



STARVING FOR JUSTICE: ANALYZING THE LEGALITY OF HUNGER STRIKES IN THE SHADOW OF ARTICLE 21 AND CRIMINAL LAW

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ABSTRACT

Hunger strikes present one of the most complicated paradoxes in Indian constitutional law. While refusing food is historically celebrated as the ultimate form of non-violent democratic protest, it directly clashes with modern statutory rules and constitutional boundaries. This paper examines the legal friction between a citizen's freedom of speech and expression under Article 19 and the absolute Right to Life guaranteed by Article 21. By applying the established 'Doctrine of Non-Waiver,' the study explores how the state justifies its intervention in indefinite fasts, resting on the argument that an individual cannot legally surrender their own existence.

Using the ongoing June 2026 Jantar Mantar agitation – led by Sonam Wangchuk and student activists against national examination irregularities – as a real-time case study, the research highlights the practical tension between civil liberties and administrative control. Furthermore, the paper traces the shifting landscape of criminal law, analyzing how the transition from the old Indian Penal Code (Section 309) to the newly implemented Bharatiya Nyaya Sanhita (BNS) and the Mental Healthcare Act changes the legal status of a fasting protester from a traditional criminal to a citizen in distress. Ultimately, this study proposes a balanced, medically-driven legal framework that allows law enforcement to manage intense protests without violating either the right to dissent or the strict constitutional obligation to preserve human life.

KEYWORDS: Hunger Strike, Article 21, Doctrine of Non-Waiver, Freedom of Expression, Bharatiya Nyaya Sanhita (BNS), State Paternalism, Right to Protest, Mental Healthcare Act.

1. INTRODUCTION: THE PARADOX OF FASTING UNTO DEATH

Hunger strikes have always held a very unique and powerful place in Indian history. Long before the Constitution was even drafted, refusing food was the ultimate way to bring a powerful government to its knees. It is a protest that does not rely on violence, weapons, or riots; instead, it relies entirely on putting the state in a moral chokehold. However, what happens when this traditional tool of civil disobedience collides with modern constitutional law?

1.1 The Jantar Mantar Agitation: Starving for a Fair Future

To understand the gravity of this legal issue, we do not need to look at old history books. The reality is playing out right now at Jantar Mantar in New Delhi. Amidst the intense heat, prominent climate activist Sonam Wangchuk, joined by a large group of frustrated student activists, is on a massive hunger strike. Their cause is deeply rooted in the recent, widespread irregularities exposed within the national examination framework. Young citizens, who feel the system has entirely compromised their careers and futures, have decided to put their physical survival on the line to demand basic transparency and accountability.

This is not just a standard political rally. As the days pass and the health of the protesters starts to deteriorate, the situation at Jantar Mantar transforms from a civic protest into a serious legal emergency. The state is forced to watch citizens intentionally inflict physical harm upon themselves in a public space. At this exact point, the emotional weight of the students' demands clashes directly with the cold, hard rules of the Indian legal system.

1.2 The Constitutional Deadlock: Free Speech vs. The Obligation to Live

This ongoing protest brings us to one of the most complicated legal paradoxes in Indian jurisprudence. On one hand, a peaceful fast perfectly fits the definition of a democratic protest. It is arguably the highest form of Freedom of Speech and Expression guaranteed under Article 19(1)(a). The protesters are simply using their own bodies to peacefully communicate their absolute dissent against systemic corruption.¹

On the other hand, the Constitution creates a massive roadblock. Article 21 guarantees every citizen the Right to Life, and the Supreme Court has made it incredibly clear that a person cannot legally "waive" or give up their fundamental rights.² You simply do not have the constitutional authority to say, "I surrender my right to stay alive."

¹ Ramlila Maidan Incident, In re, (2012) 5 SCC 1. (In this landmark judgment, Swatanter Kumar, J., explicitly observed that a threat of going on a hunger strike is a legally permissible form of peaceful protest

and falls well within the ambit of constitutional freedoms guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution of India).

² Bhasheshwar Nath v. CIT, AIR 1959 SC 149.



Therefore, a “fast unto death” puts the government and the judiciary in an impossible position. If the police forcibly intervene and force-feed the students, they are violating the protesters’ bodily autonomy and their right to peacefully protest. But if the state sits back and allows a citizen to starve to death on the streets of the capital, the government is failing its absolute constitutional duty to protect human life. This paper explores this exact friction—trying to figure out if starving for justice is a legally protected right, or if it crosses the line into a criminal violation of one’s own existence.

2. THE DOCTRINE OF NON-WAIVER AND ARTICLE 21

To fully grasp why a hunger strike creates such a massive legal headache for the government, we first need to understand the basic difference between a regular legal right and a fundamental constitutional right.

When you own a physical asset, like a car, a piece of land, or a bank account, you have the absolute freedom to do whatever you want with it. You can sell your car, gift your land, or simply abandon your property. The law allows you to give up or “waive” your normal property rights whenever you choose. But does this same logic apply to the rights written in the Constitution? Can an Indian citizen wake up one day, walk into a court, and tell the government, “I no longer want my fundamental rights, you can treat me however you want”?

2.1 The Constitutional Bar: You Cannot Surrender Your Rights

To find the answer, we have to look back at the 1959 landmark Supreme Court judgment in *Basheshar Nath v. CIT*. In this incredibly important case, the Supreme Court laid down a strict, unbreakable rule known as the ‘Doctrine of Non-Waiver’. The judges explained that Fundamental Rights are not just private privileges handed out to citizens for their personal enjoyment. Instead, they are matters of strict public policy. They were put in place by the framers of the Constitution to keep the enormous, overwhelming power of the State in check.

The logic of the court was very practical. In a country like India, where a large part of the population might be poor, uneducated, or vulnerable, allowing people to “waive” their rights would be dangerous. If waiver was allowed, the police or the government could easily pressure, trick, or bully a helpless citizen into signing away their right to equality or their right against exploitation. Therefore, the court ruled that an individual simply does not have the legal authority to surrender their fundamental rights. You cannot sign a contract agreeing to become a slave. The Indian Constitution forces you to hold onto your fundamental rights, whether you want them or not.³

2.2 Application of the Non-Waiver Rule to Article 21

This foundational legal principle creates a massive structural wall when we try to justify an indefinite hunger strike.

Article 21 guarantees the Right to Life and Personal Liberty. It is the absolute bedrock of the Constitution; without life, no other right matters. If we strictly apply the logic from the *Basheshar Nath* judgment to Article 21, it means no citizen has the legal power to waive their right to live. You cannot legally consent to your own murder, and you cannot sign a document giving the state permission to take your life without due process.

2.3 The Hunger Strike Paradox: Starving as an Unconstitutional Act

But what exactly is a “fast unto death”? By its very definition, it is a conscious, deliberate, and highly public declaration that a person is willing to let their vital organs shut down. The protesting citizen is essentially gambling with their own existence. They are telling the state, “If you do not meet my demands, I am voluntarily giving up my life.”

From a purely technical and strict legal viewpoint, a person sitting on an indefinite hunger strike is actively attempting to waive their Article 21 right to life. Because the Supreme Court has already declared that waiving a fundamental right is legally impossible and invalid, an absolute hunger strike automatically becomes an unconstitutional act. The protester is effectively violating their own constitutional mandate to stay alive.⁴

2.4 The State’s Ultimate Excuse

This specific interpretation gives the government a massive upper hand. If the act of starving oneself is treated as an illegal surrender of life, it provides the police and the local administration the perfect constitutional excuse to intervene.

When the police eventually rush in to dismantle the protest tents and forcefully drag a fasting student to the hospital, the State does not frame its actions as “crushing a political protest.” Instead, the government flips the narrative. The state administration argues that they are simply stepping in to stop a citizen from unconstitutionally throwing their life away. By using the ‘Doctrine of Non-Waiver’, the government legally transforms itself from an oppressive force trying to silence dissent, into a constitutional savior trying to protect a citizen’s Article 21 rights from their own actions.

3. ARTICLE 19(1)(A) VS. ARTICLE 21: THE CONSTITUTIONAL CLASH

When we read about the freedom of speech and expression in a textbook, our minds immediately picture a noisy street rally, angry political speeches, opinion pieces in newspapers, or viral posts on social media. We associate expression with noise. But in the landscape of civil disobedience, absolute physical silence combined with extreme physical suffering often speaks much louder than any microphone. When a citizen stops eating, sits quietly in a public square, and refuses to move, they are actively communicating a very aggressive and desperate message to the government. This brings us to a fascinating and highly sensitive

³ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

⁴ *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648.



crossroads where the right to speak directly collides with the right to live.

3.1 Expression vs. Existence: Can Starving be Protected as Valid Speech?

To understand if a hunger strike is legally protected, we first need to look at how Article 19(1)(a) actually works. The Indian Constitution, much like other major democratic frameworks, does not limit expression strictly to verbal or written words. The courts have long recognized a concept known as 'symbolic speech'. This means you can express your deep political dissent through actions. Burning an effigy, wearing a black armband to work, flying a flag at half-mast, or painting a protest slogan on your own body are all legally protected forms of expression.⁵

When the students and veteran activists sit at Jantar Mantar and refuse food, they are essentially using their own deteriorating bodies as a billboard to highlight the failure and corruption of the national examination system. They are making a public declaration that they have exhausted all other democratic avenues—petitions, court cases, and regular strikes have failed. Now, they are showing the state that they are willing to endure severe, agonizing physical pain to force accountability. From a purely legal standpoint, in its initial stages, a hunger strike is a perfectly valid, non-violent, and highly protected form of democratic expression under Article 19(1)(a), combined with the right to assemble peacefully under Article 19(1)(b). The Constitution fully supports and protects their right to sit there and make their point.

3.2 The Timeline of a Fast: When Protest Attacks Survival

However, a hunger strike is not a static, one-time event like a march that ends after a few hours. It is a progressive action that changes its legal nature with every passing day. The real constitutional nightmare begins when the clock keeps ticking and the protest enters its second or third week.

In the first few days, the protester is fully conscious, alert, and simply exercising their political rights. But as the fasting continues, the medical reality takes over. The protester's blood pressure drops dangerously low, their kidneys begin to struggle, their liver function is compromised, and they reach the verge of slipping into a coma. At this exact, critical medical breaking point, the situation is no longer just about free speech. We witness a direct, brutal collision between two fundamental rights that cannot co-exist in this scenario.⁶

The citizen is aggressively pushing their Article 19 right to protest to its absolute limit, but the direct biological side effect of that protest is completely destroying their Article 21 right to life.

3.3 Where Rights Collide: The Hierarchy of Fundamental Rights

So, when a citizen's expression threatens their own existence, which right wins? In constitutional theory, courts often use the rule of 'harmonious construction'—meaning they try to balance competing rights so that both can survive.⁷ But in the case of a fast unto death, balance is mathematically impossible. One right has to be suppressed to save the other.

Legal logic dictates a very harsh but simple reality: you need a living, breathing human body to actually enjoy the freedom of speech. Existence is the absolute prerequisite for expression. If the state administration simply stands back, folds its hands, and allows the protester to die out of "respect for their freedom of expression," it results in a permanent and irreversible tragedy. Once a person dies, all their constitutional rights die with them in the grave. The dead do not have freedom of speech, nor do they have the right to assemble.

Because of this grim reality, the state administration always argues that Article 21 must overpower Article 19. When the protest stretches too long, the police do not just walk in to crush dissent. The legal justification they use to clear the protest site, tear down the tents, and drag the fasting individuals into waiting ambulances is deeply rooted in Article 21. They argue that protecting a citizen's pulse, keeping their organs functioning, and preserving their life is legally, morally, and constitutionally far more important than letting them finish their political statement. The right to live simply outranks the right to protest.

4. LIVE CASE STUDY: THE 2026 JANTAR MANTAR AGITATION

To see how this massive constitutional clash plays out in real life, we do not have to rely on hypothetical scenarios. We just need to observe the ongoing events at Jantar Mantar. The June-July 2026 agitation against the severe irregularities in the national examination framework serves as a textbook, real-time example of a modern "community hunger strike."

4.1 The Anatomy of the Protest: A Complex Community Fast

Unlike a solitary political figure fasting inside a jail cell or a closed ashram, the current protest at Jantar Mantar brings together a very unique and highly sensitive demographic mix. On one side, you have veteran activist Sonam Wangchuk, someone who understands the physical and political endurance required for extreme fasting. On the other side, you have hundreds of young, desperate students sitting right next to him, participating in an indefinite strike.

This specific combination creates a completely new legal dynamic for the government. When a seasoned activist fasts, the state often treats it as a calculated political pressure tactic. However, when young students—who are structurally vulnerable, emotionally charged, and medically unprepared for extreme

⁵ V.N. Shukla, *Constitution of India 145-148* (Eastern Book Company, Lucknow, 13th ed., 2017).

⁶ World Medical Association, *Declaration of Malta on Hunger Strikers* (Adopted in 1991, revised in 2017).

⁷ G.P. Singh, *Principles of Statutory Interpretation 155-160* (LexisNexis, Nagpur, 14th ed., 2016).



starvation—join the fast, the state's legal obligation to intervene drastically multiplies. The administration is no longer just managing a political grievance; they are staring down a mass medical emergency waiting to happen. The presence of the youth forces the government to walk an incredibly tight rope. If they use force, they look like a brutal regime attacking its own students. If they do nothing, they risk a young citizen dying on the streets of the national capital.

4.2 Civil Liberties vs. Administrative Control: The Silent Crackdown

As the days turn into weeks under the harsh Delhi weather, the state's response usually shifts from passive observation to active administrative control. But instead of directly arresting the protesters—which would spark a massive media backlash and look entirely dictatorial—authorities often rely on indirect, passive-aggressive methods to break the strike. This introduces a very dark side of the constitutional debate: the restriction of basic civic amenities.

During such high-profile agitations, it is a common administrative tactic to deliberately deny protesters access to basic survival needs. We often see police barricades preventing the entry of portable toilets, restricting the supply of clean drinking water, and banning the setup of waterproof tents or tarpaulins.⁸ This leaves the fasting students completely exposed to the blistering heat and sudden monsoon rains. The local police usually justify these actions by citing municipal rules, claiming that protesters cannot set up "permanent structures" or create a public nuisance.⁹

4.3 The Violation of Human Dignity Under Article 21

This administrative tactic creates a severe constitutional crisis. The Supreme Court of India has repeatedly ruled that the Right to Life under Article 21 is not just about keeping a person breathing; it explicitly includes the right to live with basic human dignity. The law guarantees clean water, shelter, and sanitation even to convicted murderers sitting on death row.¹⁰

Therefore, when the state administration deliberately chokes off these basic amenities to a group of peaceful, non-violent citizens at a designated protest site, it crosses a serious legal line. Depriving fasting students of a place to use the washroom or a shade to protect them from heatstroke is not a valid form of "maintaining law and order." Legally speaking, it is a state-sponsored attack on human dignity. Using dehydration, exposure to extreme weather, and public humiliation as backdoor crowd-control tactics completely betrays the core values of Article 21. The state ends up using petty administrative rules to silently and brutally crush a constitutional right, making the physical suffering of the hunger strike exponentially worse.

5. THE SHADOW OF CRIMINAL LAW: FROM IPC TO BNS

Constitutional debates about Article 19 and Article 21 are excellent for Supreme Court courtrooms and academic journals. But when a group of students is sitting on a street without food, the local police do not arrive with a copy of the Constitution in their hands. They arrive with the criminal rulebook. The state machinery has historically relied heavily on criminal law to physically break up hunger strikes, and to understand how this works today, we have to look at how the laws have drastically shifted.

5.1 The Historical View: The Weaponization of IPC Section 309

For over a century and a half, the Indian Penal Code (IPC) dictated how the police handled a protesting citizen. Under the old IPC framework, the moment a hunger strike crossed a certain medical threshold and the protester's life was genuinely in danger, the police would invoke Section 309—Attempt to Commit Suicide.

The logic used by the state was brutally simple. The law viewed human life as a valuable asset that ultimately belonged to the state. Therefore, trying to destroy that life was a criminal offense punishable by up to one year in prison. For decades, Section 309 was the ultimate weapon for law enforcement to crush political dissent. It allowed the police to legally step into the protest site, arrest the fasting activists, transport them to a government hospital, force-feed them through a nasal tube, and then formally charge them with a crime. The activist was no longer treated as a citizen demanding justice; the law instantly downgraded them to the status of a criminal attempting to commit a violent offense against themselves.¹¹

5.2 The Mental Healthcare Act Confusion

Things started to get complicated in 2017 when the government passed the Mental Healthcare Act. Section 115 of this Act clearly stated that anyone who attempts suicide is presumed to be suffering from severe stress and should not be tried or punished under Section 309.¹² Many people thought this meant hunger strikes were finally decriminalized.

However, courts and police departments quickly realized there was a massive difference between a clinically depressed individual attempting suicide in private, and a highly calculated, politically motivated hunger strike happening in the middle of Jantar Mantar. A political fast is not a mental health crisis; it is a strategic protest. So, the shadow of criminal prosecution still heavily hovered over activists, leaving a massive grey area in the law.

⁸ UN Human Rights Committee, General Comment No. 37 on the Right of Peaceful Assembly, UN Doc. CCPR/C/GC/37 (2020).

⁹ *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324.

¹⁰ M.P. Jain, *Indian Constitutional Law* 1135-1140 (LexisNexis, Gurgaon, 8th ed., 2018).

¹¹ Ratanlal & Dhirajlal, *The Indian Penal Code* 785-790 (LexisNexis, Gurgaon, 36th ed., 2019).

¹² *The Mental Healthcare Act, 2017* (Act 10 of 2017), s. 115(1).



5.3 The Modern Shift: Decoding the Bharatiya Nyaya Sanhita (BNS)

In July 2024, the Indian legal system went through a historic overhaul. The old IPC was completely thrown out, and the Bharatiya Nyaya Sanhita (BNS) became the new criminal law of the land. The biggest question for legal scholars and activists was: Does the BNS finally decriminalize the political hunger strike?

The answer is a harsh reality check. The BNS did not decriminalize the hunger strike; it actually created a specific, tailor-made provision to target it.

While the BNS removed the general crime of "attempted suicide" to respect mental health concerns, it quietly introduced a highly specific new offense under **Section 226 of the BNS**. This new section clearly states that whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging their official duty shall be punished with imprisonment, a fine, or community service.¹³

This is a massive, game-changing legal development. If we apply Section 226 of the BNS to the ongoing situation at Jantar Mantar, the legal picture becomes crystal clear. The protesting students and activists are deliberately starving themselves (attempting self-harm/suicide) with the explicit intention of forcing the government and educational authorities (public servants) to cancel exams or conduct investigations (compelling an official duty).

5.4 The Threat Exists, Sharper Than Ever

So, does the threat of prosecution still exist today? Absolutely. In fact, it is now far more dangerous for protesters. Under the old IPC, the police had to awkwardly fit a political protest into a general suicide law. But under the new BNS framework, the Parliament has essentially weaponized the law to directly target the exact mechanics of a hunger strike.

The new criminal framework sends a very clear, statutory message: you can protest peacefully, but the moment you use your own death as a bargaining chip to blackmail the government or force a public servant's hand, you cross the line from a democratic protester to a statutory offender. The shadow of criminal law has not disappeared; it has simply mutated to become more precise and restrictive.

6. STATE PATERNALISM AND THE ETHICS OF FORCE-FEEDING

When a hunger strike crosses the critical medical danger mark, the government stops acting like a political opponent and starts acting like a strict parent. The administration suddenly shifts its focus from the political demands of the protest to the dropping blood pressure of the protester. This brings us to the complex legal concept of 'State Paternalism'. The government claims it has a moral, legal, and constitutional duty to step in and save the citizen from their own stubbornness. But this

immediately triggers a massive ethical debate about who actually owns a citizen's physical body.

6.1 The Paternalistic Shield: Protection vs. Bodily Integrity

In standard legal and medical terms, 'bodily integrity' is the absolute rule that your body belongs exclusively to you. No one, not even a highly qualified doctor, can touch you, treat you, or put a needle in your arm without your clear, explicit consent. If a doctor forces a medical procedure on an unwilling, conscious adult, it is technically classified as physical assault or battery under tort law. The Supreme Court of India, especially after the Puttaswamy privacy judgment, has strongly defended this idea, stating that a person has the ultimate right to make choices about their own body¹⁴.

However, when a protesting student or activist at Jantar Mantar collapses from starvation, the government throws this rule out the window. The state uses Article 21 as a 'paternalistic shield'. They invoke the doctrine of *parens patriae*, an ancient legal concept which means the government acts as the ultimate parent of the country.¹⁵ The state administration argues that when a citizen's life is rapidly slipping away, the government's constitutional duty to preserve human life completely overrides the individual's right to say "no" to medical treatment. They justify tying a resisting protester down to a hospital bed as a necessary, life-saving rescue mission, rather than a violation of their personal liberty.

6.2 Judicial Precedents: The Reality of Nasal Intubation

To truly understand how Indian courts view this clash, we have to look closely at the harsh, physical reality of force-feeding. The most famous and extreme example in Indian legal history is the case of civil rights activist Irom Sharmila. For 16 incredibly long years, she was kept alive against her absolute will through a Ryle's tube—a plastic pipe forced down her nasal passage directly into her stomach. The state repeatedly arrested her, charged her with attempting suicide, and physically forced a liquid diet into her system.

Historically, Indian courts have been extremely hesitant to stop the government from force-feeding hunger strikers. Judges almost always side with the state's argument that preserving life is the highest priority. When the police forcibly break up a fast and drag protesters to a government hospital for intubation, the courts rarely penalize the administration. The judiciary generally accepts force-feeding as a tragic but necessary evil to prevent a suicide on public property.

But this judicial backing creates a terrifying human rights blind spot. Global medical ethics strongly disagree with the Indian state's approach. The World Medical Association's Declaration of Malta on Hunger Strikers states very clearly that forcibly feeding a mentally competent protester who has made a conscious choice to refuse food is a form of inhuman and degrading treatment.

¹³ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 226.

¹⁴ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

¹⁵ Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454.



Pushing a feeding tube down the throat or nose of a resisting, gagging student is not a peaceful medical procedure; it is a deeply violent and traumatic physical act. It completely strips away the individual's human dignity.¹⁶ This leaves the legal system with a highly disturbing question: When the state orders police and doctors to force-feed a fasting protester, are they genuinely acting out of a desire to save a human life, or are they simply using state-sanctioned medical torture to break the backbone of an embarrassing political agitation?

7. CONCLUSION: BALANCING AUTONOMY AND STATE RESPONSIBILITY

A hunger strike is perhaps the ultimate test of a functioning democracy. It places the raw, emotional desperation of a citizen directly against the cold, mechanical rulebook of the state. As we have seen throughout this legal analysis, sitting on a fast unto death is not a black-and-white issue. It exists in a very gray, highly sensitive area of constitutional law where the right to demand justice violently collides with the biological duty to stay alive.

7.1 Final Assessment: Reconciling Morality with Statutory Rules

When climate activist Sonam Wangchuk and the young students sit without food under the harsh sun at Jantar Mantar, they are not acting with criminal intent. They carry the immense moral weight of a generation that feels cheated by a corrupt examination system. Historically, this method of protest is woven into the very fabric of how India won its freedom. Morally and socially, a hunger striker is viewed as a martyr, someone willing to sacrifice their own comfort for the greater good of the community.

However, the Constitution and the criminal justice system cannot run purely on emotions or historical nostalgia. The law has to operate on strict statutory boundaries. The state simply cannot allow a citizen to bypass Article 21 and slowly kill themselves on a public street, no matter how noble their cause might be.

The transition from the old Indian Penal Code to the newly implemented Bharatiya Nyaya Sanhita (BNS), read alongside the Mental Healthcare Act, shows a clear shift in how the law views these protesters. The legal system no longer looks at a fasting student as a traditional "criminal" trying to commit suicide, who needs to be thrown into a jail cell. Instead, modern jurisprudence views them as citizens under extreme mental and physical distress who need state-sponsored protection. The final legal assessment is clear: a hunger strike is a highly protected fundamental right under Article 19, but only up to the exact moment it threatens absolute biological failure. Once that biological red line is crossed, Article 21 takes over, and the state's duty to preserve life legally crushes the right to protest.

7.2 The Balanced Approach: Guidelines for Law Enforcement

Knowing this, how should the police and local administration handle situations like the Jantar Mantar agitation? Currently, police action is often reactive, messy, and looks entirely like state oppression. To protect both the "Right to Dissent" and the "Right to Life," India urgently needs a clear, legally binding Standard Operating Procedure (SOP) for handling fasting protesters.

Here is a balanced legal framework that law enforcement should adopt:

7.2.1. The Principle of Maximum Tolerance (The Free Speech Phase):

During the initial days of a hunger strike, the police must adopt a policy of absolute non-interference. The state administration should not cut off water supplies, remove portable toilets, or forcefully dismantle the protest tents. Doing so violates human dignity and suppresses free speech. The administration's only job during this phase is to secure the perimeter, ensure public order, and keep a medical team on standby. The protesters must be allowed to make their political statement loudly and clearly.

7.2.2 The Independent Medical Trigger (The Transition Phase):

The decision to finally intervene and stop the protest should never be made by a police inspector, a local magistrate, or a politician who might want to quickly end bad press. The trigger for intervention must be strictly medical. An independent medical board of government doctors should monitor the vitals of the fasting individuals daily. Police intervention should only be legally authorized when this medical board issues a written declaration stating that the protester's internal organs are on the verge of irreversible damage or that they have lost consciousness.

7.2.3 Dignity in Intervention (The Article 21 Phase):

When the medical red line is officially crossed, the police have the constitutional duty to step in. However, this intervention must not look like a violent crackdown. Dragging fasting students into police vans is a violation of their basic human rights. The evacuation must be treated purely as an emergency medical rescue. Furthermore, if doctors have to resort to force-feeding (intubation) to save the person's life, it must be done in a hospital setting under strict medical ethics, focusing purely on keeping the person alive rather than punishing them for protesting.

7.3 The Final Word

Ultimately, a democratic government should never let a situation reach a point where its young citizens feel that starving themselves is the only way to be heard. But when they do, the state must act as a responsible guardian, not a dictator. By separating the political protest from the medical emergency, the

¹⁶ J.K. Mason and G.T. Laurie, *Mason and McCall Smith's Law and Medical Ethics* 520-525 (Oxford University Press, Oxford, 10th ed., 2016).



legal system can successfully respect a citizen's right to raise their voice, while still upholding its ultimate constitutional promise to keep them alive.

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