



HRDA/NHRC-SM/South/TN/17/01/2024

January 30, 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 arrest of 19 protestors by the Tirunelveli police for demanding the arrest of school authorities after a death of a boy studying in IX class.

We are writing to you to bring to your kind attention that N. Naren was studying in an IXth class, in a private school in Tirunelveli. His father Mr. Nagarajan could not pay the second term fee for his son N. Naren due to floods in Tirunelveli. The school authorities demanded the second-term and third-term fees from N. Naren and scolded him for not paying school fees on time. Due to this N.Naren did not go to school on January 4, 2024 and committed suicide when he was alone at home.

Nagarajan filed a police complaint and demanded to take legal action against the school management and compensation for the loss of his son. Many relatives of the deceased protested in front of the school on January 5, 2024, condemning the death of N Narsen. Aggrieved by this, police arrested 19 people.

The incident has been reported widely in the media and a link is shared here for your reference - [Boy ends life in TN, kin say was chided by school staff over late fee \(newindianexpress.com\)](https://www.newindianexpress.com)

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).

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.”

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.”

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.”

NHRC guidelines for police personnel on various human rights issues 2010

Arrest

“dos

- 1. Ensure that no person is deprived of his/her right to life or personal liberty, except in accordance with the procedure established by law (Article 21 of Indian constitution)*
- 3. Ensure that the arrestee is informed of the full particulars or the grounds of arrest (Article 22 of Indian Constitution)*
- 4. Ensure that a relative or a friend of the arrestee is informed about the fact of arrest and the place where he/she is being detained (Section 50 A (1) of Cr.P.C)*
- 10. Protect the human dignity of the person being arrested.*
- 11. Conduct search of the arrested person with due respect to his/her human dignity. Avoid unnecessary use of force and respect his/her right to privacy.”*

Don't

- “1. Do not arrest a person with warrant, unless there is a reasonable satisfaction, on the basis of the investigation done, about the person's involvement in a cognizable offence and there is a need to affect his/her arrest. (Section 41. Cr.P.C)*
- 2. Do not arrest a person unless the commission of an offence cannot otherwise be prevented (Section 151 Cr.PC)*
- 3. Do not use more force than is necessary to restrain an arrested person (Section 49 Cr.P.C and Article 21 of Indian Constitution)*
- 5. Do not detain any arrested person beyond 24 hours without the express order of a magistrate (Section 57 Cr.P.C)”*

Detention don'ts

- “1. Do not subject any person in detention to torture or to any cruel, inhuman or degrading treatment or punishment.*

2. *Do not compel a person in detention to confess, to otherwise incriminate him/herself or to testify against any other person.*

3. *Do not detain anyone for a prolonged period in the name of interrogation, as this may amount to harassment and wrongful confinement.”*

NHRC guidelines on “arrests” 22nd November 1999

“Arrest involves restriction of liberty of a person arrested and therefore infringes the basic human rights of liberty. Nevertheless, the constitution of India, as well as international human rights law, recognizes the power of the state to arrest any person as a part of its primary role of maintaining law and order. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible.”

Pre arrest

- The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafide of the complaint and a reasonable belief as to both the person’s complicity as well as the need to effect arrest. [Joginder Kumar’s case – 1994 4 SCC 260]
- Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a Cognizable case.
- Except in heinous offences, an arrest must be avoided. The power to arrest must be avoided where the offences are bailable unless there is a strong apprehension of the suspect absconding.

Arrest:

- As a rule, use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.
- The dignity of the person being arrested should be protected.

- Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care of the person's right to privacy.
- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language with he or she understands.

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