



Amit Sahni Judgement: The Freedom of Roads

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INTRODUCTION

The Supreme Court of India held that only in specified places could public gatherings and demonstrations expressing dissent be organised. An appeal brought by lawyer Amit Sahni for the removal of a protest organised in Shabeen Bagh, a neighbourhood of Delhi, against the Citizenship Amendment Act and the National Register of People, was permitted by the Court. The appellant argued that the demonstration blocked the public road and caused passenger significant inconvenience. In acknowledging the argument, the Court held that, in spite of the existence of the right to peaceful protest against the law, it was not possible to occupy public ways and public spaces indefinitely. It held that, pursuant to Article 19 of the Constitution, the rights to freedom of speech and dissent are subject to appropriate restrictions relating to the sovereignty and dignity of India, to public order and to the control by the police authorities concerned.

Keywords: Supreme Court, Amit Sahni, Citizenship Amendment Act



FACTS

The Citizenship (Amendment) Act 2019 was passed by the Indian Parliament in December 2019, leading to protests in various parts of the country. One such protest resulted in the closure of Delhi's Shaheen Bagh district. A written petition against the protest was filed in the High Court of Delhi on 14 January 2020, alleging that the public roads should not be allowed to be invaded in this way. The High Court ordered the respondent authorities to take the appropriate steps, but did not include any clear order or guidance and the situation remained the same.

Advocate Amit Sahni (appellant) subsequently lodged an appeal before the Supreme Court against the order of the High Court, arguing that the site of the protest should be deleted. In the meantime, interference petitions were also submitted by groups sympathetic to the demonstrators. Two interlocutors were appointed by the Supreme Court to mediate the problem with the protesters but their attempts were unsuccessful, but the site was cleared with the spread of Coronavirus. However, because of the broader implications of the case and for the sake of clarification, the Court agreed to go ahead with the appeal.

The applicants contended that, under Article 19(1) (a) and 19(1) (b) of the Constitution of India, they had an absolute right to protest both in terms of number and space. Article 19(1) (a) of the Constitution states that: "All citizens are entitled to freedom of speech and expression, and Article 19(1) (b) states that: "All citizens are entitled to assemble peacefully and without arms.

LEGAL ISSUE

The counsel for the protestors argued that Articles 19(1)(a) and 19 (1)(b) provided an absolute right to peaceful protest, irrespective of the number of people involved in the protest, or the space they occupied to exercise this right. The State could only impose 'reasonable restrictions' on this right on grounds of 'public order'.

DECISION OVERVIEW

In this case, Judge Sanjay Kishan Kaul of the Supreme Court of India authored the three-judge bench's ruling. The key question of the Court's determination was whether, pursuant to Article 19(1) (a) and 19(1) (b) of the Constitution of India, there is an absolute right to peaceful protest.



"The applicants claimed that the right to peaceful protest was absolute "in relation to space and numbers [p. 13] The Court, however, rejected the argument that "an infinite number of people will meet whenever they wish to demonstrate. The Court observed that public channels and public spaces cannot be permanently occupied [p. 17], the reason being that while Article 19 allows any person to assemble peacefully and protest against the acts or inactions of the State, certain duties and responsibilities are inherent in the right. "In addition, reiterating its position in the case of *Mazdoor Kisan Shakti Sangathan v. Union of India* (2018) 17 SCC 324], the Justices ruled that "every fundamental right, whether of a person or of a class, does not exist in isolation and must be balanced with every other contrasting right. [p. 16]

The justices were of the view that the state had to respect and promote the civil rights of the people if democracy and opposition were to go hand in hand. Likewise, the citizens had to comply with the fair restrictions imposed by the State on their rights relating to the sovereignty and dignity of India and to public order [p. 16] The Court emphasised, in order to strike a balance between the two that the protests expressing opposition had to be coordinated in specified locations [p. 17]. At this point, the Court acknowledged that the protest was not only held in an "undesignated area" in the present case, but there was an additional "public road blockage that caused serious inconvenience to commuters." The Court noted that tents on one side and a temporary library, a large model of India Gate and a large metallic three-dimensional map of India on the other had completely occupied the disputed area [p. 10]

"The Court referred here to *HimatLal K. Shah v. Commissioner of Police* [(1973) 1 SCC 227], where the Justices noted that "Streets and public parks exist primarily for other purposes and that the social interest promoted by the unlimited exercise of freedom of expression and assembly on public streets[s] must give rise to the social interest that the prohibition and regulation of speech is intended for the benefit of the social interest. But the distinction between fair control and unconstitutional exclusion is constitutional [p. 17]

The Court also addressed the paradoxical nature of technology and the internet, which, according to it, "both empowers digitally powered movements and, at the same time, contributes to their apparent weaknesses." It said that technology has allowed movements to rapidly scale up and evade censorship, but that social media networks are also fraught with danger and can lead to the development of highly polarized [p.18]. The Court noted that in Shaheen Bagh, which began as a protest against the Citizenship Amendment Act, both of these scenarios were witnessed, gaining



traction across cities to become a campaign of unity for women and their cause, but came with its fair share of chinks and caused commuters discomfort [p. 18].

The Court therefore held that the full obstruction of public ways was not appropriate and that steps should be taken by the administration to keep the areas free of intrusions and obstacles [p. 19] The Court found that, in the present case, despite the lapse of a significant period of time, the administration did not enter into any negotiations or any intervention. It claimed that the respondent authorities were accountable but failed to take effective steps [p. 20] The Court hoped that such a situation would not occur in the future and that demonstrations 'with some sympathy and debate but not allowed to get out of hand' would be subject to the legal position as mentioned above [p. 21].

CASE SUMMARY

The Supreme Court of India held that only in specified places could public gatherings and demonstrations expressing dissent be organised. An appeal brought by lawyer Amit Sahni for the removal of a protest organised in Shaheen Bagh, a neighbourhood of Delhi, against the Citizenship Amendment Act and the National Register of People, was permitted by the Court. The appellant argued that the demonstration blocked the public road and caused passengers significant inconvenience. In acknowledging the argument, the Court held that, in spite of the existence of the right to peaceful protest against the law, it was not possible to occupy public ways and public spaces indefinitely. It held that, pursuant to Article 19 of the Constitution, the rights to freedom of speech and dissent are subject to appropriate restrictions relating to the sovereignty and dignity of India, to public order and to the control by the police authorities concerned.

REFERENCE: [HTTPS://LEXFORTI.COM/LEGAL-NEWS/](https://lexforti.com/legal-news/)