



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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HRDA/NHRC-SM/South/KL/16/01/2024

January 25, 2024

To
Justice (retd.) Mr. AK Mishra
Chairperson,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi –110 023
Email: chairnhrc@nic.in

Respected Justice Mishra,

***Subject: Requesting to initiate suo moto proceedings in the case of violation
of right of peaceful protest repeatedly in Kerala from January 9, 2024.***

We are writing to you to bring to your kind attention that on January 9, 2024 Kerala Youth Congress state president Rahul Mamkoottathil was arrested for participating in a march in December 2023. He was arrested from his residence and was remanded for 14 days judicial custody. He was produced before the Thiruvananthapuram Session court on January 10, 2024. The court rejected the bail application and remanded Rahul for two weeks judicial custody till 22nd January, 2024.

The incident has been reported widely in the media and a link is shared here for your reference - [Youth Congress president Rahul Mamkoottathil arrested for Secretariat protest \(onmanorama.com\)](#)

On 10 January, 2024 Kerala Youth Congress members organised a march to the Kerala Secretariat to protest against the arrest of Rahul Mamkoottathil. The march was launched by MLA Shafi Parambil. Near the Secretariat the police attacked the protestors by using water cannons to disperse the protestors. After that the protestors sat on the road, raising slogans against police and state government. Then, the police restored to lathi charge on the protestors.

On January 12, Cantonment police have registered a case against Shafi Parambil and Youth Congress district leaders Sudheer Shah, Nemom Shajeer, Saju Amardas,

Manoj Mohan and 150 identifiable people. According to the FIR, the activists, who took out a jatha from Palayam side in front of the secretariat, raised slogans and disrupted the movement of pedestrians and vehicles. The police used water cannons after a march by the Youth Congress

The incident has been reported widely in the media and a link is shared here for your reference - [Kerala Youth Congress organises protest march to secretariat - The Statesman](#)

On January 12, 2024 Youth Congress activist marched to collectorate march in Kannur, during the march police attacked the protestors, in which Youth Congress district president M P Praveen suffered brain injuries, according to medical records at the Government Medical College in Alappuzha. Mr. Praveen fell to the ground and was surrounded by about 10 policemen and was beaten up. There is also a serious injury to the neck in the lathi charge. Praveen was shifted to a private medical college in Thiruvalla for specialist treatment. Youth Congress district general secretaries Megha Ranjith and Saranya Sreekumar, who were seriously injured in the police Lathicharge, have also been admitted to a private medical college in Thiruvalla. Both were hit on the head and neck. According to the MRI scan report, the disc in Megha's neck has been pushed out. Azhikode Mandalam secretary Riya Narayanan, who also injured in the police violence during the Youth Congress collectorate march she was forcibly dragged into the vehicle by the police during the Youth Congress collectorate march in Kannur. The police stomped on her hair and they dragged her to the vehicle.

The Police used water cannons during the Youth Congress march in Kottayam near SP Office and there was use of lathi charge to disperse the protesting Youth Congress members.

Media report of the incident- [Youth Congress alleges police brutality during protest in Kannur - The Hindu](#), ['After stomping my hair, policemen pulled me up and sideways with all their might, bone-crushing pain' - KERALA - GENERAL | Kerala Kaumudi Online](#)

On January 13, 2024 police used water cannon to disperse youth congress activist who staged a protest in front of the police commissioner office in Kochi against the arrest of Rahul Mamkootathil. The march was organised under the aegis of the YC Ernakulam district committee. District president Sijo Joseph led the march.

Inaugurating the march, Hibi Eden, MP, accused the State government of double standards towards protests organised by the youth outfits. <https://www.thehindu.com/news/cities/Kochi/police-fire-water-canon-at-yc-protest-march/article67737542.ece>

On January 13, 2024, during the Youth Congress protest in Palakkad, the police attacked using water cannons and lathi charge. Media reports - [Kerala Youth Congress protest: Young girl brutally attacked by police, says VD Satheesan - India Today](#)

On January 15, 2024 in Alappuzha, a police attacked the protestors of youth congress during their protest for release of Rahul Mamkootahil. [Kerala Youth Cong protests continue against arrest of its state president \(deccanherald.com\)](#)

On January 16 2024, Rahul was recorded in three more protest related cases. Media link - [Rahul Mamkootathil gets bail in 2 out of 3 new cases slapped on him by police \(onmanorama.com\)](#)

On January 16, 2024, the march to the Collectorate in Kozhikode was attacked by police, the police personnel resorted to using water cannons, After the protestors refused to disperse. The police resorted to using tear gas. In Adoor, a clash erupted between the cops and the protestors after the Youth Congress workers climbed over the barricades.

The incident has been reported widely in the media and a link is shared here for your reference - <https://english.mathrubhumi.com/news/kerala/youth-congress-protests-turn-violent-in-kerala-1.9243949>

The Right to protest is an essential element of the right to participate in any democratic dispensation, and restrictions imposed on this right must be closely scrutinized with respect to their necessity and reasonableness (A/61/312, para. 56)

The Right to protest is recognized under several international instruments, including:

- I. The International Covenant on Economic, Social and Cultural Rights (Article 8),
- II. Article 5 (a) of the Declaration on Human Rights Defenders 1998 states that “For the purpose of promoting and protecting human rights and fundamental

freedoms, everyone has the right, individually and in association with others, to meet or assemble peacefully”.

The right to exercise freedom of speech and expression is enshrined under Article 19 (a) of the Indian Constitution. The right to freedom of opinion and expression encompasses three different aspects:

- I. The right to hold opinions without interference;
- II. The right to access to information, and
- III. The right to impart information and ideas of all kinds.

Supreme court in Mazdoor Kisan Shakthi Sangathan v. UOI 2018 17 SCC 32 held that: -

“54. The right to protest is thus recognised as a fundamental right under the Constitution. This right is crucial in a democracy which rests on the participation of an informed citizenry in governance. This Right is also crucial since its strengths representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from the state authorities as well as powerful entities. This 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 the marginalised and poorly represented minorities.

59.A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the state in the light of the directive principles of social welfare as a whole. The court’s duty is to strike a balance between competing claims of different interests.”

In Anita Thakur v. State of J&K, (2016) 15 SCC 525 it was observed the Supreme court that:-

“12...holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles

19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The “right to assemble” is beautifully captured in an eloquent statement that “an unarmed, peaceful protest procession in the land of “salt satyagraha”, fast-unto-death and “do or die” is no jural anathema”. It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.”

15. Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. Provisions of IPC and CrPC, discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become “unlawful”. At the same time, while exercising such powers, the authorities are supposed to act within the limits of law and cannot indulge into excesses. How legal powers should be used to disperse an unruly crowd has been succinctly put by the Punjab and Haryana High Court in *Karam Singh v. Hardayal Singh* [*Karam Singh v. Hardayal Singh*, 1979 Cri LJ 1211 : 1979 SCC OnLine P&H 180] wherein the High Court held that three prerequisites must be satisfied before a Magistrate can order use of force to disperse a crowd:

First, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace.

Second, an Executive Magistrate should order the assembly to disperse.

Third, in spite of such orders, the people do not move away.”

The Supreme Court in *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324 : 2018 SCC OnLine SC 724 at page 366 held that:-

“54. The right to protest is, thus, recognised as a fundamental right under the Constitution. This right is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from the State authorities as well as powerful entities. This 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 the marginalised and poorly represented minorities.”

Supreme Court in *Ramlila Maidan Incident, In re*, (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810 : 2012 SCC OnLine SC 186 at page 99 held that:-

“245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them.

309. Privacy and dignity of human life has always been considered a fundamental human right of every human being like any other key values such as

freedom of association and freedom of speech. Therefore, every act which offends or impairs human dignity tantamounts to deprivation pro tanto of his right to live and the State action must be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. (Vide Francis Coralie Mullin v. UT of Delhi [(1981) 1 SCC 608]).

Basic principles on the Use Of Force And Firearms By Law Enforcement Officials in 1990, Cause 4 states that:-

“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

Kerala Police Manual 1970 lays down a step-by-step procedure to deal with unlawful assemblies:-

(i) The police must invariably secure the presence of a Magistrate where it anticipates a breach of peace.

(ii) The decision to use force and the type of force to be used is to be taken by the Magistrate.

(iii) Once the order for the use of force is given by the Magistrate, the extent of force to be used will be determined by the seniormost police officer.

(iv) The extent of force used must be subject to the principle of minimum use of force.

(v) Use of force should be progressive — i.e. firearms must be used as a last resort if tear smoke and lathi-charge fail to disperse the crowd.

(vi) Common tear smoke which causes no bodily injury and allows recovery of affected persons should be used.

(vii) When the crowd is large and the use of tear smoke is likely to serve no useful purpose, the police may resort to lathi-charge.

(viii) Lathi-charge can only begin if the crowd refuses to disperse after suitable warning.

(ix) Clear warning of the intention to carry out a lathi-charge should be given through a bugle or whistle call in a language understood by the crowd. If available, a riot flag must be raised. If the police officer-in-charge is satisfied it is not practical to give a warning, she/he may order a lathi-charge without warning.

(x) Lathi-blows should be aimed at soft portions of the body and contact with the head or collarbone should be avoided as far as practicable.

(xi) The lathi-blows must not cease until the crowd is completely dispersed.

(xx) All help should be rendered to convey the wounded to the hospital..."

We believe that use of brutal force on the protestors, registration of FIR based of fabricated charges, detention and arrest of protestors is a act of reprisal against their activism.

We urgently appeal to you to exercise Section 12 (a) of the Protection of Human Rights (Amendment) Act, 2019, and take *suo moto* cognizance of this incident and initiate an independent inquiry through NHRC's investigation wing.

We hope and expect that the NHRC will intervene in this case impartially and in a time bound manner.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Henri Tiphagne', with a horizontal line underneath it.

(Henri Tiphagne)

National Working Secretary