



## THE RIGHT TO PROTEST: A DEMOCRATIC ANTINOMY

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### ABSTRACT

*Fundamental rights are cornerstone instruments of any democratic society. They form the bedrock of constitutional democracy. Among them, the Right to protest and free expression is indispensable for holding those in power accountable for their actions. However, the right to protest is not unrestricted and absolute in nature. It is subject to reasonable restrictions, so that it cannot jeopardise the sovereignty, integrity of India, and public order. The risk of violence and indecency in public gatherings has always been a challenge for the authorities. The paradox here is that the act of restoring faith in the government and public order, which is intended to reaffirm public trust, can itself become a source of disorder. But how does this democratic right potentially become a threat to the very order it seeks to uphold? What role does social media play in organising modern-day protests? This paradigm shift, characterised by highly polarised and influenced public views, has taken the right to protest to the brink of uncertainty. The risk of civil strife and the absence of intellectual discourse while organising a protest could potentially discredit the democratic ingredients in it. The author seeks to establish that, though an essential element of liberty, the right to protest can lead to the erosion of the very institutions of democracy. Unrestricted and untrammelled protests can lead to civil strife and public disorder. The article endeavours to examine the situations where the right to protest undermines the very fundamentals of democracy itself.*

**Keywords:** Civil strife, Fundamental Rights, Polarisation, Intellectual discourse, Dissent.

### INTRODUCTION

The acknowledgement and acceptance of fundamental rights have been a gradual process across the world. It is a hard-fought battle for liberty, equity and justice. The pre-democratic era was characterised by minimal regard to basic human rights, widespread exploitation and

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unrestricted power to the State. In the ancient world, the Kingdoms were ruled by the monarchs under the divine right of kings. First, the Magna Carta (1215) and then the English Bill of Rights (1689) laid the foundational framework for the modern democratic constitutions across the world. These documents marked the first efforts to challenge the authority of the State and to ask for the recognition of basic human rights. These efforts were not a result of peaceful protest as mandated under the modern-day constitutions. For example, the French Revolution resorted to rampant killings and ultimately the execution of King Louis XVI to secure their freedoms. The American Revolution witnessed several major European powers take fight side by side to defeat the British.<sup>1</sup> In contrast, under the leadership of M.K. Gandhi, India embraced non-violence and the philosophy of Satyagraha, incorporating methods such as non-cooperation and civil disobedience. Yet, the large-scale violence was often difficult to avoid under a despotic regime. The methods earlier revolutionaries adopted to gain independence were justified, given the context of authoritarian regimes, which do not follow the mandate of human rights and civil liberty.

However, in the contemporary democratic order, violent methods are expressly rejected for registering dissent, with judicial bodies serving as legitimate forums for grievance redressal. In recent years, social media has transformed the landscape of protest organisation and participation. Access to social media has democratized information. The abundance of information and easy access to various platforms (Facebook, X, Instagram, etc.) are proven to be integral and valuable tools for registering dissent. However, this shift has also loosened the space for sustained intellectual discourse around protest. Often guided by manufactured social media narratives, the protest itself loses the authenticity behind its organisation. Mass protests can register dissatisfaction, but forging a consensus around intelligent reform is much harder.<sup>2</sup>

Thus, this article attempts to explore and critically examine the intricate balance between rights and responsibility. The recent political upheavals in Bangladesh and Nepal illustrate the precarious balance between the right to protest and the preservation of democratic order. This escalating tension between individual rights to dissent and social obligation to uphold democratic stability underscores the central paradox—the democratic antinomy—that this article seeks to explore. Understanding how democracies can reconcile these competing demands will be crucial for safeguarding both liberty and order in an era marked by rapid socio-

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<sup>1</sup> Willard M. Wallace, American Revolution Britannica (2020). (<https://www.britannica.com/event/American-Revolution>).

<sup>2</sup> Pratap Bhanu Mehta, A sense of drift (The Indian Express, 2025) 8.

political change and technological disruption. This article examines the persistence, adaptation, and occasional conflict of rights in the quest for justice and democracy.

## **RIGHT TO PROTEST: CONSTITUTIONAL FRAMEWORK**

The right to freedom of speech and expression and to assemble peaceably without arms are enshrined under Article 19(1)(a) and 19(1)(b) respectively. Both these rights read together form the bedrock for holding peaceful protests, and asking the legitimate questions to the establishment. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has been described as a “basic human right”, “a natural right”, and the like.<sup>3</sup> The right to freely express and register dissent has been upheld as an indispensable aspect of human liberty. In every democratic society, holding peaceful and orderly demonstrations through protests is our privilege assured to citizens.<sup>4</sup> Holding peaceful demonstrations to convey grievances is a fundamental right,<sup>5</sup> and so is the right to assemble for organising dharnas or peaceful agitations.<sup>6</sup>

However, as a constitutional mechanism of balancing the rights, “reasonable restrictions” are imposed upon the right to freedom. The restrictions imposed are in view of protecting the sovereignty, integrity, the security of the state, friendly relations with foreign states, public order, decency and morality, or in relation to contempt of court, defamation, or incitement to an offence. It confers that the right to freedom is not absolute in nature and is subject to reasonable restrictions. The conceptual framework behind imposing restrictions is that there always exists a possibility that a protest can go violent at any time. A public gathering assembled for a legitimate cause can turn unruly and disturb the public order. The State holds the duty to arrange and assist with a peaceful protest. It can also make orders for deciding the designated time and place for holding such processions and make necessary arrangements.

To put this succinctly, the Hon’ble Supreme Court clarified the modern-day position of protest as, “India, as we know it today, traces its foundation back to when the seeds of protest during

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<sup>3</sup> People’s Union for Civil Liberties v. Union of India (2003) 4 SCC 399.

<sup>4</sup> Maneka Gandhi v. Union of India (1975) 1 SCR 778.

<sup>5</sup> State of Rajasthan v. Shri G. Chawla and Dr Pohumal (1959) AIR 544.

<sup>6</sup> Ramlila Maidan Incident (2012) 5 SCC 1.

our freedom struggle were sown deep, to eventually flower into a democracy. What must be kept in mind, however, is that the erstwhile mode and manner of dissent against colonial rule cannot be equated with dissent in a self-ruled democracy. Our constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties.”<sup>7</sup> In *Amit Sahni versus Commissioner of Police & Others*,<sup>8</sup> the Supreme Court of India observed that public places cannot be occupied indefinitely. SCI unequivocally cleared that public ways and public spaces cannot be occupied in such a manner, to disrupt public order, and that too indefinitely. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone.

### **THE RIGHTS AND RESPONSIBILITY: RECENT DEMOCRATIC CRISIS**

The recent crisis in Bangladesh tells us the extent this right can go to hamper the very order it seeks to establish. The cause for the wide range of nationwide protests was legitimate, one that can potentially establish the lost democratic order in their country. The issue of corruption and promulgation of certain despotic laws of the regime has created apprehension in the young minds of the country. They were highly insecure about their future. The youth decided to protest and peaceably assembled to challenge the old regime. However, what followed this legitimate protest was nothing short of a nightmare for any democracy across the world. Clash between the protestors and the authority has resulted in the mass destruction of the long-standing infrastructure and institutions; the countries have hard fought to build in so many years of their independence. More than 400 reported deaths and over 1000 protestors were injured. The authorities also acted violently. The crackdown of the police and later deployment of the army to regulate the protest have only caused havoc to the institutional democratic order of Bangladesh.

Within just a period of one year, another South Asian country, Nepal, also witnessed an unprecedented Gen-Z protest against the government. The youth felt betrayed and cheated by the government after seeing the lavish lifestyle of wealthy nepo kids of politicians. While the country suffers from a lack of employment, economic instability and a missing framework for future course of action for the development of its country. Ultimately, the government pushed for a blanket social media ban, citing non-compliance by the tech giants with Nepali law. But students viewed it as an attack on their freedom of speech and expression. The anger mounted

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<sup>7</sup> *Ramlila Maidan Incident* (2012) 5 SCC 1.

<sup>8</sup> [2020] 12 S.C.R. 151.

and resulted in nationwide protests against the government. If Official records are to be believed, 19 people died and more than 100 got injured, among them a few children succumbed to these violent protests.

The broad question is not how the protest started but how it ended. The intention of the protest is not a point of contention. But the unruly turn it has taken by resorting to violence, creating apprehension and fear. Protestors destroying the infrastructure of the country, rampaging the parliament buildings, targeted killings and looting have made headlines more than the good cause of this protest. The dissent for the authorities ultimately culminated in the fall of governments in both countries. The whole cabinet and the Prime Minister resigned and fled, leaving everyone in disdain. Those who were supposedly the protectors of democracy left their country amidst turmoil.

These two episodes underline a critical democratic paradox. As provided under the Indian constitution that “reasonable restrictions” are necessary to curtail encroaching tendencies of these rights. In *Bimal Gurun v. Union of India*,<sup>9</sup> the court held that “Demonstrations, whether political, religious or social or other demonstrations which create public disturbances or operate as nuisances, or create or manifestly threaten some tangible public or private mischief, are not covered by protection under Article 19(1). A demonstration might take the form of an assembly, and even then, the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. From the very nature of things, a demonstration may take various forms; “it may be noisy and disorderly”, for instance, stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration, and this would not obviously be within Article 19(1)(a) or (b).”

The Indian courts, for so long, advocated for a balanced approach while upholding the right to protest as an essential aspect of liberty and, at the same time, the protection of public order. There has to be a mediation ground for both parties in contention, i.e., the government and the protestors. Rather than opting for violence, the long-established judicial way has to be resorted to question the despotic policies of the government. The judiciary plays a vital role in balancing the fundamental rights of individuals on the one hand and their responsibilities towards the state on the other. The long-standing democratic institutions should be protected, not destroyed. Bangladesh’s and Nepal’s democratic experiences demonstrate that the rights and

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<sup>9</sup> (2018) SCC Online SC 233.

responsibilities must coexist to complement each other. The government's responsibility is to ensure the arrangements of peaceful protest and view it as a safety valve of democracy. The longevity of protest depends not on the loudness but on the wisdom with which the society channels dissent.

### **THE MISSING INTELLECTUAL DISCOURSE**

The Trilateral Commission's 1975 report on "The Crisis of Democracy" has highlighted various threats to democratic institutions. The emergence of "adversary intellectual" and their resentment with the government's stance poses a severe threat to democracy. It was argued that, "At present, a significant challenge comes from the intellectuals and related groups who assert their disgust with the corruption, materialism, and inefficiency of democracy and with the subservience of democratic government to 'monopoly capitalism.'" The development of an "adversary culture" among intellectuals has affected students, scholars, and the media. Intellectuals are, as Schumpeter put it, "people who wield the power of the spoken and the written word, and one of the touches that distinguish them from other people who do the same is the absence of direct responsibility for practical affairs."<sup>10</sup> The idea behind it is not to discredit the intellectual culture, but to highlight the need for limitation. The report put forth the argument that "Democratic government does not necessarily function in a self-sustaining or self-correcting equilibrium fashion. It may instead function to give rise to forces and tendencies which, if unchecked by some outside agency, will eventually lead to the undermining of democracy."<sup>11</sup>

The recent missing intellectual discourse on bridging the gap between the government and the protestors proves the assertions made by the authors fifty years ago. The absence of constructive intellectual discourse in mediating the gap between governments and protest movements today confirms the Commission's concerns. The erosion of dialogue has allowed polarisation and discontent to spiral into disorder, weakening democratic principles rather than strengthening them. Their pessimism towards democracy aptly describes the contemporary erosion of democratic principles. The cohesion between the government and protestors can only be bridged by intellectual dialogue through proper channels. There has to be a coordinated programme between the protestors, so that the objective of the protest does not lose its way

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<sup>10</sup> Samuel Huntington, Michel Crozier, Joji Watanuki, *The crisis of Democracy* (New York university press, 1975) 6.

<sup>11</sup> *ibid* 7.

amid the noise. Anarchy cannot be an answer for a poorly executed democracy. The right to protest is an integral part of liberty. But this should not kill the very institution which establishes it.

## CONCLUSION

The analysis demonstrates that, as much as the rights are pertinent for a viable democracy to thrive, so is the responsibility to protect them in order to survive. Both Rights and Responsibility go hand in hand. Anger towards democratic institutions does not necessarily produce viable solutions. Social media-manufactured public opinion has severely affected the fabric of constitutional democracy. The absence of sustained intellectual discourse highlights that maybe the purpose of any resentment towards the establishment is right, but without having a consensus-building programme, the protests seem meaningless. Protests driven by emotion or grievance, without a structured consensus-building mechanism, often lose their original purpose. Yes, it can topple the government, but it cannot overhaul the democratic fundamentals of democracy. Bangladesh and Nepal serve as reminders that freedom without responsibility risks turning legitimate protest into societal chaos. Ultimately, this analysis highlights a crucial lesson: the right to protest cannot be exercised in isolation from responsibility, reason and constructive engagement.