
THE RIGHT TO PROTEST AND DISSENT: A COMPARATIVE STUDY OF INDIA AND SOUTH ASIAN DEMOCRACY

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ABSTRACT

Protest and dissent is paradoxically one of the most constitutionally protected civil liberties in South Asia, in some form or another, in the founding documents of essentially every South Asian democracy, but at the same time one of the most heavily policed and often stifled civil rights. The paper conducts comparative doctrinal analysis of the right to protest in India, Pakistan, Bangladesh, Sri Lanka and Nepal and explores how the constitutional rights to assembly and expression relate to various restrictions and statutory laws, the public order laws of the colonial era, anti-terror laws and executive emergency powers. The paper starts by creating a conceptual structure between protest and disorder, and by considering the right to protest as a rights composite made up of speech, assembly, movement, and more recently, access to digital platforms. It then proceeds to do a detailed doctrinal analysis of Indian Constitutional jurisprudence and charts the course from the early public forum recognition to the principles of proportionality in *Anuradha Bhasin* to the containment logic in *Amit Sahni*. The study is extended comparatively with the laws regarding Islamabad Public Order and Peaceful Assembly Act, 2024, Bangladesh's quota-reform uprising of 2024, Aragalaya movement in Sri Lanka in 2022 and its judicial vindication in 2025, and the Gen-Z protests in Nepal in September 2025 over the ban on social media. Four cross-cutting patterns emerge from the comparative analysis: a colonial legacy of restrictive statutory architecture; an inclination of judges to use sympathetic rhetoric and deferential outcomes; the rise of "infrastructural suppression," which now dominates as the prime mechanism for control via shutdown of the internet and platforms; and emergency powers as the most vulnerable fault line where constitutional protection is most easily breached. The paper argues that the right to protest in the region of South Asia is not as well protected as the words of the constitutional guarantees, but rather how willing political, judicial and civil-societal institutions are to open up executive discretion to meaningful and timely judicial and public scrutiny; and calls for regional judicial, statutory and institutional reform accordingly.

Keywords: Right to Protest, Dissent, Article 19, Freedom of Assembly, South Asia, Public Order, Internet Shutdown, Proportionality.

1. INTRODUCTION

The air of democracy is dissent. A democratic system which allows citizens to vote between elections but does not give them the freedom to protest, gather and criticize the power is a half democracy. The right of protest – that is, the combination of the freedoms to assemble peaceably, to voice one's opposition to another view at large, and to march in unison against governmental action or inaction – is not a subsidiary or decorative right. It is a structural requirement for representative government, providing the mechanism for getting the governed to let the government know how it is disagreeable. It is precisely because the democracies of South Asia have a common colonial genealogy, but they have taken different paths in post-colonial development, that constitutes the South Asian region as an interesting area for comparative constitutional study of this right. India, Pakistan, Bangladesh, Sri Lanka and Nepal all were left behind by the British an administration system that was not established for the protection of dissent, but for its suppression. This paper asks how this inherited coercive framework has set the tone for the current jurisprudence of protest in the region, as it is in conflict with the principled, rights affirming, post-Independence constitutions.

1.1 Literature Review

Some existing literature on the right to protest in South Asia can be summarised as three broad strands: The first strand, doctrinal constitutional scholarship, has explored the Indian right to protest mostly through the prism of Article 19 jurisprudence, beginning with the judicial recognition of public streets as legitimate forums for protest, and the subsequent development of the concept of reasonable limits under Article 19(2) and 19(3).

This literature has proved to be useful in creating the textual and judicial framework of the right, but it has tended to focus on one jurisdiction, thus neglecting the comparative aspect. The other strand, human rights and civil liberties reporting, mostly from groups like Amnesty International, Human Rights Watch, national civil liberties groups, etc. has recorded specific incidents of suppression of protest such as the Bangladesh quota-reform crackdown, the Sri Lankan Aragalaya repression, and the Nepal Gen-Z protests with empirical rigour. This literature is, however, mostly event driven, descriptive and lacks doctrinal content and infrequently provides a comparative constitutional analysis of individual events. The third strand, theorizing of internet shutdowns and platform ban as new form of rights restriction, has started theorizing about internet shutdowns and platform ban as a new form of rights restriction,

especially in the context of India's disproportionately high rate of internet shutdowns and, more recently, Nepal's 2025 social media ban. It is good to see that this literature has set the internet as an infrastructural prerequisite for today's assembly, but it remains unlinked to the older doctrinal literature on physical assembly rights.

Research Gap: The lack of a study, to the best of this author's knowledge, which examines the two aspects of protest on the physical and the digital plane and brings these strands together in a comparative doctrinal analysis, with an added element of the principal South Asian democracies; and the underlying colonial-statutory architecture, which grounds the restrictions across jurisdictions. This paper fills that void by providing an integrated, comparative and doctrinal analysis of the right to protest in the five South Asian democracies, of both physical and infrastructural methods of repression in a single analytical framework, based around the proportionality standard.

1.2 Statement of Problem

Freedom of assembly is guaranteed in substantially the same words in the constitutions of all South Asian nations, and freedom to speak, without unreasonable restrictions, is enshrined in all South Asian nations, except for Bhutan. However, the past few years have seen the use of prolonged detentions, lethal force, bans on the internet, and new licensing regimes with permission required as a default, rather than the previous one that granted assembly unless it was forbidden, against peaceful protest in India, Pakistan, Bangladesh, Sri Lanka and Nepal. The central question that this paper seeks to answer is why guarantees that are textually akin and accepted in principle by court decisions in the United States and in the United Kingdom give such a wide range of protection in practice – sometimes none at all – and how doctrinal and institutional changes could help narrow that divide.

1.3 Research Questions

The following research questions are used in this paper:

(i) Meaning of the right to protest and dissent in the Indian Constitution and how it is interpreted by the judiciary?

(iii) Discuss the differences between the Pakistani, Bangladeshi, Sri Lankan and Nepalese position on the rights of assembly and expression, both in terms of the text and judicial

interpretation.

(iii) What are some shared historical and contemporary statutory and executive tools that limit the exercise of the right to protest in these jurisdictions?

(iv) How has the right to protest in the region itself changed in terms of its doctrine and practice because of the new digital and infrastructural controls (internet shutdowns, platform bans)?

(v) What legal, judicial and institutional changes could help to reduce the difference between the constitutional promise of dissent and its protection in South Asian democracies?

1.4 Aims and Objectives

This paper is an effort to develop an original comparative doctrinal analysis of the right to protest and dissent in India and the key South Asian democracies. The specific aims of the study would be: to chart the evolution of the constitutional and jurisprudential framework of the right to protest in India; to make a comparative study of the constitutional and statutory position in Pakistan, Bangladesh, Sri Lanka and Nepal with reference to more recent and significant protest events; to pinpoint transnational structural patterns that explain the continuing disjuncture between constitutional guarantee and actual protection of the right to protest; and to suggest concrete statutory, judicial and institutional reforms which could bridge that gap.

1.5 Research Methodology

The doctrinal and comparative approach is used in this paper. It draws its inspiration from primary Constitutional texts (the Constitutions of India, Pakistan, Bangladesh, Sri Lanka and Nepal) as well as primary laws (Bharatiya Nagarik Suraksha Sanhita, 2023, Unlawful Activities (Prevention) Act, 1967, Islamabad Public Order and Peaceful Assembly Act, 2024, and Temporary Suspension of Telecom Services Rules, 2017) and key Supreme Court judgments of India and Sri Lanka. It adds to this basic resource a secondary reporting of contemporary protest events in Bangladesh, Sri Lanka, Pakistan and Nepal from credible human rights groups, academic writing, and reputable news sources to challenge a set of ideas with real-life examples. The paper is not of the empirical or statistical type but is in fact of a qualitative and comparative nature and its analytical approach involves uncovering the common structural characteristics between the two different national legal systems. Research

is original, both in terms of the synthesis and argument, and does not simply copy material from any one source.

2. CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Protest as a Composite, Derivative Right

In contrast to the right to vote, the right to protest is not often referred to as such in constitutional provisions. Instead, it is composed of a number of listed freedoms: freedom of speech and expression, freedom of peaceful assembly, freedom of association, and more recently—freedom of access to the means of communication, including the Internet. The right to protest is thus to be understood as a “composite” or “derivative” right: it can be found neither as a standalone textual guarantee in the majority of South Asian constitutions, but is ‘composed’ through the interplay of multiple rights. The right is derivative, which means that if a state wishes to abridge protesting, it doesn't need to alter the constitution, it just needs to make the statutory restriction on the one freedom that it has, more restrictive.

2.2 Dissent Distinguished from Disorder

One of the analytical mistakes of the South Asian jurisprudence is the confusion between the concepts of "dissent" and "disorder". Dissent (disagreement) vs Disorder (braking down of public peace). While they can overlap, conceptually they are different; indeed, a constitutional framework that embraces democratic discourse should be wary of viewing any form of disruptive dissent as inherently disorderly. By its very nature, civil disobedience is prone to disruption, to drawing attention it does so by disrupting the normal course of living. Judging by “inconvenience” and “illegality” can lead to a jurisprudence that removes the disruptive element, which is at the heart of protest and makes it communicative. This paper takes the view that there are legitimate limits on the time, place and manner of protest which do not contravene the Constitution, but that restrictions which seek to completely remove the disruptive nature of the protest itself are a restriction on the substance of the right.

2.3 The Proportionality Standard

In the jurisdictions studied, courts have increasingly, to varying degrees of stringency, turned to a ‘proportionality’ test to evaluate restrictions on protest: whether the restriction is for a legitimate aim; whether the restriction is suitable to achieve this aim; whether there was an

alternative that was less restrictive; and whether in the strict sense, the restriction is proportionate, balancing its severity against the importance of the aim pursued. This paper does not ignore the differences of its application, but takes proportionality as the doctrinal common denominator, and applies this criterion as the yardstick to conduct the comparative analysis in the following sections.

3. THE RIGHT TO PROTEST UNDER INDIAN CONSTITUTIONAL LAW

3.1 Constitutional Text

The term “protest” is not mentioned in the Indian Constitution. The right is built on Article 19(1)(a) (speech and expression), Article 19(1)(b) (assembly peaceably and without arms) and, as far as movement or blockage of the public ways is concerned, Article 19(1)(d). The "reasonable restrictions" on each of the freedoms includes: Article 19(2) (speech sovereignty and integrity, security of the State, public order, decency, morality, contempt of court, defamation, incitement to an offence); and Article 19(3) (assembly sovereignty and integrity, public order only). There is a limit to the freedom to assemble, and the framers chose to limit it with narrower restriction-grounds than speech, indicating that they intended freedom to assemble to be limited sparingly.

3.2 Judicial Construction of the Right

The Supreme Court's decisions have been building up over the past 70 years. Early decisions understood that the right to hold public meetings on public streets is part of the right to meet and therefore is subject to reasonable regulation of traffic and safety, and introduced the concept of "public forum" into the Indian constitutional discourse. A important articulation of the positive content of the right was to be found in the *Mazdoor Kisan Shakti Sangathan v. Union of India* case where the Court, in its consideration of restrictions on the right to protest at Jantar Mantar, concluded that Article 19(1)(a) and 19(1)(b) of the Constitution include the right to protest peacefully, and that restrictions without a threat assessment would not survive.¹

The proportionality doctrine came into the main stream of the protests jurisprudence in *Anuradha Bhasin v Union of India* which was in the context of communication and movement restrictions in Jammu and Kashmir. The Court concluded that the restrictions upon fundamental

¹ *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324.

rights should be based on the expressly mentioned reasons in the Constitution and that the indefinite suspension of internet should not be permitted without a reasoned review in the Telecom Suspension Rules, 2017 on a periodic basis,² and that restriction orders must be published to allow for judicial review because if the citizen cannot see the order restricting her rights, there is no right of review. The conflict between protest and public order was starkly experienced in the case of *Amit Sahni v. Commissioner of Police* in the context of the protests at Shaheen Bagh in 2019-2020.³

The three-judge bench ruled that such a right, to the extent that it exists, is not unlimited in terms of time or place, as the public roads could not be blocked forever, forbidding other people to move around.⁴ The Court's comment that "designated places" for protest must be provided, but it did not identify them or define what constitutes a "designated place," or specify who or by what criteria would determine what should be considered a "designated place,"⁵ The Court's observation that protests must occur at "designated places," without specifying who designates such places or by what criteria,⁶ Since then it has allowed for local authorities to restrict protest to an indirect and less conspicuous spot, reducing its communicative force without affecting the abstract right itself. While staying the implementation of the challenged farm legislations, the Supreme Court in 2020-2021 farmers' agitation, was careful to state that their order was not intended to quell protest, an implicit recognition that the parallel constitutional right of protest against a law does not get extinguished when one is subject of litigation in court.⁷

3.3 Statutory and Executive Restrictions

Despite such a constitutional framework, statutory and executive instruments, which preceded and, in many respects, do not fit into the constitutional text, mould the reality of protest in India.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (subsequent to Section 144 CrPC) gives a

² *Anuradha Bhasin v. Union of India*, AIR 2020 SC 1308; Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017, r. 2(6).

³ *Anuradha Bhasin v. Union of India*, AIR 2020 SC 1308, discussing *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1 on the requirement of disclosure of orders under Art. 32.

⁴ *Amit Sahni v. Commissioner of Police*, Civil Appeal No. 3282 of 2020, decided 7-10-2020; reported as 2020 SCC OnLine SC 808.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Order of the Supreme Court of India dated 12-1-2021 in Writ Petitions challenging the Farm Laws, staying implementation while clarifying that the order was not intended to curtail protest.

District Magistrate (DM) the power to ban an assembly if they believe it poses a threat – a power that has traditionally been used to pre-emptively ban protest.

Section 152 of Bharatiya Nyaya Sanhita, 2023 (which replaced the sedition offence in IPC Section 124A) has been framed to cover acts that threaten the sovereignty, unity and integrity of the Bharat, with limits added by the judiciary that require incitement to violence. The provision is still being used against protest leaders and activists and has a known "chilling effect" despite these restrictions.

The Unlawful Activities (Prevention) Act, 1967 (UAPA), which was amended in 2019, is being applied to the protest organisers and has been for many years a form of incapacitation without any real conviction.

Internet shutdowns have emerged as the most common tool to “disrupt the organisational infrastructure of protest” in India, and are governed by rules and procedures issued under the 2017 Telecom Suspension Rules. The order of shutdown is essentially unchecked by any requirement of a court, or other independent body, of "necessary and proportionate" necessity, though Anuradha Bhasin does require that "procedural discipline" be maintained and that shutdown be reviewed at regular intervals.

4. COMPARATIVE PERSPECTIVE: PAKISTAN

4.1 Constitutional Framework

The Constitution of Pakistan 1973, under Article 16 guarantees every citizen the right to ‘assemble peaceably and without arms in accordance with the law within reasonable limits’.⁸ It is narrower in one sense than its Indian equivalent: the guarantee is restricted to citizens; the exercise of it is interdependent with Article 17 (association) and Article 19 (speech) and restrictions on the former are often cited in defence of the latter and vice versa and vice versa, restrictions on the latter are often cited in defence of the first.⁹

4.2 Statutory Architecture

Colonial era laws, which are largely unchanged, have had a significant impact on Pakistan's

⁸ The Constitution of the Islamic Republic of Pakistan, 1973, Art. 16.

⁹ Human Rights Commission of Pakistan, *Freedom of Peaceful Assembly in Pakistan* (2022), Ch. 1.

protest jurisprudence, including the Pakistan Penal Code, 1860, the Code of Criminal Procedure, 1898, and the Maintenance of Public Order Ordinance, all of which give magistrates and police broad, largely unchecked powers to disperse, ban, and criminalise assembly.¹⁰ Political instability and differences in the security context across the country have resulted in significant disparities in the exercise of the right to assembly, with assemblies calling for minority/ provincial rights being at a significantly greater risk of being forcibly dispersed than mainstream political assemblies.¹¹

4.3 The 2024 Public Order Act and Contemporary Practice

The most important development over the last year has been the **Islamabad Public Order and Peaceful Assembly Act, 2024** which was introduced in a rushed manner within a short legislative period and only applicable to the Federal Capital. It is mandatory for the District Magistrate to give permission for anything over 15 people, and the Act gives the Magistrate broad discretion as to whether or not to grant permission, as to whether "the prevailing law and order situation" is right or wrong. And it gives the Government the right to designate "red zones" where assembly is not allowed at all.¹² It has been described as a shift from the constitutional default (assembly allowed, on reasonable restrictions) to the administrative default (assembly prohibited, on discretionary permission) and a structural anomaly in relation to the general constitutional rule that fundamental rights are generally incapable of being made into privileges that are then only granted to the holder by executive discretion.¹³

5. COMPARATIVE PERSPECTIVE: BANGLADESH, SRI LANKA AND NEPAL

5.1 Bangladesh: Constitutional Text and the 2024 Quota-Reform Uprising

The constitution of Bangladesh provides that every citizen has the right to assemble and take part in public meeting and processions peaceably and without arms and this is subject to reasonable restrictions in the interests of public order or public health; Article 39 also provides freedom of speech.¹⁴ Of course, Bangladesh's restriction-grounds, in language, are narrower than India's grounds, which lack, for example, the ground of morality and the ground of

¹⁰ *Id.*, Ch. 2, discussing the Pakistan Penal Code, 1860; Code of Criminal Procedure, 1898; and the Maintenance of Public Order Ordinance.

¹¹ *Id.*

¹² Islamabad Public Order and Peaceful Assembly Act, 2024, ss. 4, 4(8), 5, 8.

¹³ Oxford Human Rights Hub, "The Draconian Public Order Act – Protests Crackdown in Pakistan" (2024).

¹⁴ The Constitution of the People's Republic of Bangladesh, Arts. 37, 39.

contempt of court. But this is a very disconnect in the world of quota reform protests and its implementation as the protests in 2024 bear witness. The peaceful protest by students demanding the repeal of a government policy to revive the 30 per cent civil service job quota for women, which was started in June 2024, turned violent in a matter of days, due to inflammatory government rhetoric, prompting a nationwide uprising.¹⁵ In response, the state shut schools, and enforced a multi-day nationwide internet shutdown, from 18 July 2024, and used lethal and less-lethal weapons, such as shotguns with birdshot and grenade launchers, that killed several hundred people and caused hundreds of mass arbitrary detentions.¹⁶ The protests finally forced Sheikh Hasina to step down from power as Prime Minister in early August, 2024, after 15 years in office.¹⁷ The internet shutdown was not done by way of any published, judicially reviewable instrument, nor was force used, leaving no room for the kind of scrutiny that has been provided under the Indian Anuradha Bhasin framework, albeit it may be a bit late.

5.2 Sri Lanka: Constitutional Text and the 2022 Aragalaya

The Constitution of Sri Lanka allows freedom of speech and expression (Article 14(1)(a)) and freedom of peaceful assembly (Article 14(1)(b)), which are subject to restrictions in Article 15 on a variety of grounds such as national security or public order. The President can also, under the Public Security Ordinance, defeat, by proclamation, the ordinary statutory safeguards of fundamental rights. Direct testing of this came in the 2022 Aragalaya (the struggle) which was sparked by the economic breakdown and the anger against corruption in the Rajapaksa political family..¹⁸ The government has called three states of emergency between March and July 2022, prompting frequent arrests of people protesting on curfews, including more than six hundred for curfew violations during the state of emergency that was declared from 1 to 6 April 2022, and a state of emergency specifically to disperse protesters at the Galle Face Green protest site on 17 July 2022.¹⁹ In July 2025, Sri Lanka's Supreme Court ruled the July 2022 emergency regulations infringed on the right to free speech and assembly, stating that these freedoms are more important during a phase of acute national crisis, rather than less.²⁰ The Aragalaya paved

¹⁵ Institute of South Asian Studies, National University of Singapore, *Quota Protests in Bangladesh: Causes and Consequences*, ISAS Brief (27 July 2024).

¹⁶ Amnesty International, "What is Happening at the Quota-Reform Protests in Bangladesh?" (2 August 2024).

¹⁷ *Id.*

¹⁸ 2022 Sri Lankan Protests; Aragalaya, cause and chronology as documented in contemporaneous reporting, March–July 2022.

¹⁹ Human Rights Watch, "Sri Lanka: Protect Rights During Political Turmoil" (13 July 2022).

²⁰ Supreme Court of Sri Lanka, SC FR No. 26/2022, decided 23 July 2025 (holding emergency regulations of

the way for the resignation of the Prime Minister and the President in under four months and ultimately for the political realignment which led to the election of a government that pointedly rejected the establishment that the protesters had targeted.²¹ Despite the success of the movement politically, the act of protesting itself gave rise to a large number of individual rights violations that went undocumented, according to independent documentation, in the course of the use of the Prevention of Terrorism Act.²²

5.3 Nepal: Constitutional Text and the September 2025 Gen-Z Protests

Constitution of Nepal, 2015, Article 17 provides for freedom of assembly and freedom of opinion and expression with reasonable restriction on specified grounds such as that of, sovereignty, integrity and public order. The political culture of Nepal has always given a larger space to mass mobilization in the process of constitutional change itself – as evident from the prodemocracy movement in 1990 and 2006. Twenty-six major social media platforms such as Facebook, YouTube, WhatsApp, Instagram, X and Signal have been blocked due to their refusal to register in the country in line with the government's decision, announced on 4 September 2025, to ban these platforms for not complying with the local registration requirement.²³ As a digitally connected youth population, the ban was seen as a direct attack on the main mechanism of organising Youth-led anti-corruption campaigns such as one exposing the lifestyle of the politically connected “nepo-kids” that went viral.²⁴ Protests outside Kathmandu's Parliament escalated quickly, leading to the burning of the Parliament building and the President's residence on 8th September 2025, with police opening fire on the protesters, killing 19 and injuring hundreds, and Sushila Karki Nepal's first woman Chief Justice being appointed as interim Prime Minister on 12th September 2025 after consultations between protest leaders and the army, and the resignation of PM K.P. Sharma Oli.²⁵ There were further reports of unrest as the death toll increased significantly.²⁶

July 2022 violative of Art. 14(1)(a) and (d) of the Constitution of Sri Lanka).

²¹ Carnegie Endowment for International Peace, *The Aragalaya Protest Movement and the Struggle for Political Change in Sri Lanka* (2025).

²² International Federation for Human Rights (FIDH) & Centre for Human Rights and Development, *Anatomy of a Crackdown: The Repression of Sri Lanka's Aragalaya Protest Movement* (31 January 2023).

²³ ConstitutionNet, "Nepal's Gen Z Movement and Constitutional Crisis" (2025).

²⁴ *Id.*

²⁵ Britannica, "2025 Nepalese Gen Z Protests: Background, Social Media Ban, and Political Breakdown" (2025).

²⁶ *Id.*

5.4 Comparative Snapshot

The four jurisdictions examined in Sections 4 and 5 show a recurring pattern: a constitutional guarantee that protects the text; a triggering grievance (a legislative, economic or regulatory grievance); a response by the executive that involves physical force and infrastructure restrictions; and, in three of the four examples (Bangladesh, Sri Lanka, Nepal), a political outcome that is disproportionate to the initial grievance, and in three, the collapse of the incumbent government. The only jurisdiction to have reacted to this trend is Pakistan, which has adopted a more restrictive statutory framework (Islamabad Act 2024) rather than a mobilisation that toppled the government, although observers have suggested that this could be due to the presence of a comparable underlying grievance rather than a dearth.

5.5 Preliminary Findings

This is a comparative study with three preliminary findings. First, the constitutionally protected right to assembly and expression is, in every of the five jurisdictions, highly similar in structure and form, a general guarantee with a qualified public-order exception. Second, the degree of judicial independence and promptness of judicial review more clearly relates to the protection of the right than does the richness of the text of the guarantee. Third, the immediate cause of the most important protest episodes explored in this paper – the CAA protests at Shaheen Bagh, the Bangladesh quota protests, the Aragalaya and Nepal Gen-Z protests – was, in each case, a specific policy or law (the CAA, the reinstating the quota, poor economic management, the ban on social media) and not a broader political grievance, meaning that in practice, the right to protest serves as an immediate response mechanism to specific state action, not a background liberty.

6. CROSS-CUTTING COMPARATIVE THEMES

6.1 The Colonial Residue Thesis and Judicial Balancing

The striking commonality of India, Pakistan and Bangladesh is the “colonial residue thesis” of this paper, which argues that fundamental features of the penal codes from each state – unlawful assembly, preventive detention and magistrate-based public order regulation came down to them via a common template from the Criminal Procedure Code, 1898, shared by the three states. Although they have different legal background, Sri Lanka and Nepal share a similar trajectory: via the Public Security Ordinance and related notions of preventive detention. This

is an asymmetry created by the fact that the right-to-behave provisions in constitutions that assert popular sovereignty are subject to the condition that the right must be litigated by citizens to make it real; the right-to-not-behave provisions are subject to being unilaterally applied by the executive, without the requirement for any citizens to bring a lawsuit. This is exacerbated by a general pattern in judicial thinking in the region: judicial arguments are consistently driven by protective language for the importance of dissenting in a democracy, and yet courts often make decisions that are deferential to executive evaluations of necessity. The affirmation by the Indian Supreme Court in *Amit Sahni*, "democracy and dissent go hand in hand", issued along with an order that was tantamount to freedom of expression, was just one of the many instances of the court's interference in the lives of protesters. In addition to the order that effectively meant freedom of expression, the Indian Supreme Court's affirmation in *Amit Sahni*, "democracy and dissent go hand in hand", was one of the many instances of the court's interference with protesters' lives,²⁷ exemplifies this pattern. The Sri Lankan Supreme Court's decision in 2025 provides a salient exception in the form of protective rhetoric that has become a negative consequence for the executive, but noteworthy is that the decision did not make itself available during the time of the event, so there was no immediate remedy..

6.2 Infrastructural Suppression and Emergency Powers

The greatest change in the region today has been from physical suppression to infrastructural suppression, specifically access to the internet and social media platforms as the communication and organization "germ" of contemporary dissent. The states have seen that the same is true of India, which experienced an unprecedented number of shutdowns based on government orders, Bangladesh with a multi-day blackout during the uprising in 2024, and Nepal with the ban on platforms in September 2025. This development dovetails into the second critical fault line in this study: The exercise of emergency and quasi-emergency executive powers as Section 163 orders in India, the "red zone" designation under the Act of 2024 in Pakistan, the unpublicized practice of emergency powers in Bangladesh, the Public Security Ordinance emergency proclamation in Sri Lanka, and the curfew powers given to the army in Nepal. In principle, ordinary constitutional restriction-grounds can be tested for reasonableness / proportionality in court. Emergency powers, on the other hand, can often be used to either delegitimize or dampen that norm, either by turning the burden of proof onto the challenging citizen or by protecting the necessity assessment from judicial second-guessing.

²⁷ UN Human Rights Committee, General Comment No. 37 on the Right of Peaceful Assembly (Article 21), U.N. Doc. CCPR/C/GC/37 (17 September 2020).

Comparative evidence strongly indicates that the health of the right of protest is more a result of the willingness and institutional capacity of the judiciary in a South Asian democracy to subject invocations of emergency powers to a true and timely test, than a result of the generosity of the constitutional guarantee of the right of protest.

7. THE ROLE OF INTERNATIONAL LAW AND REGIONAL COOPERATION

7.1 International Standards and Their Limited Domestic Traction

All five jurisdictions studied abide by the International Covenant on Civil and Political Rights, 1966, Article 21, which guarantees freedom of assembly as long as it is exercised peacefully and is "necessary in a democratic society in the interests of national security, public safety, public order, public health or morals, or the rights of others."²⁸ There is, however, a lack of uniformity in domestic application of the UN Human Rights Committee's standard on assembly, as the standard on Article 21 has not been directly enforceable as domestic law in any of the jurisdictions studied, without any implementing legislation in place, and government practice, particularly in Bangladesh and Nepal in the context of internet shutdowns, has demonstrated significant divergence from the Committee's stated standard, with limited effect on the domestic legal landscape.

7.2 The Absence of a Regional Human Rights Mechanism

In South Asia, there is no regional human rights court or supervisory body to which a grievated citizen can appeal after all citizens' remedies have been exhausted, unlike in Europe, the Americas and Africa. Unlike the European Convention there is no human rights charter or judiciary in the region of South Asian Association for Regional Cooperation (SAARC). This lack of oversight results in the fact that violations of the right to protest throughout the region are heard, if at all, only in domestic constitutional courts, there is no comparative jurisprudence exchange, no regional body with the mandate to arbitrate, and no regional standard-setting body to unify the protection of the right to assemble across the region, which shares a common set of threats to civic space and constitutional heritage.

8. STRUCTURAL CHALLENGES COMMON TO SOUTH ASIAN DEMOCRACIES

8.1 Institutional and Legal Challenges

The lack of a clear, judicially-defined standard between the regulation of the manner, time and

place of protest and suppression of its substance places too much discretion in the hands of the local administrative authorities. Pre-emptive and anti-terror laws more and more used to pre-trial security prisoners UAPA in India, Prevention of Terrorism Act in Sri Lanka; and similar laws elsewhere are being used not against real threats of violence but to pre-trial security prisoners, as an effective form of punishment irrespective of whether they are ultimately convicted or acquitted.

8.2 Challenges of Selective and Discriminatory Enforcement

Those who engage in protests supported by or representing religious, ethnic or linguistic minorities or causes that are seen as challenging the political or military establishment are invariably subjected to a disproportionately harsher restriction of their right to Article 16 than those organised by or in support of mainstream political formations, as has been observed in Pakistan's uneven implementation of Article 16 across the country and the differential treatment of protest movements across India. Such selectivity is a defect of the formal universality of the constitutional guarantee, and creates a 'two-tiered' approach to the actual level of protection.

8.3 The Digital-Age Challenge

Increasing measures of infrastructural suppression (shutting down the internet and platforms) have outstripped relevant law development. Only India has even a elementary procedural structure the 2017 Telecom Suspension Rules to consider such measures, and even then, it's been faulted as too lax on the substantive necessity front. As demonstrated by the 2024 and 2025 episodes, Bangladesh and Nepal do not currently have any similar procedural safeguard, and the most important, current restriction on the right to protest in the region is in most jurisdictions not subject to any meaningful ex ante or ex post legal limitation whatsoever.

9. RECOMMENDATIONS AND WAY FORWARD

9.1 Statutory Reform: From Permission to Notification

Laws in the region should abrogate open-ended and discretionary public order laws (such as Section 163 BNSS in India, Pakistan's 2024 Act) by introducing a notification-based, default presumption for peaceful assembly instead of prior permission that is applied in the case of demonstrable and specific threat, and then submitted to judicial review.

9.2 Judicial Standard-Setting: A Structured Proportionality Test

Constitutional courts should establish and apply as a default and consistent rule a structured proportionality test (legitimate aim, suitability, necessity (least restrictive alternative), and proportionality *stricto sensu*), rather than the balancing approach currently used and taking a different shape from court to court, as observed in Sections 3–6.

9.3 Regulating Digital and Infrastructural Restrictions

Institutions of collective action such as Internet platforms and websites should be subjected, as a matter of constitutional doctrine, to the same level of scrutiny as a direct prohibition on physical assembly, including a prior requirement for judicial or independent tribunal authorisation, maximum duration and prior publication of the order and its factual basis.

9.4 Reform of Preventive Detention and Anti-Terror Statutes

There should be explicit statutory protection against the use of preventive detention and anti-terror laws for people whose only documented action is to organise, or join in, a peaceful assembly, and faster judicial review procedures for detentions for peaceful protest.

9.5 Institutional Strengthening for Contemporaneous Protection

9.5.1 National Human Rights Institutions

National human rights bodies throughout the region must be empowered to have immediate investigatory powers in cases of live protests with the right to demand immediate disclosure of any order to limit assembly and communication, as the people of Sri Lanka did in the Aragalaya litigation years after the events.

9.5.2 Independent Media and Civil Society

An independent press and a free bar are essential for contemporary and legal challenge of the violation of rights in connection to protest. States should not prevent journalists from reporting on protest activity or their actions using anti-terror or accreditation or licensing measures, and bar associations should be encouraged to provide quick response legal aid to arrested protesters and organisers.

9.6 Recommendations for Regional Cooperation in South Asia

It is desirable to seek regional cooperation through SAARC or other regional forum to achieve minimum common standards in the protection of peaceful assembly, based on the common textual tradition of SAARC region's constitutions and common historical background of colonial era suppression which all the 5 states have pledged to eradicate.

9.6.1 Legal Reforms

- Implement a model public order law based on the right of peaceful assembly that can be replicated in South Asian countries, instead of colonial-era public order laws that do not uphold the rights of individuals.
- Update telecom and digital-communication laws to include a requirement for independent, judicial or quasi-judicial authorization to suspend an internet or platform before and after a specific period of time, and to have it periodically reviewed before any such suspension.
- Include statutory exemptions in anti-terror laws (UAPA, PTA and its equivalents) for actions that are only peaceful protest organisation or participation.
- Introduce fast-track courts with judges from High Courts and the corresponding apex courts with specific jurisdiction and jurisdiction to hear urgent petition cases of protests seeking habeas corpus and fundamental rights, with a remedy that is contemporaneous and not retrospective.
- Discuss establishment of a SAARC working group on Civic Space and Peaceful Assembly to draft non-binding SAARC standards and provided cross-jurisdictional judicial dialogue.

10. CONCLUSION: RECONCILING CONSTITUTIONAL PROMISE AND INSTITUTIONAL PRACTICE IN SOUTH ASIA

Protest and dissent in South Asia is a constant configuration of constitutional insecurities, which is textually guaranteed, constitutionally recognised on principle and is consistently at risk of being deemed political or proscribed by legislation and state action that is largely

colonial in origin. The comparativist study that follows in this paper shows that despite many differences in constitutional design, history and institutional capacity, the pattern is striking: constitutional protections of assembly and expression are always qualified with broadly worded "public order" exceptions, which are subject to colonial legacy of statutory instruments granting extensive, often unchecked, discretion to executive and magisterial powers, and which are now increasingly supplemented by a new generation of "infra-structural" controls over the digital architecture of modern dissent. The recent wave of mass protest across the region on Shaheen Bagh and farmers' movement in India, Islamabad's public order crackdown in Pakistan, the quota-reform movement in Bangladesh, the Aragalaya in Sri Lanka and the protest by Gen-Z in Nepal showed not only the remarkable resilience of civic mobilisation in South Asia, but also the recurring cost in lives, liberty and institutional trust when constitutional promises of dissent are not matched by contemporary institutional protection. The results of this paper indicate that it is not the precise wording of the constitutional protection but the ability and willingness of the courts, human rights bodies and, above all, civil society to give executive decisions, especially those taken under the guise of "public order" or "emergency," valid, timely and proper scrutiny that is the key. If South Asian democracies are to deliver on their aspirational commitments enshrined in their founding constitutional documents, what is needed is not the formulation of new rights, but the abolition of old, suppressive architecture; the disciplined use of concepts of proportionality in the physical and digital sphere to both restrictions; the reform of the framework of preventive detention that has been hijacked against peaceful dissenters; the development of institutions willing to protect dissent, not just when it is retroactively vindicated, but when it is most needed and most at-risk.

BIBLIOGRAPHY

A. Constitutions

1. The Constitution of India, 1950.
2. The Constitution of the Islamic Republic of Pakistan, 1973.
3. The Constitution of the People's Republic of Bangladesh, 1972.
4. The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978.
5. The Constitution of Nepal, 2015.

B. Legislation

6. The Code of Criminal Procedure, 1898 (Pakistan).
7. The Pakistan Penal Code, 1860.
8. The Indian Penal Code, 1860 (repealed and replaced by the Bharatiya Nyaya Sanhita, 2023).
9. The Code of Criminal Procedure, 1973 (India) (repealed and replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023).
10. The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 163.
11. The Bharatiya Nyaya Sanhita, 2023, s. 152.
12. The Unlawful Activities (Prevention) Act, 1967 (India), as amended by Act 28 of 2019.
13. The Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 (India).
14. The Islamabad Public Order and Peaceful Assembly Act, 2024 (Pakistan).
15. The Prevention of Terrorism Act, No. 48 of 1979 (Sri Lanka).
16. The Public Security Ordinance, No. 25 of 1947 (Sri Lanka).

C. Cases

17. *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324.
18. *Anuradha Bhasin v. Union of India*, AIR 2020 SC 1308.
19. *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1.

20. *Amit Sahni v. Commissioner of Police*, 2020 SCC OnLine SC 808.
21. Supreme Court of Sri Lanka, SC FR No. 26/2022 (decided 23 July 2025).

D. International Instruments

22. International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, Art. 21.
23. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), Arts. 19–20.
24. UN Human Rights Committee, General Comment No. 37 on the Right of Peaceful Assembly (Article 21), U.N. Doc. CCPR/C/GC/37 (17 September 2020).

E. Reports and Secondary Sources

25. Human Rights Commission of Pakistan, *Freedom of Peaceful Assembly in Pakistan* (2022).
26. Oxford Human Rights Hub, "The Draconian Public Order Act – Protests Crackdown in Pakistan" (2024).
27. Institute of South Asian Studies, National University of Singapore, *Quota Protests in Bangladesh: Causes and Consequences*, ISAS Brief (27 July 2024).
28. Amnesty International, "What is Happening at the Quota-Reform Protests in Bangladesh?" (2 August 2024).
29. Human Rights Watch, "Sri Lanka: Protect Rights During Political Turmoil" (13 July 2022).
30. International Federation for Human Rights (FIDH) and Centre for Human Rights and Development, *Anatomy of a Crackdown: The Repression of Sri Lanka's Aragalaya Protest Movement* (31 January 2023).
31. Carnegie Endowment for International Peace, *The Aragalaya Protest Movement and the Struggle for Political Change in Sri Lanka* (2025).
32. ConstitutionNet, "Nepal's Gen Z Movement and Constitutional Crisis" (2025).
33. Britannica, "2025 Nepalese Gen Z Protests: Background, Social Media Ban, and Political Breakdown" (2025).