

RIGHT TO PEACEFUL ASSEMBLY IN USA

Ms. Jyoti Garg, Dept. of Law

Dr. C.V. Raman University, Bilaspur

ABSTRACT

The freedom of right to assembly has been at the heart of some of the most important social movements in American history: antebellum abolitionism, women's suffrage in the nineteenth and twentieth centuries, the labor movement in the Progressive Era and after the New Deal, and the Civil Rights movement. The "right of peaceable assembly" is described as part of "the Constitutional substitute for revolution" by Abraham Lincoln.

Keywords: Right to Assembly, USA.

INTRODUCTION

The Constitution of USA, which was adopted on 17 September, 1787, is the world's second oldest written constitution that is still in use. The text of the Constitution in itself did not entail the individual rights, liberties and freedoms but are found in the 10 amendments to the Constitution that altogether form the Bill of Rights that came into effect 15 December 1791. Thus, the fundamental source of protection of individual rights in USA is the Bill of Rights.

RIGHT TO PEACEFUL ASSEMBLY IN USA

The First Amendment to the United States Constitution prohibits the United States Congress from enacting legislation that would abridge the right of the people to assemble peaceably. Freedom of assembly is cognate to the right of free speech and free press and is „equally fundamental. Although, this freedom of assembly is not protected by the First Amendment only for the purpose of petitioning the Government for redress. This extends to assembly for the purpose of any lawful discussions, including free political discussion “to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means”, without incitement to violence or Crime.”[1]

The Fourteenth Amendment to the United States Constitution makes this prohibition applicable to state governments. The Supreme Court of the United States has held that the First Amendment protects the right to conduct a peaceful public assembly. However, the right to assemble is not absolute. Such time, place, and manner restrictions can take the form of requirements to obtain a permit for an assembly. The Supreme Court has held that it is constitutionally permissible for the government to require that a permit for an assembly be obtained in advance. The government can also make special regulations that impose additional requirements for assemblies that take place near major public events.

In the United States, the organizer of a public assembly must typically apply for and obtain a permit in advance from the local police department or other local governmental body. Applications for permits usually require, at a minimum, information about the specific date, time, and location of the proposed assembly, and may require a great deal more information. Localities can, within the boundaries established by Supreme Court decisions interpreting the First Amendment right to assemble peaceably, impose additional requirements for permit applications, such as information about the organizer of the assembly and specific details about how the assembly is to be conducted. The First Amendment does not provide the right to conduct an assembly at which there is a clear and present danger of riot, disorder, or interference with traffic on public streets, or other immediate threat to public safety or order. Statutes that prohibit people from assembling and using force or violence to accomplish unlawful purposes are permissible under the First Amendment.[2]

Mass social protests in the United States have at times encountered abusive policing and public disparagement. Some of the police responses to the Occupy Wall Street protests in New York City in 2011 appeared to violate domestic and international law.³⁸ Although the Constitution guarantees the right to assembly, recently two human rights experts, Mr. Mania Kiwi and Mr. David Kaye, in their Special Rapporteur on freedom of peaceful assembly and of association, called the lawyers in the United States to refrain from making “undemocratic” anti-protest bill which criminalizes the rights to freedom of peaceful assembly and expression.

In 2008, Freedom house, also reported that the state of right to freedom of peaceful assembly and association was declining, that repressive governments were increasing restrictions on these rights, and that, in doing so such governments were violating international human rights standards. The UN experts: Mr. Maina Kiai, Special Rapporteur on freedom of peaceful assembly and of

association, took up his functions as the first Special Rapporteur on the rights to freedom of peaceful assembly and of association in May 2011. He is appointed in his personal capacity as an independent expert by the UN Human Rights Council. Mr. David Kaye (USA) was appointed as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in August 2014 by the United Nations Human Rights Council. “Since January 2017, a number of undemocratic bills have been proposed in state legislatures with the purpose or effect of criminalizing peaceful protests,” the experts said. “The bills, if enacted into law, would severely infringe upon the exercise of the rights to freedom of expression and freedom of peaceful assembly in ways that are incompatible with US. Obligations under international human rights law and with First Amendment protections. The trend also threatens to jeopardize one of the United States’ constitutional pillars: free speech.” Concerns about the implication of these bills were raised by the experts in a communication sent to the US authorities on 27 March 2017. The bills come amid a wave of US protests over the past few years which have intensified in recent months. “From the Black Lives Matter movement, to the environmental and Native American movements in opposition to the Dakota Access oil pipeline, and the Women’s Marches, individuals and organizations across society have mobilized in peaceful protests, as it is their right under international human rights law and US law,” the experts said. “These state bills, with their criminalization of assemblies, enhanced penalties and general stigmatization of protesters, are designed to discourage the exercise of these fundamental rights.” In Indiana, Senate Bill No. 285 would allow law enforcement officials to “use any means necessary to clear the roads of people unlawfully obstructing vehicular traffic”. Several bills, such as those proposed in Arkansas, Florida, Georgia, Indiana, Iowa, Michigan, Minnesota and Missouri, disproportionately criminalize protestors for “obstructing traffic”. One Missouri bill proposes a prison term of up to seven years for “unlawful obstruction of traffic”. Other bills in Florida and Tennessee would have the effect of exempting drivers from liability if they accidentally hit and even kill a pedestrian participating in assemblies. Bills in Florida, Indiana, Minnesota and Missouri refer to what they consider “unlawful” or unauthorized assemblies, and in Minnesota and North Carolina, individuals could be liable for the total public cost of ending “unlawful assemblies”. In Minnesota, the proposed bill could have the effect of criminalizing peaceful protesters for participating in demonstrations that turn violent or result in property damage – even if those protesters did not personally participate in the violence or property damage. In Colorado, North Dakota and

Oklahoma, several bills proposed as a response to the protests organized by activists and opponents of the Dakota Access Pipeline in North Dakota, would have a chilling effect on environmental protestors.[3]

CONCLUSION

The experts took particular issue with the characterization in some bills of protests being “unlawful” or “violent”. The experts said that there nothing exists like violent protests but only violent protestors, who are to be dealt individually and appropriately by the law enforcement. If one person is resorting to violence then that does not mean that the right to freedom of peaceful assembly by the other protestors be taken away. The right is not a collective right; but it is held by each person, individually. “Peaceful assembly,” they added, “is a fundamental right, not a privilege, and the government has no business imposing a general requirement that people get permission before exercising that right.” The experts emphasized that legislators should be mindful of the important role that the right to freedom of peaceful assembly has played in the history of American democracy and the fight for civil rights. The experts concluded in their report by asking the US authorities, at the federal and state level, from refraining to enact such legislations that are restricting and hindering to exercise the rights to freedom of peaceful assembly.

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