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**FREEDOM OF ASSEMBLY: EXPLORING PROVISIONS UNDER ECHR
SAFEGUARDING THE RIGHT OF ASSEMBLY AND ANALYZING THEIR IMPLICATIONS
W.R.T FREEDOM OF EXPRESSION**

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ABSTRACT

The paper deals with the provision of the Right of Assembly provided to the citizens under Art. 11 of the European Convention on Human Rights, in light of the Freedom of Expression that each citizen is provided with. There has been a plethora of instances over the years where the question that has arisen in Courts has been of whether or not the State, or any other person, has the authority to disrupt a peaceful assembly, and whether or not certain forms of assembly can enjoy the protection guaranteed under Art. 11. This paper seeks to analyze the case law of the European Court of Human Rights (ECtHR), and identify the lacunae present in the legal system, henceforth. Additionally, the research seeks to explore and analyze the confluence of the Right of Assembly with Freedom of Expression, as interpreted by the ECtHR. The aim of this research is to also analyze the various ways in which a State can intervene in an assembly, and to recognize the conflict between the Right of Assembly and other rights, including the Right to Property. The sources employed are secondary sources, viz., journal articles, books, etc., but the most amount of emphasis has been laid on case law, keeping in mind the objective of this research. It has been observed that the Court, in matters concerning Right of Assembly has adopted a relatively liberal approach, so as to ensure that the citizens are able to enjoy the right provided to them, with only reasonable restrictions concerning the same.

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INTRODUCTION

BACKGROUND

The Right of Assembly, as a political right emerged in continental Europe in the eighteenth century, along with other rights which were political in nature.³ The right gave the citizen the opportunity to assemble and express their dissent towards the government. The right was purely political in nature, owing to the fact that social movements around that period were mainly associated with dissent, with other social movements only emerging in the 19th and 20th century.⁴ Currently, the right encompasses various other dimensions, since a plethora of social issues have emerged, and dissent and protest is now not simply confined to the government and its policies.⁵

RIGHT OF ASSEMBLY UNDER THE ECHR

The Right of Assembly, which is considered to be a fundamental right in the European states and the European Union, is enshrined under Article 11⁶ of the European Convention on Human Rights (hereinafter, “ECHR”).

The Article states that:

- i. Every person holds the right to form peaceful assemblies and to associate with others. The right further includes the right to create and be a part of trade unions in order to ensure protection of their interests.
- ii. There must be no limits on the enjoyment of these rights save those required by law and essential in a society that is democratic in nature, to safeguard public safety or security of the state, to prevent disturbance or crime, to protect one's health or morality, or to defend the freedoms and liberties of others. This article shall not

³ James M. Jarrett, Vernon A. Mund, *The Right of Assembly*, 9 N.Y.U. L.Q. Rev. 1, (1931).

⁴ Petr Černý, *The Current Trends in the Right of Assembly under the European Convention on Human Rights*, 6 A.J.L. 231, 231-242 (2020).

⁵ Dragan Golubovic, *Freedom of Association in the Case Law of the European Court of Human Rights*, 17 I.J.H.R. 7, (2013).

⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 11, Sep. 3, 1953, E.T.S. 5.

exclude reasonable limits on the implementation of these privileges by armed forces personnel, the police, or the state administration.

In order to safeguard the rights provided under the ECHR, the European Court of Human Rights (ECtHR) has been established. Therefore, with regard to the Right of Assembly, the ECtHR ensures that protection of the right is guaranteed, which is also evident through various decisions by the Court⁷, which shall be discussed later.

ANALYSIS

RELATIONSHIP OF RIGHT OF ASSEMBLY WITH FREEDOM OF EXPRESSION

Freedom of expression, which is considered a central political right in the European states, is closely related to the Right of Assembly. The purpose of an assembly, as pointed out by various thinkers, is the expression of a common ground and a common opinion.⁸ Therefore, in this sense, the Right of Assembly becomes one of the important rights which safeguard the Freedom of Expression that the citizens are provided with.

Freedom of Expression is enshrined under Art. 10⁹ of the ECHR. However, specific forms of expression are not covered under the article, which makes it imperative for jurists, researchers and political thinkers to construe its implications with respect to its confluence with other rights enshrined under the Convention. Furthermore, since the article does not include specific forms of expression, it can be deduced that one is hence free to express themselves in any form of expression.¹⁰

The ECtHR has time and again pointed out that Freedom of Expression and the Right of Assembly go hand in hand, and are, in fact, overriding values of a society that is democratic in structure and form, and that the right to hold an opinion and to express it is an integral part of the freedom to assemble.¹¹ The ECtHR has also pointed out that the Right of Assembly is a *lex*

⁷ *supra* 3.

⁸ Emily Howie, *Protecting the Human Right to Freedom of Expression in International Law*, 20 I.J.S.L.P. 12, 12-15 (2017).

⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10, Sep. 3, 1953, E.T.S. 5.

¹⁰ *supra* 2.

¹¹ *Refah Partisi (the Welfare Party) and Ors. v. Turkey* [GC], no. 41340/98, 41342/98, 41343/98 et al., ECtHR 2003.; *Olliger v. Austria*, no. 76900/01, ECtHR 2006.

specialis to the Freedom of Expression, since there are cases of unauthorized assembly wherein the Court can interfere with and restrict the right.¹²

The Court has often stated that in order to further the objectives of democracy, it is imperative that solutions are sought through open discussion, and if dissent and/or expression in any form is curbed, no matter how unacceptable or illegitimate it may seem to the State, it will be in violation of the principles of democracy, and therefore, it is important to protect both – the Freedom of Expression and the Right of Assembly.¹³

In Focus: The Pride March Case (Alekseyev v. Russia)¹⁴

Right of Assembly has emerged as an efficient way in which minorities can express themselves in the society, especially when the minorities in question are unaccepted and/or persecuted in the society. An example of this is the case of the LGBTQ+ community marches in Russia. These marches (called the Gay Pride or the Pride March), aimed at facilitation of expression of the community, were banned by the Moscow municipal authorities, in view of the notion that the rights of others, especially the ones who were against homosexuality for religious or moral reasons, were being restricted due to these marches.

The Court laid emphasis on the contention of the mayor of Moscow that gay marches needed to be curbed, since they were unacceptable in a country where the moral and religious beliefs of the majority does not allow them to accept homosexuality and pointed out that democracy does not imply that only the opinion of the majority is to be taken into consideration. Democracy also allows freedom of expression of minorities. The Court, therefore, in view of these points, ruled that the ban was in violation of Art. 11 of the ECHR and therefore needed to be lifted.

Restrictions on the Freedom of Expression under the Right of Assembly

It is now worth noting that the Right of Assembly is not an unrestricted right and the Right of Assembly cannot be extended to the extent where it is used to intimidate other groups and people with contrasting opinions. However, it needs to be demonstrated that there is a compelling reason

¹² Kudrevičius and Ors. v. Lithuania, no. 37553/05, ECtHR 2015.

¹³ Stankov and The United Macedonian Organisation Ilinden V. Bulgaria, no. 29221/95, 29225/95, ECtHR 2001.

¹⁴ Alekseyev v. Russia, no. 4916/07, 25924/08, 14599/09, ECtHR 2010.

for restriction on expression.¹⁵ An example of this is the case of *Vona v. Hungary*¹⁶, wherein it was ruled that simply because of the fact that expression by a group incites concern among a certain group of people, or is deemed disrespectful. However, the Court further ruled that such a gathering which has the potential to incite violence and intimidate a racial minority does not fall under the protection of the Convention.

It is, however, worth noting that responsibility for activities which are unlawful or illegal in nature cannot be put directly on organizers of the assembly, unless it is proven that they had direct involvement in the same.¹⁷ In a case where an assembly was conducted despite directions against it, the organizer was not deemed responsible owing to the fact that mere declaration of person to be an organizer does not impose liability.

It needs to be proven in such cases that the person:

- i. Was the one taking care of the procession/meeting,
- ii. Was the organizer, and
- iii. Directed the course of the assembly.¹⁸

PROTECTION GRANTED UNDER THE CONVENTION

While evaluating the extent of freedom of expression safeguarded by the ECHR, it is important to note the implications of the definition of an assembly under the Convention concerning protection against interference.¹⁹

It has often been pointed out that protection under Art. 11 of the ECHR denotes protection from interference of the State and of third parties.²⁰ On the other hand, the protection conversely denotes restrictions which may be levied as per ordinary law of the State²¹, in case the assembly is not protected under the Convention, as mentioned in the previous section.

¹⁵ Feldek v. Slovakia, no. 29032/95, ECtHR 2001.

¹⁶ Vona v. Hungary, no. 35943/10, ECtHR 2013.

¹⁷ Yilmaz and Kiliç v. Turkey, no. 36607, ECtHR 2008.

¹⁸ Stefanec v. Czech Republic, no. 75615/01, ECtHR 2006.

¹⁹ Juan María Bilbao Ubillos, *Freedom of Assembly And Association (Art. 11 ECHR): Some Hesitations On A Path Of Firm Protection*, IN EUROPE OF RIGHTS: A COMPENDIUM ON THE EUROPEAN CONVENTION OF HUMAN RIGHTS 403 (Brill 2012).

²⁰ William K. Coblenz, Robert S. Warshaw, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 44 CALIF. L. REV. 94, 94-104, (1956).

²¹ Dirk Woorhoof, Hans Cannie, *Freedom of Expression and Information in a Democratic Society*, 72 INT'L COMM. GAZ. 407, 407-423, (2010).

Within the context of the Convention, assemblies are commonly defined as both private and publicly accessible gatherings of individuals, processions on streets and all in all, gatherings that are not confined to a single location and whose members have a similar aim.²² While interpreting Art. 11 of the ECHR, it needs to be noted that the ECHR defines assembly as a peaceful gathering of many persons, processions, and public parades. According to the Convention, the word "assembly" refers to the lengthy possession of facilities by gatherings which are political, religious, cultural, social in nature, and also other gatherings, such as exhibits, concerts, trade shows, conferences, and receptions.²³

It should be noted that only peaceful gatherings are protected under Article 11 of the Convention. This includes, but is not limited to, the fact that the assembly is not gathered with the intention of committing violence, rioting, or other unlawful actions, or that these activities are not organised during the meeting by the facilitator or some other person (organiser). Minor occurrences that occur during the meeting do not cause the assembly to get agitated.²⁴

Conflict between Right of Assembly and Right to Property

One of the biggest points of dispute concerning protection of the Right of Assembly arises in the cases of occupation of buildings, since it leads to the rise of a conflict between the Right of Assembly and the Right to Property. "Squatting", as defined in the current context, refers to the occupation of someone's property by an assembly.²⁵ This action often entails individuals seizing abandoned buildings demonstratively, putting political slogans or even holding supporting activities there, and refusing to leave an occupied property, even via passive resistance. Thus, it is clear that this is not a simple act of squatting consisting in securing residence in abandoned homes, but rather an outward manifestation of a civically engaged mindset.²⁶

One way to keep a building occupied is to proclaim its new occupants to be members of the assembly, indicating a significant social issue via their actions. Because only peaceful gatherings are constitutionally protected, if violence is employed to gain access to the building

²² *Ibid.*

²³ *Djavit An v. Turkey*, no. 20652/92, ECtHR 2003; *Cisse v. France*, no. 51346/99, ECtHR 2002; *Barankevich v. Russia*, No. 10519/03, ECtHR 2007.

²⁴ *Christians against Racism and Facism v. the United Kingdom*, no. 8440/78, ECtHR 1980.

²⁵ Gina Clayton, *Reclaiming Public Ground: The Right to Peaceful Assembly*, 63 MOD. L. REV. 252, (2000).

²⁶ *Ibid.*

(by breaking locks, for example), this activity cannot be incorporated within the right of assembly's protection.²⁷

According to the ECtHR, as a result of the emergence of developments in the field of democracy, economy, and technology, as well as the societal advances, the state may have a positive responsibility to enforce the right of assembly even against private entities, particularly where the private company is tied to a public institution in some manner. However, in the same decision, the Court also stated that in case an assembly has occupied a private property when there is an alternative present, the act is not protected under the Convention.²⁸

The Court has further held that there may be cases where the act committed as a part of the assembly may be different from the officially designated objective, and in such cases, it needs to be noted how the members behave while being a part of the assembly.²⁹

The ECtHR permits the imposition of stringent restrictions on the holding of an assembly, encompassing the need to inform members in advance, in order to balance the numerous interests protected. Concerning the notice of the assembly, the ECtHR ruled that since the meeting in a public area may disturb daily life and may encounter opposition, it is essential that the organiser adheres to the legal requirements for notifying the event. Additionally, such a requirement benefits the assembly's participants, since notice in advance enables the police to prepare for the event and assure its smooth operation. Although a number of European states' legal regulations contain the assembly's reporting principle³⁰, which states that it is sufficient to notify the authority of one's intention to hold an assembly, the Convention requires the assembly to follow the authorization principle, which entails the possibility of holding the assembly/procession only when permission to hold it has been granted by the authority.³¹

²⁷ Petr Černý, *The Right of Assembly in Central Europe*, 15 A.H.R.J. 163, 163-185, (2020).

²⁸ Appleby v. U.K., no. 44306/98, ECtHR 2003.

²⁹ *supra* 11.

³⁰ Andy Aydın-Aitchison and Ceren Mermutluoğlu, *Mapping Human Rights to Democratic Policing Through the ECHR*, 30 BRILL 72, 72-99, (2020).

³¹ Sergey Kuznetsov v. Russia, no. 10877/04, ECtHR 2008.

LAWFUL INTERVENTION

There are certain conditions that are foreseen by the provisions under Art. 11, which allow lawful interference in the Right of Assembly. The conditions³² are as follows:

- i. The intervention needs to have been effected by law,
- ii. The intervention needs to be in consonance with the objectives laid out under Art. 11(2),
- iii. The intervention needs to be a necessity to allow democracy to prevail in the State.

State intervention in the right to assemble may take a variety of forms. The most often used method of intervention is a prohibition on the assembly before its convening and dissolving of the meeting during its convening.³³ However, the ECtHR has recognized various additional actions as impinging on the freedom to assembly in its case law. These included, but were not limited to, criminal penalties against protestors, imprisonment at a police station, enforcement of a fee in administrative procedures, limitation of the meeting's date or location, relocation of the gathering, or evacuation of the church in the event of its occupation.

States are not only required to permit the enforcement of the right of assembly and, in certain situations, to establish conditions for its holding or even to prohibit it, but also to actively assure its realisation in the face of prospective counterdemonstrations.³⁴ What all state authorities (particularly the police) must guarantee in order to meet the state's affirmative commitment to secure the execution and protection of the assembly cannot be determined clearly from the case law. By and large, nations have considerable control over the exact activities they take, and it is critical that they be successful and proportional.

The ECtHR stated that assemblies cannot be disrupted by those who oppose the ideas and assertions being expressed.³⁵ Participants must be allowed to attend gatherings without fear of violent activities; otherwise, organisations or any other persons or groups that act in support of similar ideas or interests may be discouraged from freely articulating their views on extremely contentious matters affecting society. In a democratic state, the right to hold a

³² *supra* 25.

³³ *Bączkowski and Others v. Poland*, no. 1543/06, ECtHR 2007; *Primov and Others v. Russia*, no. 17391/06, ECtHR 2014.

³⁴ *Olliger v. Austria*, no. 76900/01, ECtHR 2006.

³⁵ *Plattform "Ärzte für das Leben" v. Austria*, no. 10126/82, ECtHR 1988.

counterdemonstration cannot be used as a tool to prevent citizens from exercising their right to express. Genuine right of peaceful assembly cannot be construed to be a mere commitment on the state's part to not interfere.

Another principle, as mandated by the ECtHR, is that if a comparatively lighter method of intervention is available to the intervener, a stronger method is to be avoided.³⁶

Another question concerning intervention in the right deals with unannounced assemblies. In such cases, a distinction is made between spontaneous and unspontaneous assemblies. While spontaneous assemblies enjoy the same right as given to permitted and announced assemblies, the rights provided to unspontaneous assemblies enjoy less protection.³⁷

CONCLUDING REMARKS

It can hereby be concluded, keeping in mind the trend in the manner that cases concerning Right of Assembly are dealt with, that the European Convention on Human Rights encompasses adequate and efficient provisions safeguarding the right of a person to assemble. It is also worth noting hereby that through the case law cited, it is clear that the ECtHR has adopted a relatively liberal approach with respect to peaceful assemblies, keeping in mind the developments that have taken place in the field of democracy over the years, and the emergence of new social issues.

Furthermore, the intersection between the Right of Assembly and the Freedom of Expression has been explored by the Court in a manner so that both the rights go hand in hand, and it is ensured that the fundamental rights that a citizen hold in the society are safeguarded.

The only lacuna, as evident, lies in the way cases concerning Right to Property and Right to Ownership are dealt with, in light of the Right of Assembly. Although the Court, as mentioned, has issued guidelines in its judgements with regard to the same, similar instances get repeated over the years, calling for a uniform system of guidelines to be followed.

All in all, however, the interpretation of the Court w.r.t. the Right of Assembly and its confluence with the Freedom of Expression is an area that can, in fact, serve as a point from

³⁶ *supra* 31.

³⁷ *Éva Molnár v. Hungary*, no. 10346/05, ECtHR (2008).

which nations can learn, considering the constant developments in democracy and the emergence of new social issues.

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