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India: A case for Right To Protest To Be Heard

What needs to be understood is the fact that protests raise significant human rights issues that force the state to act upon its obligations to prevent, investigate, prosecute and punish those responsible

By Abhinav Mehrotra and Dr. Biswanath Gupta | Sep 03, 2021



The opposition parties in India have joined the farmers' protest which has been going on since last year to pressurize the government in repealing three contentious farm laws. The three legislations are the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, Farmers Agreement of Price Assurance (Empowerment and Protection), and the Essential Commodities (Amendment) Act, 2020.

These laws have paved the way for a free market system for the farmers but they are skeptical that the acts may reduce the maximum retail price of the crops that are now guaranteed by notified markets. Further, these laws allow the big corporations to buy their products and ultimately they may become landless. Although the government and farmers have had several rounds of talks, these have not yielded any fruitful results.

On similar lines, another protest took place in India last year related to the Citizenship Amendment Act 2019. The Act promises citizenship to non-Muslim people, mainly Jains, Hindus, Sikhs, Buddhists if they are forced to return to India from neighboring nations Pakistan, Bangladesh and Afghanistan following religious persecution. The law had caused widespread discontent among people across India, especially the Muslim population and triggered mass protests that accused the union government of violating Article 14 of the Constitution regarding ensuring equality before the law and equal protection of the law.

Henceforth, a very important question arises on whether there should exist a Right to Protest To Be Heard. In simple words, protest can be broadly defined as "non-routinized ways of affecting political, social, and cultural processes".

However, in practice, the human right to protest is well established under international human rights law through the right to hold political rallies; freedom of assembly; freedom of expression; right to life, and freedom from torture. But this does not entail a Right to Protest To Be Heard. The right implies that it is the responsibility of the state to not only allow protests but also respond to claims or recommendations made in the course of the protests.

International laws, treaties

Against this backdrop, it would be in context to throw light on the presence of such a right by analyzing the international treaties, soft law instruments, and general comments of the UN treaty bodies.

To illustrate, under Article 12 of the Convention on the Rights of Child adopted by the UN General Assembly in 1990, the state parties are mandated to assure the child, who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 3(1) of the Convention provides that the best interests of the child shall be a primary consideration in all actions concerning him/her, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies.

Similarly, the UN Committee on Economic, Social and Cultural Rights has emphasized that the right to self-determination entails the responsibility of the state to hear the protests.

States' duties

What needs to be understood is the fact that protests raise significant human rights issues that force the state to act upon its obligations to prevent, investigate, prosecute and punish those responsible.

To illustrate, the UN Committees have recommended the states respond with dialogue and consultation, one such example being the Declaration of Indigenous Peoples that emphasizes the need for a right to free, prior and informed consent before relocation and taking control over their resources. Similarly, the Committees have also recommended the states respond with policy changes.

For example, the Committee on the Rights of the Child had recommended sometime back the central African nation Gabon respond to strikes by teachers by proactively releasing the delayed payments to ensure the right to education of children.

Seen in this light, the threats posed to the rights of individuals, more specifically human rights, and in a larger context, the survival of the democratic structure at the international level, ultimately leads to the discussion on whether there should exist a Right To Protest To Be Heard enshrined in the constitutions of countries. This would ensure better protection of human rights, growth, development and security. This sentiment was also echoed during the 1993 Vienna World Conference on Human Rights. According to its final statement, "Democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing."

Way forward

In this respect, the need of the hour is to ensure that effective synergies between international and local human rights movements are established. Inspiration can be drawn from the lessons learned from the 2011 Arab Spring uprisings and their aftermath.

It was in 2011, that the Egyptian government had imposed a shutdown of the internet to suppress dissenting voices of its citizens which was in direct contravention of the covenant dealing with civil and political rights. It was the Special Representative on the Promotion of the Right to Freedom of Opinion and Expression who emphasized the gravity of the situation and urged the government to restore the freedom of expression and access to information for the citizens.

Going further, The Right of Protest To Be Heard is of great significance because the protests present an effective and legitimate way to raise the claim on governments through participation and contestation.

(The writers teach at O.P. Jindal Global University, Sonapat, India. The views expressed are personal. They can be contacted at amehrotra@jgu.edu.in)

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