
CJP PROTEST AND ITS SUPPRESSION: A CONSTITUTIONAL ANALYSIS

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ABSTRACT

The right to peaceful assembly and protest are the foundational pillar of democracy, guaranteed and protected under Article 19(1)(a) and 19(1)(b) of the Constitution. The right is not absolute it may be subjected to reasonable restrictions under Article 19(2) and 19(3). Assembly that turn unlawful, violent, or threaten public order may be dispersed by the police under statutory provisions governing unlawful assembly. The persistent legal difficulty lies in the rightful exercise of fundamental right of protest and crowd control measures adopted by the police force while dispersing crowd turning violent and boundary between lawful crowd control and excessive or arbitrary force. This paper examines the constitutional and statutory framework governing protest and dispersal of unlawful assembly in India, and applies this framework to the widely reported 2026 “CJP” demonstrations at Jantar Mantar, New Delhi, in which student-led crowd defying dispersal orders were met with baton charges and tear gas as they attempted to march toward Parliament. The paper argues that while the police retain a lawful power to disperse assemblies that breach prohibitory orders or turn disorderly, that power is conditioned on graduated, proportionate, and accountable use of force, and the constitutional limits on the right to protest. The 2026 episode illustrates recurring tensions between operational policing imperatives and constitutional guarantees that Indian jurisprudence has repeatedly sought to reconcile.

Keywords: Jantar Mantar, Police accountability, Proportionality, Right to Protest, Use of force.

Introduction

Every democracy allows its people to show dissent, disagreement, challenge policies and call for accountability. Free exercise of dissent ensures faith of people in democracy. Demonstration is one such aspect where citizens raise their voice against unjust laws, policies, executive actions and demand changes. The right to demonstrate is a fundamental right not explicitly provided in the Constitution, but the Supreme Court has recognized it principally by the combined reading of right to freedom of speech and expression and right to assemble peacefully without arms under Article 19(1)(a) and Article 19(1)(b) of the Constitution respectively forms the basis of this right.¹ Lawful exercise of the right to demonstrate can be regulated but not to be restricted beyond the scope of the Constitution. These guaranteed fundamental rights are not absolute but limited by Article 19(2)² and 19(3)³. In regard to these clauses the relevant criteria that limits the right to demonstrate is in the interest of sovereignty and integrity of India and the public order. Citizens have to exercise their rights within these fetters of the Constitution. State is obligated to protect the sovereignty and integrity of India and to maintain the public order and enact laws for that end. State has to give utmost regards to right to demonstration and cannot suppress unless it endangers public interest. State has only limited power of regulating and restricting such rights. It can be restricted only when it has authority of law, it is reasonable and is related to the purposes mentioned in Article 19(2)⁴ and 19(3)⁵. The State vests the power to regulate the exercise of right of demonstration in executive authorities and to restrict them whenever necessary in public interest. Where the Constitution recognizes right to assemble peacefully, it presumes it to be peaceful, it maybe noisy, chaotic but should not be unlawful and disturbing public order. If the demonstration or assembly is unlawful or becomes unlawful, State has duty to disperse such assembly and restrict such rights in the interest of public and social order. In order to prevent disorder, the executive authorities may prohibit the assembly of certain number of person or order the use of force to disperse

¹ Ramlila Maidan Incident v. Home Secretary, Union of India & Ors. (2012) 5 SCC 1; Mazdoor Kisan Shakti Sangathan v. Union of India (2018) 17 SCC 324; Amit Sahni vs Commissioner of Police (2020) 10 SCC 573.

² Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. (INDIA CONST. art. 19(2)).

³ Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause. (Id. art. 19(3))

⁴ Id. art.19(2).

⁵ Id. art. 19(3).

them. However excessive use of force is not permitted by law. It should be minimal and proportional to the object sought to be achieved. Excessive and indiscriminate use of force will make the action arbitrary, unreasonable and disproportionate violating Article 14⁶, 19⁷ and 21⁸ of the Constitution. Only proportional use of force is allowed which are to be determined by the facts and circumstances of each case and instance. Even though State has legitimate powers but such powers are limited by the principle of legality, necessity and proportionality.

Under the CJP banner thousands of protestors had gathered at Jantar Mantar on July 20, 2026 to march towards the parliament defying prohibitory order assembly in the New Delhi district. Protestors gathered at Jantar Mantar and at different location of district to move towards the Parliament and attempting to breach barricades for that end. Movement of protestor towards Parliament was responded by police actions. The police responded with tear gas, lathi charge, pellet guns to stop the protestors from reaching Parliament, and clash ensued in between. Indiscriminate use of force by police officers to disperse crowd was seen at the protest site, questioning the authority and extent of force to be used in order to disperse crowd. Legality of police action during CJP must be tested not against the power but limitations upon that power. We must have to analyse - Whether the degree of force used was necessary and proportional to the threat presented before the police?

This Article deals with the question – What are the Constitutional limits on restricting public protest and use of police force to disperse it?

The Constitutional Framework

Demonstrations are the overt act of the thoughts and feelings of the people. It involves gathering where citizens come together in public spaces to support or dissent to a specific cause, policies and actions. This basic essence of Democratic governance is not explicitly provided under the Constitution. But this can be traced in Preamble and Part III of the Indian Constitution. The preamble secures to all its citizens liberty of thought and expression. Article 19(1)(a)⁹ and 19(1)(b)¹⁰ forms the basis of right to demonstrate or right to protest. Article

⁶ 14. Equality before law. —The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. (Id. art.14).

⁷ Id. art. 19.

⁸ 21. Protection of life and personal liberty. —No person shall be deprived of his life or personal liberty except according to procedure established by law. (Id. art. 21).

⁹ Id. art. 19(1)(a)

¹⁰ Id. art. 19(1)(b)

19(1)(a)¹¹ of the Constitution provides fundamental right to freedom of speech and expression. It means that right to express one's opinion, thoughts, beliefs, dissents and disagreements freely by writing, word of mouth, or through visual representations or any other means. Article 19(1)(b)¹² of the Constitution provides the fundamental right to assemble peacefully without arms. It includes right to held meeting and public procession. The Constitution requires that assembly must be peaceful and unarmed. Rights enumerated in these articles are inherent natural rights of citizens. It is the foundation stone and essential element of democratic governance. The Supreme Court in several of its judgements has recognised the right to protest as a way of expression. No fundamental right of liberties is absolute but reasonably restricted. These rights do not mean that it can be exercised whatever, whenever and wherever someone likes. State is vested with responsibility ensuring the exercise of fundamental right and functioning in the public interest and maintaining law and order. The Constitution balances interest of the individual exercising the fundamental rights and the right of other to live without unreasonable interference with their rights and interest. They cannot be suppressed unless such situation that endangers the public interest. With regards to Article 19(2)¹³ and 19(3)¹⁴ the restrictions on the right to demonstration is Sovereignty and integrity of India and the public order. The restriction must be imposed reasonably and proportionally. Reasonability and proportionality depend on the facts and circumstances of each case. Factors such as duration and extent of restriction, circumstances and manner in which the imposition is authorised, the nature of right infringed, the matter and urgency of evil sought to be remedied, the prevailing condition at the time among the others are to be considered for adjudging the reasonability of restriction. State's action must also to tested on the principle of proportionality i.e., the extent of interference must be proportionate to the need for such interference. Proportionality of every action is to be judged with need necessity of that action. It should not be arbitrary and beyond what is required in that particular instance.

Statutory Power to Restraint and Disperse Assemblies

Whenever a huge crowd gathers in an area, it is evident that it would be noisy, chaotic and unpredictable but it is not necessary that such assemblies are always unlawful. When assemblies are peaceful, unarmed, not endangering the public order, organised with prior

¹¹ Id. art. 19(1)(a).

¹² Id. art. 19(1)(b).

¹³ Id. art. 19(2).

¹⁴ Id. art. 19(3).

permission of State authorities, and rights are exercised within the boundaries to which they are allowed, such assembly are lawful and State can't arbitrarily suppress such an assembly, although it may impose lawful and reasonable restrictions consistent with Article 19(2) and 19(3). In the famous *Shaheen Bagh* case¹⁵, Right to protest was recognized by the Supreme Court but also emphasised that public ways can't be occupied indefinitely. In such cases State is obligated to provide protection to those who are exercising their rights and no penal consequences would arise even though it is organised against the actions and policies of government itself. A lawful gathering can become unlawful. When a peaceful assembly turns violent or threatens public order or composed with ulterior motive and are weaponised, such assemblies are prohibited by law and are unlawful. It involves force, violence and intimidation. Penal consequences may arise for being the part of unlawful assembly and for unlawful acts. Such assemblies are not allowed by law and need to be dispersed in the interest of public order. In order to restrict unlawful assemblies, State has vested executive authorities with power to prohibit such assemblies and take necessary actions to maintain the safety and security of people and to maintain public order. A prohibitory order under section 163 BNSS¹⁶ is imposed. This provision authorises the executive magistrate in case of emergency to make ex parte order directing an individual or persons residing in a particular area or public generally to abstain from certain act and take possession and management of certain property in order to prevent obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or disturbances of the public tranquillity or riot or affray. This order is made in urgent cases of nuisance and apprehended danger. Generally, under this provision the competent authorities prohibit assembly of five or more persons to prevent danger or shut down internet in order to prevent the spreading of misinformation and aggravation of situation prevailing and make other necessary orders which they considered expedient. It is the duty of citizens to obey such orders. In case of disobedience of their order, they can be charged under section 223 of the BNS¹⁷ i.e., disobedience to order duly promulgated by the public servant and under Chapter XI of BNS. When authorities make order under section 163 BNSS¹⁸ in an area prohibiting assembly, even though people assemble disobeying the order, the Executive Magistrate and any other competent authority may command such unlawful assembly which likely to cause disturbance of the public peace, to disperse under section 148(1) of BNSS¹⁹.

¹⁵ *Amit Sahni vs Commissioner of Police*, AIR 2020 SC 4704.

¹⁶ *Bharatiya Nagarik Suraksha Sanhita*, No.46 of 2023, §163, INDIA CODE (2023).

¹⁷ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 223, INDIA CODE (2023).

¹⁸ *Bharatiya Nagarik Suraksha Sanhita*, No.46 of 2023, §163, INDIA CODE (2023).

¹⁹ *Id.* § 148(1).

And it shall thereupon the duty of the members of such assembly to disperse accordingly. If, on being commanded any such assembly, they do not disperse or conducts itself in a manner as to show unwillingness or determination not to disperse, Executive magistrate and other competent authority may proceed to disperse such assembly by civil force under section 148(2) BNSS²⁰. In order to facilitate dispersal, the officials can arrest or confine those who are part of the assembly. If Assembly cannot be otherwise dispersed, and it is necessary for public security that it should be dispersed, the District Magistrate or the any other Executive Magistrate authorised by him, who is present, may cause it to be dispersed by armed forces under section 149(1) of BNSS²¹.

Police power of dispersal and use of force

Unlawful assemblies are to be dispersed in a particular manner. While dispersing the assembly the procedure established by law must be followed and the act of the authorities should not be arbitrary and disproportional. No statute prescribes the sequence to be followed while dispersing assembly. Standard for such dispersal are gathered from the provision of dispersal provisions of BNSS, departmental standing order and manuals issued by the State police forces, principle of good faith of officers in discharge of their duties and the precedents Constitutionally reviewing the actions of the police forces under Article 14²², 19²³, and 21²⁴. The UN Code of Conduct for Laws Enforcement Official adopted in 1979, in Article 3²⁵ states that law officials in performance of their duty, use force only when strictly necessary and to the extent necessary to discharge their duty. This implies the necessity and proportionality of use of force by the officials. Further it states in that article that use of firearms is considered exceptional and in any case of its use prompt report should be made to the authorities. In guidelines related to code of conduct for the police in India released by the Ministry of Home Affairs in its paragraph 4²⁶ states that police should in securing the observance of law and maintaining order as far as practicable use the method of persuasion, advice and warning. When the application of force becomes inevitable only the irreducible minimum force required in the

²⁰ Id. § 148(2).

²¹ Id. § 149(1).

²² INDIA CONST. art. 14.

²³ Id art. 19.

²⁴ Id. art. 21.

²⁵ Code of Conduct for Law Enforcement Officials, G. A. Res. 34/169 (Dec.17,1979) art 3.

²⁶ Ministry of Home Affairs, Guidelines to the Indian Police: Code of Conduct for the Police in India, para 4 (4 July 1985).

circumstances should be used.

When a protest is organised and it becomes violent or threaten the disruption of law-and-order situation, prohibitory order under section 163 BNSS²⁷ is imposed. The first major step of the police officer should be announcing to the crowd that such order is imposed and warning them to disperse and clear the area. They have to warn them with loudspeakers and through banners. In case of *In Re: Ramlila Maidan Incident V. Home Secretary, Union of India & Ors*²⁸, the court has observed that it is mandatory requirement that when such announcements are made it must be video graphed. Officials must give opportunity to the crowd to disperse after warning and cooperate with them to ensure the peaceful dispersal. They have to inform the gathering about the exit points and direct them to it. If after repeated warning crowd does not disperse the police officials has to rely on only non- physical control measures. The area should be properly barricaded to stop them in that area. No force should be used if people are peacefully protesting and no violent forces are used by them to breach the barricades. Official should avoid early physical standoff between them and crowd unless that action is necessary. When crowd tries to breach the barricades or only few people are doing so the police may use the water cannons. It is non- lethal but forceful way to disperse and scatter the crowd. Initially officials can start with lower pressure targeting wide range of crowd and may escalate to targeted high pressure if crowd remains aggressive. Water cannons are generally regarded as a less physically invasive crowd control method than direct physical strikes, although they must also be used carefully in a controlled and proportionate manner. If the crowd remains resilient, aggressive and poses immediate threat to public safety and security or endangers law and order enforcement, police may use tear gas shells. Tear gas triggers immediate involuntary pain and inflammation in the eyes, skin and respiratory tract. It should be shot some distance away from the crowd. It should never be aimed directly into the crowd or in enclosed space where people have no escape. If crowd shows no determination to disperse, breach barricades, pelt stones on the officials, damages public property or cause arson or refrain from dispersing by non-contact methods and it becomes evident to the officials that physical force is necessary in that moment it is legally valid that baton may be charged. It should be the last resort and only the minimal force should be used to the extent it is necessary to disperse. Before the advancement to the use of physical force a warning must be given to the crowd by loudspeakers explicitly stating that lathi charges are about to begin if they remain in that area. Escalated physical force may be

²⁷ Bharatiya Nagarik Suraksha Sanhita, No.46 of 2023, §163, INDIA CODE (2023).

²⁸ [2012] 4 S.C.R. 971

used if the lower-level intervention is insufficient. Batons should be charged only in restricted manner. Officials should only blow on lower body, leg and thighs to incapacitate their movements. Striking on neck, head, face, spine is strictly objectionable as such blows may cause permanent disability or death. Force should respond to necessity and not to be continued thereafter. Legality of force must be assessed dynamically (in continuum), not merely at the moment the force begins. Continued use of force without necessity in that moment is the sheer violation of Human rights. Every use of force should be tested on the ground of necessity in that moment. It is not necessary that if the use of force was necessary in one moment it will also be necessary in another. Every blow is answerable to the principle of necessity and proportionality. The use of force has to satisfy the cumulative principle of – legality, necessity and proportionality. Satisfying one does not satisfy the other principles. Legality asks whether the force was authorised by law i.e., whether officials have legal basis to act. Necessity asks whether the use of force and degree of it is required to achieve the object. Even a lawful force becomes unlawful if the less severe force is sufficient. Proportionality ask whether the force used is reasonable in relation to object sought to be achieved, weighing the harm caused against the harm prevented. The force that is legal may still be unnecessary and force that is necessary may still be disproportionate to the threat caused.

CJP Protest: Application of the legal framework

The CJP protest was organised at Jantar Mantar, New Delhi to demand accountability on NEET paper leaks followed by hunger strike of students and prominent figures for the resignation of Education Minister Dharmendra Pradhan and providing compensation to student who committed suicide due to paper leaks. The protesters on their early days of protest have announced the “Sansad Chalo” (move towards Parliament) on July 20, 2026 if their demands were not fulfilled. On July 19, 2026 the Delhi police have imposed section 163 BNSS²⁹ in the entire New Delhi district. Accordingly, protest marches, procession, demonstration and assemblies of five or more persons are strictly prohibited except at the designated protest site of Jantar Mantar with prior permission categorically clarifying no permission of any such march towards the Parliament as determined by CJP. A huge crowd was gathered in the morning of July 20, 2026 at Jantar Mantar to march towards the Parliament. The gathered crowd planned to march towards the Parliament from different location of the New Delhi

²⁹ Bharatiya Nagarik Suraksha Sanhita, No.46 of 2023, §163, INDIA CODE (2023).

district, disobeying the order issued under section 163 BNSS³⁰. Any assembly of five or more person was prohibited except at Jantar Mantar but crowd spilled all around the high security zone of the Parliament outside the Jantar Mantar and were trying March towards it which led the authorities to intervene and stop the crowd at its location and make them disperse. The police continuously warned the crowd that section 163 BNSS³¹ is imposed, their assembly was unlawful and was calling them to disperse otherwise they would be penalised for disobeying the order of Public Servant and part of unlawful assembly. In order to stop crowd the police had barricaded the Jantar Mantar and epicentre of the crowd in New Delhi district to prevent the crowd from moving towards the parliament from anywhere. The police had welded the barricades to stop the crowd but it was determined to move. As per the video recordings at the protest site available on social media platforms, on escalation of efforts of crowd to breach barricades and move towards the parliament the Police had responded with tear gas shells and indiscriminate lathi charge on every group of people. Video evidence also showed weaponised lathis with nails capable of inflicting serious injuries in the hands of police. Rapid Action Forces had fired several rounds of pellet guns as crowd was attempting to surmount and breach the barricades.³² It was submitted on behalf of the Delhi police that protesters suddenly turned aggressive, violent, pushed through the multilayer secured cordon and attempted to violently breach the primary barricades and also alleged that the portion of crowd had begun pelting stone and plastic bottles on the police team injuring the police official and RAF team. Sudden breakthrough forced the police personals to fire tear gas shells.³³ Attempt of police forces to hold back the protesters, who were breaching barricades and of protesters to move, started the tug of war between the police and protestors. It was alleged by the students protesting that police had suddenly started the baton charge without any warning and women, children were all beaten indiscriminately. The protestors claimed and the video evidences demonstrate that police had used the indiscriminate physical force and chemical crackdown. Protestors had suffered head injuries, fractured hands and legs, open wounds, injuries all over the body, respiratory issues and those who targeted by the pellet gun shots were severally injured and

³⁰ Id.

³¹ Id.

³² Vedant Lakhera, *Beaten Broken, Tracked*, Frontline (Aug.10,2026), Vedant Lakhera, *Beaten, Broken, Tracked*, Frontline (Aug.10,2026), <https://frontline.thehindu.com/politics/delhi-police-pellet-guns-sansad-chalo-protest/article71308918.ece>.

³³ Asish Kumar Bhargava, 'One-Sided Picture': Delhi Police to Supreme Court on Jantar Mantar 'Crackdown', NDTV (Aug. 18, 2026), [https://www.ndtv.com/\[full-article-path\]](https://www.ndtv.com/[full-article-path]).

possible blindness is anticipated.³⁴

Incident of July 20, 2026 raises several legal issues--- Was the force directed towards achieving dispersal or towards inflicting injuries? Did the necessity for force continued after protestors ceased presenting any immediate threat? Were additional safeguards required when dealing with women? Was identification of police was knowingly concealed to evade accountability?

The parliament sat on the July 20 on the first day of Monsoon Session. Crowd cannot be allowed to move towards parliament in order to prevent any mischief and security breach at public institution. The crowd may at any time become violent, a small disorder could make it a national security breach. It was attempting to move towards the parliament defying the prohibitory order. They were not legally exercising their rights as they had no permission to assemble and march outside Jantar Mantar, posing threat to the public order and security. With object to disperse the assembly police initially warned the crowd and instead of following standard crowd control measure officials directly resorted to aggressive dispersal mechanism. Police claimed that water cannon were inefficient to control the sudden breakthrough forcing the RAF team to fire tear gas shells. Situation worsened when the police has suddenly charged batons without any clear warning. Officials claim that some police officers were injured by pelting stones by the protestors which led them to charge batons. Initially use of physical force is legal to disperse the violent and unruly crowd. It was the necessity of the moment that physical force should be used but police continued beating protesters even when they started scattering and running away. The standard procedure states that force should be used only to the extent of danger posed and if danger no longer exists, force must be ceased. People sharing their experiences through social media that how police personnels were targeting the protesters individually even when they were fleeing away or had taken the shelter in the restaurants and were posing no immediate threat to justify the use of force against them. Images and videos from protest site also show the nail fixed lathis which could only be used for inflicting severe injuries which is against law. Law prohibits police officers to strike on upper body and only to hit legs and thighs to stop them. Here also police surpassed its lawful authority in using force and indiscriminately struck on the upper body of protestors. Even pellet guns were used on protestors which are to be used in extreme and rarest of rare cases when there is armed clash

³⁴ Vedant Lakhera, *Beaten Broken, Tracked*, Frontline (Aug.10,2026), Vedant Lakhera, *Beaten, Broken, Tracked*, Frontline (Aug.10,2026), <https://frontline.thehindu.com/politics/delhi-police-pellet-guns-sansad-chalo-protest/article71308918.ece>. (last visited Sept. 1, 2026).

between the police and crowd, when situation like riot has been created, public property being torched and arson was prevailing which resultantly endangers the life of others. As per the protestors, no such condition had arisen that could have led them to use pellet guns and officials had arbitrarily acted. Police officials had disproportionately used the force which has no relation to the object sought to be achieved. Their acts were questionable that whether they were really using the force to disperse the crowd or only to injure them? Whether police officials had abused their power and maliciously discharged their duties? It was further claimed by protestors that it was not discharged objectively and police officers acted in manner of hunting protestors. Such conduct, if established, would raise serious questions concerning whether the force was directed towards legitimate dispersal or had ceased to serve that purpose? It was argued that police continued beating individuals when there was no such necessity making their acts unlawful. These incidents question what led the police officers to act in such manner even when the protestors were neither armed, or retaliating with force nor was destroying the public property? “The person at the realm of police officer have to take decisions backed by their wisdom and experience whether to use force or exercise greater control and restraint while dispersing an assembly. They are expected and should have some freedom of objectively assessing the situation at the site.”³⁵ In the present case, the temptation to use force has prevailed over the decision to exercise restraint.

Manhandling of women protestors by the male police officer was another issue that came to fore in that protest. Women were allegedly groped, slapped, physically assaulted by male police officers. Videos went viral showing how male officer slapped a woman who was quite distant from him and was possessing no threat. How can a police officer hit a woman at back when she was escaping away from the area? These incidents question the objectiveness of decision making of those officers in discharge of their duties. When it is evident that female protestors from all age groups were participating in protest, why sufficient women police personnels were not deployed? Where were they when such incidents were happening? Why the male police officers have taken the lead to handle the women protestors and miserably mishandled them? Male Police officers are not allowed to touch the person of woman in order to maintain her dignity and privacy. Under sec 43 BNSS³⁶ it is mandatory requirement that while making arrest unless the police officer is a female, the police officer shall not touch the person of woman.

³⁵ In Re: Ramlila Maidan Incident V. Home Secretary, Union of India & Ors 2012] 4 S.C.R. 971

³⁶ Bharatiya Nagarik Suraksha Sanhita, No.46 of 2023, §43, INDIA CODE (2023).

This principle would ordinarily also apply in the crowd dispersing mechanism if we go by the legislative intent behind section 43, BNSS. State should deploy sufficient number of woman police officers and male officer itself restraint them while dealing with women.

At protest site majority of police officers and RAF personnels were without their identification badges and many were in casuals among the police officers wearing mask and carrying lathis. They were threatening and assaulting the crowd.³⁷ On being questioned by the reporters that who were they? Who gave them authority to act in such a manner? They threatened reporters and told them to go away. Does identification of the police was knowingly concealed to evade accountability? Failure of police officers to wear identification badges cannot be justified in any way other than it being intentional. Intention to evade the accountability for their actions.

The uniform of a police officer is his direct identification. A policeman in uniform is visible and a citizen immediately know that he is policeman. Uniform carries undeniable symbol of police authority. The Kerala High Court in the case of *Avinash vs State of Kerala*³⁸ observed that requirement of police officers to wear uniform while in duties is to be enforced without exception. And it is mandate that during that police must wear their uniform. These requirements are the safeguard of the right and dignity of those who were protesting. And it was broken badly. While this decision is not directly binding on the Delhi Police, it provides persuasive reasoning concerning police identifiability and accountability. Will the State take responsibility for acts of those who were in casuals and masked or make them liable? And whether other police officers were accomplice in the act of those who were wearing casual clothes in their illegal act?

In this protest both the students and the police officers had acted against the law. Where the protestors have to peacefully protest at Jantar Mantar, they were determined to march towards the Parliament. Prohibitory Order was completely defied and large gathering organised at multiple location, in which it was imposed. Protestors were attempting to breach barricades and move towards Parliament. Some protestors were also alleged by police to be destroying some property. On the other hand, police have not lawfully discharged their duty and acted aggressively and indiscriminately. No standard crowd control mechanism was followed;

³⁷ Anand Singh, *Why Are Police in Plain Clothes Deployed for Crowd Control? Is It Legal?*, India Today (July 22, 2026), <https://www.indiatoday.in/amp/india/story/delhi-police-name-badges-cjp-protest-plainclothes-cops-rapid-action-force-raf-personnel-2953658-2026-07-22> accessed 1 September 2026.

³⁸ [2021] 6 KHC 357

unnecessary force was used even when no threat was existent. They have acted arbitrarily and vengeance could be seen in their actions. Actions do not show the reasonability and rationality. The Spirit of Constitutionalism was not followed and rule of law was defied on both sides.

Conclusion

Right to Protest is Constitutionally protected right, flowing from Articles 19(1)(a)³⁹ and 19(1)(b)⁴⁰ of the Constitution. Every citizen can protest peacefully and unarmed. It is, however, not an absolute right. Reasonable restriction can be imposed in the interest of larger Public Interest. State has been vested with the authority to restrict the exercise of fundamental right to protest on satisfaction of requirement contained under Article 19(3)⁴¹ of the Constitution. State authorises the executive authorities to regulate the free exercise of such right and allows them to restrict only on the Constitutional ground, as provided. Executive authorities have discretion in such matter but it should be exercised objectively and reasonably on the basis of prevailing facts and circumstances. Subjective satisfaction of authorities unnecessarily restricting such exercise infringes fundamental right of citizens. When citizens do not legally exercise their right and possess threat to the community interest while exercising it, authorities has been empowered to disperse such assembly peacefully and when the it does not disperse in such a manner use of force is allowed. The right to protest and the power of Police to disperse an unlawful assembly are not conflicting ends of the Constitution. Both are complementary to each other whereas one provides liberty to express, other provides a responsibility to secure the larger public interest. State's responsibility of maintaining law and order and power to disperse by use of force is statutory grounded but it is bound by the principle of necessity, and proportionality. Having power to do something does not mean that it should be exercised in all circumstances. That's where necessity comes in. Police can determine using Constitutionally limited discretion to ascertain the necessity of intervention in any given situation. If situation can be handled through communication, de-escalation or simply waiting, then use of force in such situation is unnecessary. When the intervention or use of force becomes necessary in order to control the situation, it must be graduated, proportional and dynamically adoptive in continuum of existing threat. It should not be fixed at the moment force is first applied when it is necessary but continuously reassessed through the continuum of unfolding situations. Degree of force must be justified with the threat posed. Indiscriminate, aggressive and brutal use of

³⁹ INDIA CONST. art.19, cl.1(a).

⁴⁰ Id. art. 19(1)(b).

⁴¹ Id. art. 19(3).

force when it was not justified is disregard to both the dignity of individual and lawful discharge of duty by officials. Accordingly, both the right to protest and the State's restriction upon it must be subjected to Constitutional scrutiny in equal measure. Instead of supporting one side in binary, one must judge every independent fact independently - the legality of the order, conduct of protestors, conduct of police and the degree of force used, on its own footing. The Constitutional position is very clear, State may regulate exercise of right and when necessary, disperse it, but the authority to disperse must not become a licence to use unlimited force. The legality itself, to restrict a demonstration by force cannot be therefore on its own be justified unless the legality is tested against the requirement of necessity and proportionality. The temptation to use force must not take precedence over the Constitutional duty of restraint.