

# Farmers' Protests: The Constitutional Limits on the Government's Use of Force

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Protesting farmers in India have once again taken to the streets, not unlike many other European and Latin American countries. Their demands range from a fixed minimum support price (MSP) to a pension for farmers post the age of 60 among others. While farmers from different north Indian states are protesting the reluctance of the central government to respect their requests, events have unfolded rather grimly on the Punjab-Haryana border. Farmers from Punjab are being stopped by the Haryana Police from marching forward to Delhi.

This use of excessive force on the protestors coming from Punjab has raised concerns. The Haryana Police has installed sharp nails in the roads, in addition to large barricades and concrete blocks to stop them from reaching Ramlila Maidan in Delhi. For the uninitiated, the route from Punjab to Delhi passes through Haryana. While the Aam Aadmi Party (AAP) government in both Punjab and Delhi has been conspicuously silent on their support for the protestors, the Bharatiya Janata Party (BJP) government in Haryana has beefed up security, in anticipation of the march crossing the state.

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It is noteworthy to remember, that police authorities, come under the direct control of the state government.

The Haryana police have used tear gas canisters against the protesting crowd. They have also employed water cannons. In addition to these more traditional forms of force to disperse protestors, drones have been used to drop tear gas canisters, which in some cases have exploded too late, causing severe bodily damage to protestors. There are also rampant allegations that police are also firing rubber bullets at protestors. In an extreme incident, one protestor was killed, from what the initial autopsy indicated, was a bullet wound.

This raises many questions. What is the scope of protesting in a modern liberal democracy? What is the scope of expression and movement of protestors under the Indian constitution? Can the government stop them? What is the constitutional limit of a reasonable response to such a call for protest? This short piece intends to delve into these questions.

## The Social Contract

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The Indian Constitution's Preamble and other articles establish India as a modern liberal democracy based on the idea of the rule of law and freedom for all. While citizens in modern liberal democracies enjoy a wide array of rights and freedoms, the right to use force is exclusively with the government. That is the basis of social contract theory.

The social contract, it is assumed, was entered into by people to protect all their other rights (property, equality, speech etc.) by giving up the right to use force. This is what, in political theory, finalised the transition from a state of nature (where each defended their own) to a modern state.

This is why regular citizens do not have the legal right to use force. Assault, battery, murder, rape, abduction, robbery, dacoity- they are all criminal offences. Let us look at a few examples of the government using force legally. The government has the right to kill via execution for certain criminal offences. It also has the right to take away property by force for instance in cases involving accumulation of illegal property. It can also use force to keep you in custody, while if a regular citizen did it, it would be a criminal offence.

In allowing the government to be the only user of force, there is an implicit trust that people repose in it.

## **Fundamental Rights and Reasonable Restrictions**

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The limits on the government's use of force are also enlisted in the Constitution. A reading of the fundamental rights promised within the Constitution of India shows that any government (centre/ state/ district/ village level) cannot give preference to one citizen over another (Articles 14,15 and 16), the government cannot stop citizens from following their religion (Article 25 and 26) or from living a life with dignity (Article 21).

The Constitution of India also promises citizens the right to express their opinions (Article 19(1)(a)), to assemble peaceably (Article 19(1)(b)), form unions/ associations (Article 19(1)(c) and move freely across the territory of India (Article 19(1)(d)).

It is this latter bouquet of rights, that farmers from Uttar Pradesh, Bihar, Punjab, Haryana, and Rajasthan wish to exercise. In association with each other, they want to express their collective resentment against the government of India, by peacefully assembling in Ram Lila Maidan in Delhi. To do this, they are travelling in large numbers from their respective states to Delhi because the Constitution tells them they are free to do so.

To say that citizens can use these rights however they like would be incorrect. The same constitution that gives these rights, also allows the government to impose restrictions. It seems illogical to allow someone's free speech to defame another person. It also seems

illogical that the right to move freely means squatting in the Rashtrapati Bhavan. So, the government has a limited allowance to restrict these rights.

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## Is the Police Response Reasonable? No.

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The farmers have the constitutional right to protest. They intend to assemble in Ramlila Maidan in Delhi. If they are allowed to do so, there will be no restrictions on traffic movements (within Delhi or on the way to Delhi) and no law-and-order issues. But only if they are allowed to reach there.

Interestingly, it is questionable whether the Haryana government has any *locus* to stop protestors, especially because the protestors do not intend to stage any protests in Haryana. Their destination is Delhi. Delhi does not fall under the jurisdiction of Haryana. It might be trite for the Delhi police to attempt to disperse protestors from reaching Ramlila Maidan on any real or perceived threats, but can the Haryana police/government do that?

The protestors have shared a list of demands and negotiations are ongoing between the various stakeholders. A news report dated 15<sup>th</sup> February 2024 shows that on the day when police didn't use force against the peaceful protestors, the protestors also did not try to cross over barricades or remove them. They were content to allow negotiations to continue. This clearly shows that any alleged use of force by the protestors is a direct reaction to the excessive use of force by the police, which in itself is illegal.

The Supreme Court of India must take *suo moto* cognisance of the same and inquire into whether the use of police force is in any way proportional to the perceived harm if protestors are allowed to convene in Ramlila Maidan to protest. If not, it should be declared unconstitutional and the protesting citizens should be allowed to reach the Ramlila Maidan to continue to peacefully protest until there is a resolution through mutual negotiation.

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