 2004 (5) CTC 554
12. *Mazdoor Kisan Shakti Sangathan v. Union of India and another*, WP(C) No. 1153 of 2017
13. *Government of Tamil Nadu and Others v. P Ayyakannu Lnind*, WANO.1042 of 2018, CMP No. 8772 of 2018
14. Corbin, C.M. (2009). *The First Amendment right against compelled listening*. BUL Rev., 89, 939, available at: https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1292&context=fac_articles (Accessed: 05 August 2023).
15. *P.A. Jacob v. Superintendent of Police, Kottayam*, AIR 1993 Ker. 1: LNIND 1992 KER 217
16. *Ibid*

17. Justice B P Banerjee : *Writ Remedies- Remediable Rights under Public Law*, Vol. 1, 8th Edition
18. *L.I.C. of India v. Prof. Manubhai D. Shah*, 1992, 3 SCC
19. *M.H. Devendrappa v. Karnataka State Small Industries Development Corporation*, (1998) 3 SCC 732
20. *Harish Uppal v. Union of India*, 2003 (1) KLT 192 (SC)
21. *Dhatchinamoorthi v. State By Inspector of Police*, CRL.O.P. Nos. 6951 and 6952 of 2019 and CRL.M.P. Nos. 3813 and 3817 of 2019
22. *Ram Babadur Rai v. The State of Bihar & Ors*, AIR 1975 SC 223, 1975 SCR (2) 732
23. *The Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia*, AIR 1960 SC
24. *Chaplinsky v. New Hampshire*, 315 US 568
25. *Adhirai M.M. Ibrahim v. The Commissioner of Police*, W.P. No.3210 of 2005
26. *Supra* Note 11
27. *Central Bureau of Investigation, Lucknow, U.P. v. Indra Bhushan Singh & Ors.*, Crl.Appl. No. 876 of 2002
28. Section 76, Indian Penal Code
29. *Supra* Note 26
30. *Ibid*
31. *Shiv Mongal Singh v. State - 1981*, Crl.L.J. 84.
32. Sir Rupert Cross, Philip Asterley Jones, 8th Edition of Cross and Jones *Introduction to Criminal Law*
33. Glanville William's "*Textbook of Criminal Law*", 1978 Edition at p. 408
34. David Ormerod, Smith & Hogan's *Criminal Law*, 1978 Edition
35. Colin Howard on *Criminal Law*, p.424, Third Edition
36. *State of West Bengal v. Shew Mangal Singh and others*, AIR 1981 SC 1917,
37. *Supra* Note 26
38. *Supra* Note 26
39. *Supra* Note 26
40. *(Kerala Students Union v. Sojan Francis*, 2004 (2) KLT 378.
41. *N.P. Prathap Kumar v. Ramadas*, CRL.A.No. 876 of 2002