

**Case Commentary - AMIT SAHNI V.  
COMMISSIONER OF POLICE AND ORS.**

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**Abstract**

In Amit Sahni v. Commissioner of Police and others, also known as the Shaheen Bagh case, the Supreme Court observed that the right comes with certain obligations and duties, so as to balance the fundamental rights with that of the public rights. In which the Court directed that the protestors against the Citizenship (Amendment Act), 2019

could not block public ways indefinitely, which prejudices the safety and security of local residents. Since the Constitution itself clarifies that the fundamental rights are subjected to reasonable restrictions in the interest of public order, security of the State, etc. under Article 19 (2) and (3).

The Shaheen Bagh case shows how the judiciary plays an important role in upholding the rule of law. Since an independent judiciary is the bedrock of democracy, the Supreme Court's decisions in matters tangled with political elements not only act as binding precedents but also enable people to believe and trust the judiciary to settle their issues wisely, which is a core principle of democracy. Thus, the paper aims to analyze the Supreme Court's verdict in the case of Amit Sahni v. Commissioner of Police.

**Key words:** Citizenship Amendment Act, Shaheen Bagh, right to protest, Supreme Court, public order

<b>Jurisdiction</b>	Supreme Court of India
<b>Quorum</b>	Hon'ble Mr. Justice Sanjay Kishan Kaul,  Hon'ble Mr. Justice Krishna Murari &  Hon'ble Mr. Justice Aniruddha Bose
<b>Author of the judgment</b>	Hon'ble Mr. Justice Sanjay Kishan Kaul
<b>Date of the order</b>	7-10-2020
<b>Appellant</b>	Amit Sahni
<b>Respondent</b>	Commissioner of Police and others

<b>Counsel for Appellant</b>	Petitioner-in-Person
<b>Counsel for Respondent</b>	Mr. Mansoor Ali, Advocate on Record
<b>Acts and provisions involved</b>	<p>I. Indian Constitution, 1950</p> <ul style="list-style-type: none"> <li>• Article 14</li> <li>• Article 19 (1) (a), (b) &amp; (d)</li> <li>• Article 19 (2) and (3)</li> <li>• Article 21</li> </ul> <p>II. The Citizenship (Amendment) Act, 2019</p>

country is evident that

## I. IN

### INTRODUCTION

The tenets of democracy, which depend on citizen engagement to foster good governance, are the fundamental rights. The citizens have the fundamental right to speech and expression and also the right to assemble peacefully without arms to raise their voices and opinions against societal matters that concern people's well-being. It is pertinent to point out that the journey of India's independence began with a non-violent protest, and even now the people protest for the right cause.

But the fundamental rights are subject to reasonable restrictions so as to prevent the misuse of these rights arbitrarily. And the same was observed by the Supreme Court in the case of **Amit Sahni v. Commissioner of Police and others**, also known as the **Shaheen Bagh case**, in which the protest was carried out to oppose the Citizenship Amendment Act, 2019 and blocked access to public roads and affected the safety of commuters. The Supreme Court's decision to balance the fundamental rights with those of the public rights to ensure peace and harmony in the

the judiciary plays a significant role in upholding the spirit of democracy.

Hence this paper will analyze the decision of the Apex Court through the lens of Constitutional jurisprudence and conclude with that of its impact on discussing the current scenario on protest

## II. FACTS AND ISSUES

- A. The citizens protested against the Citizenship Amendment Act (hereinafter the CAA) and the National Register of Citizens as discriminatory. A women-led sit-in was held protest in Shaheen Bagh, Delhi, which resulted in the closure of the Kalindi Kunji-Shaheen Bagh Stretch and Okhla underpass on December 15, 2019 onwards. Initially, the Writ Petition (Civil) No. 429/2020 was filed before the Delhi High Court and was disposed of on the same day itself. But the High Court directed the police authorities to exercise their power wisely to handle agitations and control traffic to balance public interest on the one hand and law and order on the other.
- B. The Petitioner approached the Supreme Court as the situation remained the same despite the High Court's direction. The Apex Court appointed two interlocutors, namely Mr. Sanjay R. Hedge and

Ms. Sadhana Ramachandran, to mediate with the protestors at the site to understand their demands properly.

- C. The interlocutors submitted their 1<sup>st</sup> report on February 2, 2020, which reflected that the conversation with the protestors on site was different from what the media had projected. Then, the 2<sup>nd</sup> report submitted on March 22, 2020, stated the protest lacked able leadership and the protestors were unable to understand the seriousness of the pandemic and weren't willing to relocate to another area to continue their protest<sup>8</sup>.
- D. Thus, the present case discusses whether the protestors can occupy public places indefinitely or if their rights are subjected to restrictions.

### III. ARGUMENTS IN FAVOUR OF APPELLANT

- A. The Appellant claim that the Constitution guarantees the citizens the right to express their dissatisfaction with the legislature's conduct and protest against their policies and actions for the well being of people, under Article 19 (1) (a) & (b), respectively.
- B. Since the freedoms guaranteed certain basic rights to the citizens to involve their participation in the affairs of the government and directed the State to comply with its duties and responsibilities for a welfare state. Thus, Article 19 promotes democratic values in the country.
- C. The CAA, a discriminatory one for the Muslims, is a reasonable issue that has to be communicated to the State so that the life, liberty, and freedoms of the people are protected by law as envisaged under Articles 14, 19 (1) (a) & (b), and 21 for the smooth functioning of democracy.
- D. Thus, the citizens have the right to oppose the CAA, which is prejudiced against the Muslims in the country.

### IV. ARGUMENTS IN FAVOUR OF RESPONDENT

- A. The Respondents claim that the fundamental rights guaranteed are not absolute in nature as these rights are subjected to reasonable restrictions as provided under clauses (2) & (3) of Article 19.
- B. The restrictions imposed are justified so as to achieve sovereignty, integrity, security, public order, etc., in the country, and the restrictions should not be arbitrary or excessive in nature. A reasonable restriction is permissible within the constitutional limits, that is, in the interest of public order.
- C. The Respondent claims that protestors blocked the public streets, roads, and ways, which caused inconvenience to the commuters, and the reports of the interlocutors state that the protestors lacked leadership because of which other groups intervened to disrupt the safety and security of the commuters, and along with the fear of the rapid spread of coronavirus.
- D. Thus, the freedom to protest shall be limited to maintaining law and order in the area.

### V. JUDGMENT

- A. The Supreme Court referred the decision of Himat Lal K. Shah v. Commissioner of Police, Ahmedabad & Anr.<sup>9</sup> to direct the State authorities to handle the situation to prevent agitation by allowing protest in a designated places to maintain public order in the locality, and also to prevent encroachment of public ways indefinitely, as
- ***"Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone"***<sup>10</sup>.
- B. The court also directed the concerned authorities to take into account the traffic, human safety and security, and also public tranquility before allowing or disallowing public meetings and also emphasized that the fundamental right to protest comes along with an obligation to fulfill

<sup>8</sup> SC Civil Appeal No. 3282 of 2020 para 9-10 at 4-5

<sup>9</sup> (1973) 1 SCC 227

<sup>10</sup> *Supra* note 1 para 17 at 10

their duties, which is an important tool in democracy, on referring the case of *Mazdoor Kisan Shakti Sangathan v. Union of India & Anr.*<sup>11</sup>, as

- *"...each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with every other contrasting right. It was in this respect, that in this case, an attempt was made by us to reach a solution where the rights of protestors were to be balanced with that of commuters"*<sup>12</sup>

## VI. ANALYSIS OF THE JUDGMENT

- A. The Supreme Court observed that the right comes along with certain obligations and duties, such that the citizens shall protest peacefully by limiting at certain places so as to prevent inconvenience to the commuters, on keeping in mind the rapid spread of coronavirus. Since the State has an obligation to secure the welfare of the people, that is, health, safety and security of public.
- B. But the *ratio decidendi* is the fundamental principle, which addresses the question of law and reasons for the decisions to bind as precedents. And in the present case, neither issues nor question of law were framed or addressed, and thus the judgment cannot have a binding effect.
- C. The bench didn't maintain transparency in its proceedings by publishing the interlocutor's report in the public domain, so that the public could know the true intent and demands of the protestors.
- D. It directs the authorities to allow protest at designated places whereby curtailing their freedom of movement as envisaged under Article 19 (1) (d)
- E. The judgment states that the public roads cannot be encroached upon in this manner and requires the authorities to allow dissent at designated places.

Here, judiciary's main concern is to prevent inconvenience to the commuters by directing the protest to take place at designated place and time. But it remains silent on who is the concerned authority to decide the duration and place of the protest? This unsettled question would be arbitrarily used by the authorities to settle the dissent in favor of the political atmosphere.

- F. The Supreme Court the case of *Anuradha Bhasin v. Union Of India*<sup>13</sup> had made a clear distinction between "law and order" and "public order" and said there was a higher threshold for activation of restrictions under public order. But in the present case the court states that the dissent should not cause inconvenience to the public, and mere inconvenience cannot be a reasonable threat to public order, which the Court didn't discuss briefly.
- G. Thus the judgment didn't address the discrepancies with proper guidelines, so that the administrators could handle the situations properly in future.

## VII. CONCLUSION

The judiciary is one of the pillars of the Constitution, it renders decisions fairly, independently, and impartially to promote social, economic, and political justice, as mentioned in the Preamble of the Constitution. The judiciary's intervention is much needed in cases involving political elements, and the Supreme Court's decision in the *Shaheen Bagh* case is inadequate. Most importantly, it lacks *ratio decidendi*, which creates room for ambiguity for the lower courts to deal with similar cases like this, and it would give birth to another incident of *Shaheen bagh* protest in the future, as evident from the farmers' protest against the three farm laws from 2020-2021, in which the Supreme Court said that the farmers can protest peacefully without any impediment and

<sup>11</sup> (2018) 17 SCC 324

<sup>12</sup> *Supra* note 1 para 16 at 10

<sup>13</sup> W.P (Civil) No. 1031 of 2019

called the Constitutional Committee to resolve the issue by refusing to interfere with the matter<sup>14</sup>

Even though the Shaheen Bagh decision is subjected to criticism for failing to give proper guidelines to deal future incidents unlike the Supreme Court's proactive decisions in the Vishaka case<sup>15</sup>, Nirbhaya case<sup>16</sup> and Kesavanandha Bharati case<sup>17</sup>, etc., the court at least mentioned that the fundamental right comes along with obligation to perform duties vigilantly. Hence, it's now the responsibility of the State to up come with regulations to ensure the demonstrations which restrict the rights reasonably so that the general public are not affected.

### VIII. RELATED CASE LAWS

1. Beenu Rawat v. Union of India, writ petition (civil) no.446 of 2013.
2. Govt. of Tamil Nadu & ors. v. P. Ayyakannu W.P. No. 8652 of 2018
3. Anita Thakur & ors. v. Govt. of Jammu and Kashmir & ors. WP (Criminal) No. 118 of 2007
4. The Home Secretary v. Era Selvam W.A. Nos. 842 and 843 of 2013
5. S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC
6. Rama Muthuramalinga,, State Propaganda Committee Member, Thanthai Periyar Dravidar Kazhagam, Tiruvarur District v. The Deputy Superintendent of Police, Mannargudi, Tiruvarur District and others, 2004 (5) CTC 554
7. Anuradha Bhasin v. Union of India W.P (Civil) No. 1031/2019

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7. Prachi Bhardwaj, *Shaheen Bagh Protests | Democracy and dissent go hand in hand but public spaces cannot be occupied indefinitely for expressing dissent: SC*, SCC BLOG ((Nov. 6, 2022 15:04PM ) <https://www.sconline.com/blog/post/2020/10/07/shah>

<sup>14</sup> Rakesh Vaishnav & ors. v. Union of India & ors. AIR 2020 SC 18

<sup>15</sup> Vishaka & ors. v. State of Rajasthan & ors. (1997) 6 SCC 241

<sup>16</sup> Mukesh & ors v. State for NCT of Delhi & ors. (2017) 6 SCC 1

<sup>17</sup> Kesavanandha Bharati v. State of Kerala AIR 1973 SC 1461

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