

## PROCESSIONS AND RIGHTS OF INDIVIDUALS

CONTROVERSIES RELATING to civil and political rights mostly present a conflict between the state and individuals or groups of individuals. Occasionally, however, they assume the shape of a dispute between the public or sections of it on the one hand, and individuals on the other. This is illustrated by a case from Kerala,<sup>1</sup> relating to the right to take out processions on public thoroughfares. The Constitution guarantees<sup>2</sup> every citizen the right to assemble peacefully and without arms. Against this, there is the ordinary citizens' right of passage along the highway, and enjoyment of property abutting on the public streets. The court described the situation as representing "[t]he eternal conflict between the right of a multitude of people to assemble and demonstrate on roads and highways and that of city dwellers to assert their individual right of passage and access...."<sup>3</sup>

Every legal conflict, of course, has its emotional underpinnings. In the instant case, the problem was as follows:

[H]ow far shall [the] organised strength of people seek to strangle the ordinary civil rights of others? What can be done to mitigate the agony of citizens trapped in populous urban centres, the thoroughfares of which are invaded by massive processions and demonstrations—political, religious or otherwise? Should lawlessness be the law, when large numbers are involved?<sup>4</sup>

The petitions had their genesis in letters addressed to the Chief Justice by five different citizens. Notices were ordered to be issued to the state government and the Advocate-General. The former stated in its counter affidavit that instructions had been issued to the police authorities "to regulate as far as practicable the Jathas of political parties or labourers or religious organisations in such a way as not to obstruct or in any other way interfere with, the public using the road in vehicles as well as on foot."<sup>5</sup>

As regards the constitutional position, the High Court took pains to point out that the right of assembly, was subject to reasonable restrictions

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1. *Sankaranarayanan v. The State of Kerala*, A.I.R. 1986 Ker. 82.

2. Art. 19(1)(b).

3. *Supra* note 1 at 83.

4. *Ibid.* (Per Sivaraman J.).

5. *Ibid.*

in the interest of public order.<sup>6</sup> The High Court also noted the decision of the U.K. court<sup>7</sup> to the effect that a man's right to enjoy his property which abuts on the highway and to have access to it both for himself and his invitees, is one which is fully entitled to the support of the courts.

Apart from this legal position, the court noted the social aspect, *viz.*, the right of urban citizens to enjoy property which abuts on the highways and to have free access to it against far too frequent invasions of such right for long periods in an absolutely unreasonable manner.

To find a solution to this difficult problem, the Kerala High Court put itself in search of statutory precedents with the help of the Advocate-General and the *amicus curia*. Ultimately, it came to the conclusion that it would be desirable to have, in Kerala, an enactment on the lines of the (U.K.) Public Order Act 1936. In brief, section 3 of the Act confers certain powers on the heads of police to regulate processions to prevent "serious public disorder". The object of the High Court in making such suggestion was to regulate the conduct of processions along streets and other public places, in a manner whereby no obstruction is caused to the normal pedestrian or vehicular traffic, even when they are going on. The suggestion was accepted by the Advocate-General, who informed the court that the state government would take up forthwith the enactment of such law.

In so far as these positive suggestions have emerged from the judgment, it is welcome. However, with respect, one aspect which could have been discussed, has been missed in the entire controversy. The situation has been dealt with primarily as a conflict between a constitutional right and an ordinary legal right. But there is also involved a conflict between two constitutional rights. On the one hand, citizens have the right to assemble peacefully and without arms. As against this, is the right of every citizen—also guaranteed by the Constitution—to move throughout every part of India.

One may also venture to offer certain observations on a wider plane. Public interest litigation so far has come up before the court for asserting the constitutional rights of a class of persons. In future, it might possibly come more and more frequently as a weapon to be wielded by individual citizens also. Besides this, as mentioned above, the battle is now not against the state, but against those very sections of society which normally are the aggrieved ones.

Indian case law in the past has offered a rich harvest of points relating to processions, but in a different sphere. The conflict so far was usually

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6. *Satyabadi v. Officer-in-charge, Sadar P.S.*, 1968 Cri. L.J. 1519 (Orissa), relied on.  
7. *Hubbard v. Pitt*, (1975) 1 All E.R. 1056.

between rival religious groups; and the (rather hackneyed) question that arose was, "the right to play music on the streets." That question has disappeared, but more challenging scenarios, with newer music, can now be expected, and not merely in the land of *kathakali*.

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