

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

REVIEW PETITION (C) NO..... OF 2020

IN

CIVIL APPEAL No. 3282 OF 2020

POSITION OF THE PARTIES

REVIEW PETITION (C) No. of
2020
ARISING OUT OF CIVIL APPEAL NO.
3282 OF 2020]

IN THE
APPEAL

IN THIS
PETITION

VERSUS

1	COMMISSIONER OF POLICE POLICE HEADQUARTERS, IP ESTATE, ITO, NEW DELHI 110001	Respondent No.1	Contesting Respondent No.1
2	DCP DELHI POLICE DCP DELHI POLICE SOUTH EAST DISTRICT POCKET-C, SARITA VIHAR, NEW DELHI 110076	Respondent No.2	Contesting Respondent No.2
3	DCP TRAFFIC, DELHI POLICE DCP TRAFFIC, DELHI POLICE SOUTH EAST DISTRICT 1 SIRIFORT ROAD, SECTOR 3 SADIQ NAGAR, NEW DELHI 110049	Respondent No.3	Contesting Respondent No.3

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|---|---|--------------------|----------------------------------|
| 4 | GOVT. OF NCT OF DELHI
THROUGH CHIEF SECRETARY IP
ESTATE NEW DELHI , DISTRICT: NEW
DELHI | Respondent
No.4 | Contesting
Respondent
No.4 |
| 5 | UNION OF INDIA MINISTRY OF HOME
AFFAIRS SECRETARY
SECRETARY NORTH BLOCK NEW
DELHI | Respondent
No.5 | Contesting
Respondent
No.5 |
| 6 | AMIT SAHNI
H. NO J-1296, PALAM VIHAR OPP.
MOTHER DIARY CHOMA(62),
CARTERPURI GURGAON HARYANA
ALSO AT OFFICE ADDRESS:- D-17, LGF,
G.K.ENCLAVE -2 , DISTRICT: NEW
DELHI. 110048 | Appellant | Proforma
Respondent
No.6 |

**REVIEW PETITION UNDER ARTICLE 137 OF THE
CONSTITUTION OF INDIA READ WITH ORDER XLVII OF
SUPREME COURT RULES, 2013, SEEKING REVIEW OF
JUDGMENT DATED 07.10.2020 IN CIVIL APPEAL No. 3282
OF 2020.**

To,

THE HON'BLE CHIEF JUSTICE OF
INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:-

BRIEF FACTS

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1. The Review Petitioners are public spirited individuals who had participated in the peaceful protest demonstrations that had been carried out in Shaheen Bagh, Delhi against the Citizenship Amendment Act, 2019 (hereinafter referred to as "CAA") from the very inception of these protests in December last year, in exercise of their fundamental rights guaranteed under Article 19(1)(a) & Article 19(1)(b) of the Constitution of India.
2. That the Review Petitioner No.1 herein was one of the Applicants in the CA.No.3282/2020 and had filed IA.No.35866/2020 & 35867/2020 for intervention and directions respectively. The said IA's were disposed of by this Hon'ble Court vide order dated 26.02.2020 wherein this Hon'ble Court held as follows:

"We have put to learned counsel for the applicants that scope in these petitions is limited in character i.e. whether the persons who are aggrieved by a legislation can sit on the road in the area which is known as Shaheen Bagh. There are many unfortunate incidents which have occurred after that and that is

not the subject matter before us. We are however informed that the High Court is in seisin of the issue and it is for the High Court to take a view of that matter as it deems appropriate. We are not precluding any of the applicants seeking any of the remedy which they have in law. The applications stand disposed of."

3. This Hon'ble Court disposed off CA.No.3282/2020 vide order under review dated 07.10.2020. Hence, the present Review Petition is being filed on the following broad grounds of review:-

GROUND

A. AMBIGUOUS OBSERVATIONS MADE BY THIS HON'BLE COURT ARE LIKELY TO LEAD TO ABUSE OF AUTHORITY BY THE GOVERNMENT:

- a. Prima facie, the observations of this Hon'ble Court in the order under review appear to be giving way to an unrestricted sanction to the police to take action by misusing these observations. This is all the more troublesome when the police has, in the recent past, acted arbitrarily by beating students and protesters. The above observations, it is submitted, have clothed the Police with an arbitrary discretion to attack any peaceful protester;

- b. It is submitted that the order under review holds that in the face of protests the administration can either engage in negotiations or take appropriate action. This would lead to a situation wherein the administration would never engage in dialogue with protesters, protesting against a Government policy or action, but would instead take action against them including their prosecution.
- c. Further the order under review takes away the Constitutional protection guaranteed to peaceful protesters by holding that the administration ought to take action to keep the areas clear of encroachments or obstructions. It is pertinent to point out at this stage that the only way for citizens in a democracy, to show their dissent towards legislations, policies and other Governmental acts and omissions, is by way of peaceful protests. To put any kind of curb on this freedom to show dissent leaves the citizens with no resort whatsoever to voice their concerns.
- d. Protests of this nature ought not to be subjected to the atrocities at the hands of a muscular administration which has targeted to vulnerable citizens of the country wherever any peaceful protest have become politically inconvenient to the elected representatives in power.
- e. In a liberal democracy, questions of serious importance, such as the threat to a person's citizenship, cannot be confined to the mercy of political representatives without the protesters having a reasonable choice of

location to protest so that their voice may be heard effectively.

B. RESTRICTING PROTESTS TO DESIGNATED PLACES ALONE GOES AGAINST THE SPIRIT OF THE CONSTITUTION:

It is submitted that propositions like holding protests at 'designated places alone' coming from judicial pronouncements shall upset the very concept of dissent and protest. In case of administrative action coming up with such propositions, the Citizens still may approach the courts of law. However, in the present situation, the citizens are vulnerable and helpless. This is an obvious error on the face of it which requires review.

C. PRINCIPLES PROPOUNDED IN THE MATTER OF HIMAT LAL SHAH, RENDERED NUGATORY:

Administrative wisdom of the police cannot be given the legitimacy of extreme superiority (as reflected from the reading of the judgement) over the collective conscience of a large group of citizens protesting against governments' policies. In fact, power of such nature in favour of the Police has been negated by a Five Judge's Bench of this Hon'ble Court in *Himat Lal Shah* (supra).

It is submitted that already the strength of the mighty police administration is such that on various occasions, the same police system does not follow the judgement of this Hon'ble Court when it comes to registration of FIR in

relation to cognizable offences and keeps the complaints pending for months.

It is further pointed out that though this Hon'ble Court has relied upon the ratio of the Judgement in *Himat Lal Shah* (Supra) but the observations recorded in the judgement under the review with respect to designating places for demonstration and the action to be taken by the police for removal of the gathering in case they are not sitting at such designated places, in essence, goes against the principles laid down in the *Himat Lal Shah* (supra). The summary of principles laid down in *Himat Lal Shah* (supra) are noted herein below:-

- a) "**31.** ... in India a citizen had, before the Constitution, a right to hold meetings on public streets subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order... ." (CJ Sikri)
- b) 70. Public meeting in open spaces and public streets forms part of the tradition of our national life. In the pre-Independence days such meetings have been held in open space and public streets and the people have come to regard it as a part of their privileges and immunities. The State and the local authority have a virtual monopoly of every open space at which an outdoor meeting can be held. If, therefore, the State or Municipality can constitutionally close both its streets and its parks

entirely to public meetings, the practical result would be that it would be impossible to hold any open-air meetings in any large city. ... Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion.” (Beg J.)

- c) 87. *If we bear this definition in mind, it would appear that the public could conceivably hold a meeting at a place falling under this definition of a street. If this is so, could the Commissioner not be authorised to regulate it in the manner contemplated by Rule 7? I think he could, provided there are sufficient safeguards against misuse of such a power.” (Beg J.)*

In view of the aforementioned reasons the Five Judge Bench of this Hon’ble Court held that the unguided and excessive regulation is violative of Fundamental Rights and accordingly the rule regulating the unguided power of the Police was declared as ultra-vires/illegal. However, in terms of the observations made in the present judgement, the said unguided power of the Police to commit excesses has been given a judicial sanction. Hence this is an

apparent error of law which requires to be reviewed by this Hon'ble Court.

D. VIOLATION OF ARTICLE 19:

The Judgement under review has given primacy to one aspect of the public importance being regulation of protests while rendering another aspect of public importance i.e. right to criticise the government policies by assembling peaceably at a public place without arms and other rights guaranteed under Article 19 as nugatory. Such observations may prove to be a license in the hands of the Police to commit atrocities on legitimate voice of protest, especially the protesters coming from the vulnerable sections of the social strata. Again this aspect is an error of law apparent on the face of the record.

It is further submitted that the extent of grievance being suffered by the citizens is curtailed simply because we are now in a post-colonial era. Draconian laws made post-independence have been protested against and even struck down by this Hon'ble Court. The belowmentioned overview of few of the innumerable post-independence protests, which have led to shaping of the laws of our country, sheds light on the immense importance of protests in a democracy:

1. Chipko movement: The first Chipko action took place in April 1973 in the village of Mandal, triggered by the government's decision to allot a plot of forest area in the Alakananda valley to a sports goods company. With

encouragement from the NGO DGSS (Dasoli Gram Swarajya Sangh), the women of the village, led by activist Chandi Prasad Bhatt, went into the forest and formed a circle around the trees preventing them from being cut down. The Sangh also decided to resort to hugging the trees, as a means of non-violent protest, thereby earning the movement the name "Chipko".

2. Silent Valley protest: It was a battlefield of personal agendas, between the then prime minister Morarji Desai, the Kerala government and environmentalists back in 1973. The Silent Valley hydroelectric project was to dam the Kunthipuzha river, submerging the entire biosphere reserve and destroying its four-million-year-old rainforests. In 1980, the MGK Menon Committee set up to review the project, came out with a recommendation to scrap it. This grassroots movement became the bedrock of Indian environmental activism.

3. Assam movement: The Assam movement (1979-1985) was a popular movement against undocumented immigrants in Assam. The movement, led by All Assam Students Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP), developed a programme of protests and demonstration to compel the government to identify and expel illegal immigrants.

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4. Jungle Bachao Andolan: The tribals of Singhbhum district of Bihar rose up in protest when the government decided to replace the natural sal forests with highly-priced teak, a move that was termed "a greed game and political populism" in the 1980s. The Jungle Bachao Andolan spread to Jharkhand and Odisha soon.
5. Gokak agitation: The Gokak agitation was a successful language right agitation in the 1980s that fought for the first-language status of Kannada in Karnataka. It was named after the committee headed by VK Gokak that had recommended primacy to Kannada in state schools.
6. Great Bombay textile strike: It was called on January 18, 1982, by the mill workers of Bombay under trade union leader Dutta Samant. The purpose of the strike was to obtain bonus and increase in wages. Nearly 2,50,000 workers and more than 50 textile mills went on strike in Bombay.
7. Narmada Bachao Andolan: The Narmada Bachao Andolan (NBA), launched in 1989 by Medha Patkar, is a movement against the development of the Narmada Valley Project. It was estimated that the reservoir would submerge 40,000 hectares of land and 250 villages, disrupt downstream fisheries and cause ecological damage. The NBA started in the mid- and late-1980s, initially as a protest against inadequate rehabilitation and resettlement

options for affected villagers and later for the preservation of the environment and ecosystems of the valley.

8. Mandal protests: In September 1990, Rajeev Goswami, a Delhi University student, set himself on fire, sustaining 50 per cent burns in protest of the Mandal Commission report, which recommended 27 per cent reservation for OBC candidates at all levels of its services. After this, youth in several cities and towns near Delhi set themselves on fire. Other forms of protest included bandhs, hartals and dharnas.

9. Namantar andolan: It was a Dalit movement to change the name of the Marathwada University in Aurangabad, Maharashtra to Dr BR Ambedkar University. It achieved a measure of success in 1994. The movement became a part of Dalit literature.

10. Jessica Lal case: Jessica Lal's case was pulled out of oblivion owing to consolidated civil society action. The model from New Delhi, working as a celebrity barmaid at a crowded socialite party was shot dead at around 2am on April 30, 1999. Dozens of witnesses pointed to Siddharth Vashisht, son of Venod Sharma, an influential Congress-nominated MP from Haryana, as the murderer. In the ensuing trial, Vashisht commonly known as Manu Sharma and a number of others were acquitted on February 21, 2006. Following intense media and public pressure, the

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prosecution appealed and the Delhi High Court conducted proceedings on a fast track with daily hearings conducted over 25 days.

11. Irom Sharmila's protests: Irom Sharmila was 28 at the time of the Malom Massacre and began a fast-in protest on November 2, 2000. Her primary demand has been the repeal of the Armed Forces (Special Powers) Act [AFSPA]. She vowed not to eat, drink, comb her hair or look in a mirror until the act was struck down. She holds the record for adhering to her fast for the longest time.

12. Dalit agitation in Maharashtra: There was resentment among Dalits in Maharashtra, owing to the murder of four Dalits, allegedly by a mob of Kunbis in Kherlanji village in September 2006. On November 28, 2006, the brewing resentment among the Dalit community in Maharashtra took the form of violent protests, when a statue of Dalit icon BR Ambedkar was desecrated by a vandal in Kanpur. On November 30, 2006, violent protests took place in several places in Maharashtra. The Dalit protestors set three trains on fire, damaged over 100 buses and clashed with police.

13. Anti-reservation protests: The 2006 Indian anti-reservation protests was in opposition to the decision of the Union government of India, led by the Congress to implement reservations for the other backward classes

(OBCs) in central and private institutes of higher education.

14. Hartal in Kerala: The state treasury of Kerala has suffered losses of thousands of millions of rupees, thanks to the state staging over 100 hartals annually. A record total of 223 hartals were observed in 2006, resulting in a revenue loss of over Rs 2,000 crore. There were around 363 "hartals", called by different political parties, between 2005 and 2012.

15. Nandigram and Singur protests in West Bengal: In January 2007, a movement led by Bhumi Uchhed Pratirodh Committee (BUPC) against the notification for acquiring land in Nandigram and Khejuri in East Midnapore district, for a special economic zone (SEZ) resulted in an agrarian agitation as protesters dug roads and damaged bridges, practically cutting off access to Nandigram. These protests culminated in police firing on March 14, which led to the death of 14 villagers, leaving several injured. It was also alleged that the protesters were tortured by the police.

Protests erupted in Singur in West Bengal in the late 2000s against the alleged forcible acquisition of 400 acres of land for the proposed Tata Nano small car project. The protests were led by Trinamool Congress chief Mamata Banerjee and supported by several Kolkata-based

intellectuals like Aparna Sen, Kaushik Sen and Suvaprasanna. As a result of the protests the Tatas withdrew and shifted the project to Sanand in Gujarat.

17. Zero-rupee note: In 2007, a non-profit organisation called 5th Pillar unveiled a new means for Indians to register their refusal to participate in bribery — the "zero-rupee note". Closely patterned after the nation's 50-rupee notes, these documents instead included anti-corruption slogans - "Eliminate corruption at all levels" and "I promise to neither accept nor give bribe". These zero-rupee notes were designed for use by Indian citizens who have been requested to pay bribes in order to obtain services that are legally free or who are hit with illicit surcharges on such routine government transactions as obtaining a driver's licence.

18. Net neutrality: Workers of Free Software Foundation in Tamil Nadu (FSFT) on April 21, 2008, protested for the cause of net neutrality at Edward Elliot's Beach in Chennai. With the Telecom Regulatory Authority of India (TRAI) deadline on taking responses for the issue coming to an end on April 24, the protesters wanted to create awareness about net neutrality among average internet users.

19. Protests over land acquisition: The government of Uttar Pradesh faced protests against its proposed enforced land

acquisition in 2011. These protests were centred on the village of Bhatta Parsaul in Greater Noida and have resulted in sporadic incidents of violence since January of that year. In August 2010, there were protests against the state government in Delhi and these had resulted in three deaths.

20. People's movement against nuclear energy: The People's Movement Against Nuclear Energy is an anti-nuclear power group in Tamil Nadu, founded by SP Udayakumar. Since September 2011, the aim of the group is to close the Kudankulam nuclear power plant site and to preserve the largely untouched coastal landscape, as well as educate locals about nuclear power.

21. Anna Hazare's fight against corruption: Anti-corruption activist Anna Hazare began a hunger strike at the Jantar Mantar in New Delhi on April 5, 2011 in order to persuade the government to enact a stringent anti-corruption law. The Lokpal Bill was premised on the institution of an ombudsman with the power to deal with corruption in public places. On April 9, 2011, Hazare ended the fast when his demands were accepted by the government.

22. Innocence of Muslims: On September 14, 2012, the US consulate in Chennai was attacked in response to a YouTube trailer titled "Innocence of Muslims". Muslim protesters threw stones and shoes at the building. This

event was part of a series of attacks that went on from September 11, 2012 to September 29, 2014. As a direct result of it, about 25 people suffered minor injuries.

23. Jal satyagraha: Fifty one villagers stood in neck-deep water as they got covered with rashes and their skin peeled - for 17 days, forcing the Madhya Pradesh government to accept their demands. Chief Minister Shivraj Singh Chouhan agreed on September 10, 2012 to lower the water level in the Omkareshwar dam, one of the key demands of the protesters in Ghogalgaon village of the state's Khandwa district.

24. Hike in house tax: Activists of Public Ekta Manch took out a mock funeral procession of the Allahabad Municipal Corporation administration in 2012 to register their protest against the hike in house tax. They shouted slogans against the AMC authorities and demanded rollback of the hike in house tax.

25. Tree protest: Greenpeace campaigner Brikesh Singh lived on a tree since September 1, 2012 for close to a month to protest destruction of biodiversity and displacement of thousands of forest-dependent communities owing to expansion of coal mining into forest areas. It acquired political mileage in the context of the 11th United Nations Convention on Biological Diversity (CBD) slated to be held in Hyderabad.

26. Nirbhaya protests: Public protests took place in the capital on 21 December, 2012, five days after the brutal gangrape of a young girl on a bus. Crowds gathered in large numbers at India Gate and Raisina Hill. Thousands of protesters clashed with police and Rapid Action Force units. Demonstrators were baton charged, shot with water cannons and tear gas shells, and even detained.

27. Napkin protests: Red Alert: You've Got a Napkin! was launched in 2014 after news spread of women in a Kochi factory being forcefully strip searched because a sanitary napkin was discovered in the restroom. The protest involved sending used and unused sanitary napkins to the officials of Asma Rubber Private Limited in the Kochi, where the strip search was held.

28. Protests against Essar's coal mining project: A dozen professional highrises affiliated to Greenpeace protested against Essar's coal mining project in Madhya Pradesh by unfurling a giant 36×72-foot banner on the building's facade in 2014. As the company struggled to get the banner, which read "We kill forests: Essar", a dozen Greenpeace activists dressed in tiger costumes hung on to ropes for over five hours.

29. Protests over Nido Tania death: On January 29, 2014, Nido Tania, a 20-year-old student from Arunachal Pradesh

was murdered in the Lajpat Nagar area of New Delhi, triggering widespread protests. The incident attracted widespread criticism from political parties and activists.

30. Telangana protests: This movement resulted in the new state of Telangana, carved from the existing state of Andhra Pradesh. The proposed new state corresponds to the Telugu-speaking portions of the erstwhile princely state of Hyderabad. On February 18, 2014, Lok Sabha passed the bill with voice majority. Subsequently, the bill was passed by Rajya Sabha on February 20, 2014.

31. Jadavpur University protests: The Hakkolorob movement is an ongoing series of protests by the students of Jadavpur University in Kolkata that began on September 3, 2014 owing to the laxity in the investigation of an alleged case of molestation on campus and the police brutality on unarmed students taking part in a non-violent sit-in demonstration.

32. Gorkhaland agitation: Led by the Gorkhas of Nepali origin in Dooars of northern West Bengal, the Gorkhaland agitation started off with the demand for a separate state, based on ethno-linguistic rights. After multiple reconciliations, the agitation sparked off in 2007 again and the demand for a separate Gorkhaland remains till date.

E. ORDER UNDER REVIEW PASSED WITHOUT GRANTING AN EFFECTIVE HEARING TO THE PROTESTERS WHO HAD PARTICIPATED IN THE PROTESTS THAT WERE A SUBJECT MATTER THEREOF:

The Petitioner in the Review Application amongst many other peaceful protesters was protesting against NPR/NRC and the discriminatory CAA. None of these protesters were made party to the impugned proceedings. Except for the brief interaction with the Interlocutors appointed by this Hon'ble Court, neither the present Petitioner nor any of the protesters got the opportunity to make submissions in the proceedings where this Hon'ble Court in this present judgement has held 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.*"

It is submitted that this Hon'ble Court has held in *Mazdoor Kisan Shakti Sangathan* (2018) 17 SCC 324 that right to protest, apart from being recognised as a Fundamental Right, "*is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of marginalised and poorly represented minorities*". In this context it is submitted that the very principle of balancing different fundamental rights by completely segregating the Right of Protestors to designated and abandoned places for protest makes the right under Article 19 completely ineffective and

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meaningless; more so when majoritarian politics takes a path to persecute marginalised minorities of the country's large population. This principle of "*balancing fundamental rights*", in the context as it has been stated in the judgement under review, requires reconsideration by this Hon'ble Court.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to;

- a) Review the judgment and final order dated 07.10.2020 passed by this Hon'ble Court in Civil Appeal No. 3282/2020 (Arising out of SLP (C) Nos. 2456 of 2020);
- b) Pass any other order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY:

NEW DELHI

Filed by

DRAWN ON: 04.11.2020
FILED ON: 05.11.2020

[KABIR DIXIT]
Advocate for the Petitioner(s)