

LEGALITY OF BANDH AND HARTAL

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INTRODUCTION

Bandh and Hartal are most frequent agitations and civil disobedience in India. They are considered as popular methods to express dissent, against the government's actions so as to attract the government to certain demands of an organization or a group or community and force the government to give in to the demands put forward.

Democracy offers certain rights to show the anger, distress of the society, protest is an integral part of a democratic system as protest is directly linked to the expression of dissatisfaction against the state or any other entity. Problems arise when this right infringes rights of other citizens who want to go ahead with their normal routine. The law needs to strike a balance between protecting right of protest as well as rights of citizens who want normal life and activities to continue notwithstanding bandhs and similar protests.

BANDH and HARTAL

While referring to a protest, the terms BANDH and HARTAL are often used interchangeably. bandh is a Hindi word which translates to 'shutdown' or 'close'. There exists an element of force and coercion in case of Bandh. On the other hand the Hartal is a peaceful way of protest which involves voluntary cessation of work and closure of shops and commercial establishments as a mark of protest.

STRIKE means a cessation of work by a body persons employed in any industry acting in combination or a concerned refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;. Strike is associated with industrial disputes and is governed by labour laws such as the Industrial Dispute Act, 1947. The law on strikes and lockouts are well defined in form of statutes, subordinate legislations and judicial precedents.

History of Bandh and Hartal

It was a popular method of civil disobedience which was advocated by Mahatama Gandhi. Indian courts too recognized that hartal in the truest sense of term is peaceful and completely

voluntary.

This definitely falls within the category of peaceful protests as Article 19 1 (a) of the Constitution of India, 1950 gives citizens the right to freedom of speech and expression. Peaceful demonstrations too are legal and is enshrined under Article 19 (1) (b) of the Constitution of India, 1950. The Supreme Court of India held in the case **Ram Bahadur Rai vs The State of Bihar & Ors**, that peaceful protests and freedom to voice out contrary opinions are wholesome weapons in a democracy and such a right can be taken away only for a constitutional purpose such as public order.

Like hartal, Bandh is not a peaceful demonstration. There is an element of force, fear and coercion which instills fear in the minds of citizens. Public order and law and order is threatened as well. Courts have not only held that causing a bandh is not a fundamental right but is in fact unconstitutional. Constitutionality of Bandh: Bandh and protests of like nature have resulted in loss of lives, irreparable harm to public property, economic loss, etc. Kerala has witnessed numerous such bandhs and violent protests which had severe effects on the economy and public order.

The state contended that there exists a right to be peaceful protest and the authorities always take steps to prevent violence.

Punishments

The Indian Penal Code, 1860 has recognized these offences and has also prescribed punishments for the same . The Prevention of Damage to Public Property Act, 1984 is a special legislation which deals with mischief causing harm to public property. The Act prescribes punishments varying in severity based on mode of committing mischief such as by fire and based on type of property damaged. The Act also lays down that no person who is in custody shall be released on bail or on his own bond until the prosecution has been given an opportunity to oppose the application for release. The Code of Criminal Procedure, 1973 enlists and empowers police to take certain steps necessary to maintain public order, tranquility, deal with unlawful assemblies and to take steps to prevent commission of cognizable offences. This is a crucial legislation which gives vast powers and discretion to the police and other authorities to deal with law and order problems associated with bandhs and similar protests.

Firstly, **Section 149 of the Code of Criminal Procedure, 1973** empowers a police officer to interpose to prevent commission of a cognizable offence.

Section 151 of the Code of Criminal Procedure, 1973 empowers the police to arrest a person who is designing to commit a cognizable offence in order to prevent the commission of the offence.

While the arrest can be made without a warrant and orders from a magistrate, this power can be exercised only when the commission of the offence cannot be otherwise prevented. Also, detention beyond the period of twenty four hours must be authorized according to the relevant provisions of the Code of Criminal Procedure, 1973.

Section 152 of the Code of Criminal Procedure, 1973 empowers a police officer to interpose for the purpose of preventing harm to public property.

There is also the provision that certain directions may issued by the chief secretary to District Collectors and Police regarding steps to be taken to maintain Law and Order during Bandh.

The directions given are for the sake to handle the situations and could not take the place of a special law which enlists offences and prescribed enhanced penalties for the offences committed.

Due to lack of an efficient legislation, to back the direction of Bandh as illegal by Supreme Court, there was no adequate deterrence.

What amounts to bandh and hartal

When bandhs continued despite being declared as unconstitutional and illegal, few aggrieved citizens and organizations approached High Courts, seeking issuance of mandamus to police and other authorities to take steps to prevent bandhs. One such case is Kerala **Vyapari Vavasayi Ekopana Samithi v. State of Kerala**. The petitioner approached the Kerala High Court seeking relief of Kerala Vyapari Vavasayi Ekopana Samithi v. State of Kerala, AIR 2000 Ker 389. declaration that stopping of plying of vehicles amounted to bandh, calling of hartal amounted to bandh as it was had the same effect, direction to newspapers and electronic media not to report calls for bandh and hartals, direction to police department for taking steps to prevent paralysis of normal life during bandh and hartals, direction to the Election Commission to cancel the registration of political parties who call for and organize bandh.

While the Court refused to declare hartals unconstitutional as it was already decided by the Supreme Court earlier, The Court took serious note of the effects of bandh and similar protests and observed:

“Surely, indulging in destruction of public and private property and causing loss of production and holding the society to ransom in the name of staging a hartal cannot be considered to be a constitutional act based on rights conferred by the very Constitution. The expenditure to be incurred by the executive to mobilize sufficient force to meet every hartal call cannot also be ignored. No party or organization can have a right to compel incurring of such nonproductive expenditure merely because they feel like calling for a hartal. There is no such freedom in anyone guaranteed by the Constitution. We are of the view that respondents 3 and 4 cannot claim any such right and that too in a developing country like India. Nor have they a right to curtail the individual freedom of those who do not sympathize with their cause.”

The Court examined the directions issued by the Director General of Police and Chief Secretary to the subordinates, and concluded that while the implementation of directions would significantly reduce the number of bandhs and its effects, absence of will power and lack of effective and qualitative enforcement by the concerned authorities could not be ignored. The Court proceeded to issue mandamus to the police and district administration to follow the directions issued by the D.G.P and Chief Secretary. This included setting up of dedicated control rooms during bandh and hartals, special mobile strike force to deal with violence, protection to public vehicles, filing of charge sheet as soon as possible, etc.

The Court also recognized the power of the Election Commission to cancel the registration of political parties which call for or organize bandh and illegal hartals, based on facts of the individual case. The Court also recognized the power of the State to sue organizations or individuals for damages for causing damage to public properties.

The State was reminded of its obligation to curb bandhs with an iron hand by the Supreme Court of India in the case **James Martin v. State of Kerala** in the year 2003. The Court observed that: "The question whether bandh or hartal or strike has any legal sanctity is of little consequence in such matters. All the more so when the days are such where even law-enforcing authorities/those in power also precipitate to gain political advantage at the risk and cost of their opponents. Unless such acts are controlled with iron hands, innocent citizens are bound to suffer and they shall be the victims of the highhanded acts of some fanatics with

queer notions of 5 Communist Party of **India v. Bharath Kumar &ors**, A.I.R.1998 SC 184. 6 James Martin v. State of Kerala, (2004) 2 SCC 203.

." In the year 2004, a petition in public interest was filed before the Kerala High Court⁷ by few citizens alleging that despite Supreme Court and High Court rulings, citizens continued to suffer due to bandh and hartals. The petitioners also alleged that there was dereliction of duty on part of the State and failure to meet constitutional responsibility in not taking steps to tackle the problem as per directions of the Courts. It was also alleged that the State did not pay compensation to public who suffered losses and that the State failed to initiate proceedings to recover damages caused to public property. The Court took cognize of the effects recent bandh and hartals had on the conduct of board examinations, people travelling to hospitals, injuries sustained by policemen among other things. Apart from reaffirming the guidelines issued by the High Court in the earlier cases, the Court laid additional guidelines. This included directions to district administration and state government to seek the help of paramilitary forces and the army when it seems that the police alone cannot prevent law and order problems. The Court also directed the government to ensure that calls for hartals expressly mention that there would be no coercion or force. Other significant directions included that to initiate steps to recover damages to public property, prevent obstruction of traffic and also not to withdraw cases against offenders under political pressure.

The most significant ruling pertaining to regulation of bandh and hartals was in the case of **In Re: Destruction of public & private properties v. State of A.P. & ors** . In this case, the Supreme Court took suo motto cognize of the large scale destruction of public and private properties during bandh, agitations and protests of like nature. The Court set up two committees to come up with guidelines to deal with the issue. One committee was headed by Justice K.T. Thomas, a retired judge of the Supreme Court and the other committee was headed by Mr. Fali S Nariman, Senior Advocate, Supreme Court of India. The significant recommendations of the Justice Thomas committee include amendment to the Prevention of Damage to Public Property Act, 1984 to create a rebuttable presumption of guilt against offenders, amending the Act to make leaders of the party who call for direct action, guilty of abatement, videography of demonstrations and activities damaging public property, granting of bail only in cases in which the Court has reasonable grounds to presume that the accused is not guilty of the offence. **George Kurian v. State of Kerala, (1997) 2 KLT 258.**

The court accepted the guidelines and report of the committees made for the discussion and solution of the legality of Bandh and Hartal. The guidelines were as follow:

1. Organizers to meet police before the protest and give an undertaking for maintenance of peace
2. Use of knives, lathis and weapons to be prohibited.
3. The senior most police officer in the district or city to supervise the protest.
4. The police shall submit a report of event and damages caused to the State Government which shall then file a report before the High Court or Supreme Court as the case may be.
5. High Court may issue suo motu action and set up a machinery to investigate the damage caused and to award compensation.
6. A retired or sitting High Court or Supreme Court judge may be appointed as Claims Commissioner estimate damages and investigate imposition of liability.
7. Absolute Liability shall be imposed once the link between the event and damage is clear.
8. Damages shall be assessed for damage to public property, private property, damage due to causing of hurt or death of persons and cost of actions taken by police and the executive to take preventive steps
9. Exemplary damages not exceeding twice the amount of damages liable to be paid may be imposed.
10. The Claims Commissioner shall report to the High Court or Supreme Court as the case maybe.

Mere assurance is not sufficient as the ground reality might be harsh enough to deter people from discharging their duties. Thus, police must ensure that buses are not damaged, traffic is not blocked and no shops are forcibly shut. When these steps are combined with continued assurance to people of safety, will normal life not get paralysed. It is about winning confidence of people to an extent that it exceeds the fear instilled by the organizers of bandh and such protests. Prosecution and high rate conviction after arrests is vital for deterrence. Poor probability after conviction defeats even stringent laws.

The Supreme Court has laid down guidelines in absence of a statute in a few cases earlier as well. Significant cases include **Vineet Narain v. Union of India**, **Lakshmi Kant Pandey v. Union of India** and **Vishaka v. State of Rajasthan**. These guidelines are meant to serve as temporary framework of law until the legislature comes up with a law. In the case **Union of India v. Association for Democratic Reforms**, the Supreme Court observed that: "It is not possible for this court to give any directions for amending the Act or statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the court can necessarily issue directions on the said subject to fill the vacuum or void until the suitable law is enacted" . **Bairam Muralidhar v. State of A.P**, (2014)10 SCC 380. **Vineet Narain v. Union of India** , (1998) 1 SCC 226. **11Lakshmi Kant Pandey v. Union of India**, (1984) 2 SCC 244. **Vishaka v. State of Rajasthan** (1997), SCC 241. **Union of India v. Association for Democratic Reforms**, (2002) 5 SCC 294. Judiciary has limited expertise in framing of laws and has access to limited resources and facilities for consultation, drafting, etc .

Conclusion

The Kerala Government has come up with a draft bill called the "Kerala Regulation of Hartal Bill, 2015". It criminalizes enforcement of hartals by force, forcibly shutting up of shops, threat of injury, etc. Organizers are required to obtain permission from the authorities and inform the public before the three days of organizing the Hartal. Organizers are required to deposit an amount as security for payment of compensation for damage caused to property and injuries sustained.

Bail can be obtained by the accused only after depositing an amount equal to the value of damaged property as assessed temporarily. If the police fails to help the public in exercising their legal rights during such hartals, it would be treated as dereliction of duty and can also be punished with fine extending up to Rs 10,000.

The Government is also empowered to make rules for effective implementation of the policies. The Central Government has come up with the draft "prevention of Damage Public Property(Amendment) Bill, 2015". It incorporates the guidelines suggested by the "Justice Thomas Committee Report" and "the Nariman Committee Report". Significant features includes rebuttable presumption against the accused', 'mandatory video graphing of protests

and bandh' and also 'provision for booking office bearers of organizations conducting bandh and Hartal for abatement of mischief'.

Fines can extend up to the market value of the properties damaged.

It is a positive sign that the Central Government has decided to take steps to implement the measures suggested by the Justice Thomas Committee and Nariman Committee. "The State legislatures need to come up with legislations to tackle law and order problems caused by bandh and hartals in the states". Apart from legislations, the need of the hour is for the police and other authorities to take active interest in maintaining law and order and preventing paralysis of normal life during bandh and hartals. Reforms in the police and modernisation are required to help the police restore normal life in case of violence. This included better communication facilities, adequate protection for personnel in form of riot gear, vehicles for patrolling etc. The Coordination between the police and prosecution department is also vital to secure conviction. Adequate resources need to be provided to the police department for filing of charge sheets as early as possible and the number of prosecutors need to be increased to prevent inefficiency due to workload. The government must not adopt a lenient stance on offenders due to political reasons. Lastly at no point should examinations be called off, bus services stopped, etc. merely because of hartals and bandh. This degrades the morale of the public and also encourages such methods of protests to coerce the government to give in to the demands.