

While appreciating the existence of the right to peaceful protest against a legislation it has to be made unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely.

[Case Brief] Amit Sahni V Commissioner of Police and Ors.

Case name: Amit Sahni V Commissioner of Police and Ors.

Case number: Civil Appeal No. 3282 Of 2020

Court: In the Supreme Court of India

Bench: J. Sanjay Kishan Kaul
J. Aniruddha Bose
J. Krishna Murari

Decided on: 07/10/2020

Relevant Constitutional Law

Act/Sections: Citizenship Amendment Act, 2019

➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. A section of the society, aggrieved by this legislative amendment of Citizenship (Amendment) Act, 2019, has filed petitions before this Court under Article 32 of the Constitution of India, assailing the constitutionality and legality of this amendment, which is pending consideration. There have been protests against this legislation in Delhi and in different parts of the country.
2. The original petition was filed before the Delhi High Court which was disposed. The grievance made in the petition was that the persons opposing the Citizenship Amendment Act and the

National Register of Citizens, had adopted a method of protest which resulted in the closure of the Kalindi KunjShaheen Bagh stretch, including the Okhla underpass from 15.12.2019. It was submitted that the public roads could not be permitted to be encroached upon in this manner and, thus, a direction be issued to clear the same.

3. The High court held that in such a situation like this, it was observed that no specific writ, order or direction can be issued as to how to handle the agitation or protest, or even the place of protest and traffic, as the same would be determined based on the ground reality and the wisdom of the police, especially where situations may keep changing every 10 minutes. However, since the situation remained the same, the petitioner therein filed the present appeal by way of a Special Leave Petition against this order of the High Court.

➤ **ISSUE BEFORE THE COURT:**

1. Where and how the protest can be carried on, without public ways being affected?

➤ **RATIO OF THE COURT**

1. The Court stated that India, as we know it today, traces its foundation back to when the seeds of protest during 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.
2. Our Constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights, i.e., the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State.
3. The Court further added that these rights are subject to reasonable restrictions, which, inter alia, pertain to the interests of the sovereignty and integrity of India and public order, and, while appreciating the existence of the right to peaceful protest against a legislation it has to be made unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely.
4. The Court was of the opinion that democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was

not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters.

5. The Court refused to accept the plea of the applicants that an indeterminable number of people can assemble whenever they choose to protest.
6. Furthermore, the Court acknowledged that we live in the age of technology and the internet where social movements around the world have swiftly integrated digital connectivity into their tool kit; be it for organizing, publicity or effective communication. Technology, however, in a near paradoxical manner, works to both empower digitally fueled movements and at the same time, contributes to their apparent weaknesses.
7. The ability to scale up quickly, for example, using digital infrastructure has empowered movements to embrace their often-leaderless aspirations and evade usual restrictions of censorship; however, the flip side to this is that social media channels are often fraught with danger and can lead to the creation of highly polarized environments, which often see parallel conversations running with no constructive outcome evident.
8. Both these scenarios were witnessed in Shaheen Bagh, which started out as a protest against the Citizenship Amendment Act, gained momentum across cities to become a movement of solidarity for the women and their cause, but came with its fair share of chinks - as has been opined by the interlocutors and caused inconvenience of commuters.

➤ **DECISION HELD BY COURT:**

1. The Court stated that it had no hesitation in concluding that such kind of occupation of public ways, whether at the site in question or anywhere else for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions
2. Accordingly, these proceedings were closed once again and the Civil Appeal stood disposed of, leaving the parties to bear their own costs.