



HRDA/NHRC-SM/South/AP/13/01/2024

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 detention of Anganwadi protestors at Dharna Chowk, Vijayawada by the Andhra Pradesh Police.

We are writing to you in bring to your kind attention that on January 22, 2024, Vijayawada police arrested 100s of Women Anganwadi protestors. After arrest they were shifted to different police stations in the neighbouring Krishna and NTR Districts.

The police were also stationed at the bus stand and railway station of Vijayawada, Vijayanagaram, Prakasham, Vishakhapatnam, Anakapally, Palnadu, Tirupati and Bapatla, the police arrested the protestors from the bus stands and railway stations.

On January 21, 2024, Police officials arrested 40 Anganwadi protestors when they protested Infront of the police station condemning the arrest of their fellow protestors. The Police detained Anganwadi workers who were coming from Nellore in two buses. They were detained at Kavali Police station.

More than one Lakh Anganwadi workers and helpers have been agitating for the last 40 days, demanding the resolution of their long-standing issues. Their protest led to the closure of 55,600 Anganwadi centres across the state. On 2nd January 2024, the government of Andhra Pradesh issued a warning to take departmental action against the protestors; aggrieved by this, on 3rd January 2024, Anganwadi workers staged a protest in front of collectorates across the state of Andhra Pradesh.

On January 6, 2024, the Andhra Pradesh state government brought the Anganwadi workers and helpers under the Essential Service and Maintenance Act, 1971, which prohibits the strike of workers and forces them to join their duties.

The Anganwadi associations have gathered more than 1 core signatures across the Andhra Pradesh, they planned to submit their representation to Chief Minister on January 22, 2024. But the government has issued orders to officials to remove the Anganwadi workers from duty if they don't show up at work.

The incident has been reported widely in the media and a link is shared here for your reference - [Andhra Pradesh: Security tightened, Anganwadi protestors arrested ahead of 'Chalo Vijayawada' program | Andhra Pradesh News - News9live](#)

Media reference to this incident is shared for your reference - [Anganwadi Arrests: అంగన్‌వాడీ దీక్షల భగ్నం.. విజయవాడలో అరెస్టులు-anganwadi protests chalo vijayawada caused arrests in vijayawada ,ఆంధ్ర ప్రదేశ్ న్యూస్ \(hindustantimes.com\)](#)

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.

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 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)

Human rights defenders play a pivotal role in ensuring that protest and criticism are expressed in a peaceful and constructive manner. States should legitimize and empower human rights defenders in this role and encourage defenders to take full ownership of this role (A/62/225, para. 102).

Women defenders often face more risks when participating in collective public action because of perceptions of the traditional role of women in some societies, and they become targets of non-state actors (A/61/312, para. 72)

States must investigate and prosecute instances of gender-based violence against women defenders occurring during demonstrations as a matter of priority. It is important to give no-tolerance signals on gender-based violence (A/62/225, para. 101 (a)).

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]).

We believe that arrest of the WHRDs who were protesting for their adequate payment is an 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