
RIGHT TO PROTEST AND PUBLIC ORDER

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ABSTRACT

The right to protest forms a cornerstone of any democratic society, enabling citizens to voice their dissent, influence policymaking, and hold governing authorities accountable. In India, this right is constitutionally guaranteed under Article 19(1)(a) and 19(1)(b), which safeguard the freedom of speech and expression and the right to assemble peacefully. However, these rights are not absolute and are subject to reasonable restrictions under Articles 19(2) and 19(3) in the interests of sovereignty, integrity of the nation, public order, morality, and the security of the state. The intersection between the right to protest and the need to maintain public order often creates complex legal, social, and political challenges. Striking a balance between these competing interests is crucial to ensure that democratic expression does not devolve into public disorder or violence.

This paper explores the legal and constitutional framework that governs the right to protest in India, examining how courts have interpreted the limits of peaceful assembly and expression in a manner that respects civil liberties while safeguarding public safety. Protests such as those against the Citizenship (Amendment) Act (CAA) and the farmers' agitation against the three farm laws have exemplified the role of public demonstrations in shaping national discourse. These movements highlighted not only the power of collective dissent but also the friction that arises when protests lead to disruptions in public life, pose threats to public infrastructure, or challenge governmental authority.

1. RIGHT TO PROTEST

To Sin by silence, when they should protest, makes cowards of men (Ella Wheeler Wilcox).

Protest! stand up for your rights! are of the terms that are often heard not just in the unstable and sensitive country systems and issues of the society but more often heard in the democratic systems. It is often said that we should fight the injustice, not let the injustice win, stand by the right thing and protest for it if needed. But the real question is what exactly is protest.

Speaking truth to authority can be accomplished through protest. Protests have historically been the impetus behind some of the most potent social movements, bringing abuse and injustice to light, calling for responsibility, and encouraging people to hold out hope for a better future. Simply, protest movements can be characterized as dynamic gatherings, whether organized or spontaneous, that seek to articulate dissent, opposition, condemnation, or demands with the intention of impacting public discourse or deliberation. These protests may serve various purposes, including the formulation of claims, the expression of collective aspirations, the affirmation of values, or the visibility of identities.¹

In order to ensure that institutions in positions of authority recognize our human rights, protest has been essential. People power has always shaped our world, from the 1930 Salt March against British colonial control in India to the decades of Pride marches that followed the Stonewall Riots in 1969 to the latest Black Lives Matter demonstrations. There are innumerable instances of people banding together to create history and grant us the freedoms and rights we enjoy presently.

Protest, which is fueled by ingenuity and a sense of compassion, can take many different forms both online and offline, ranging from sit-ins and acts of civil disobedience to strikes, marches, and vigils. The ideas and inspiration emerging from the protests can be used to pave the way for progress in areas that impact our everyday lives, including better governance, safer working conditions, and combating issues like racism, discrimination and environmental destruction and other issues that are the pressing need of the current time at the local and the International level.

¹ <https://www.amnesty.org/en/what-we-do/freedom-of-expression/protest/>

Even raising voice against the usage of plastics at the world level is a kind of protest, asking for better policies for better waste disposal, asking for better environmentally friendly practices, they are all protests. Thus, the protests can range from the simple local issues at the simplest of the family problems to the most complexing International level issues.²

As witnessed, protests, can be at the local or the International level, similarly, protests can be either lawful or unlawful. Lawful demonstrations occur when individuals protest while adhering to the law and might involve participants holding signs, engaging in conversations, delivering speeches about their views, and some may even raise their voices. It is crucial to remain off private property and stay within the designated area as instructed by the organizers. Occasionally, protests may take place on roadways, but in such cases, there are typically police present to guide the demonstration. On the other hand, Unlawful demonstrations consist of violating laws and creating hazards for others. This may involve vandalism, physical altercations, setting fires, and participants possessing weapons. Unlawful demonstrations can pose significant risks.³

Protests are not just a form of expressing dissenting opinions, it is rather a medium through which changes can be revolutionized, protests play a crucial role in amplifying the voices of minority communities, allowing them to express their concerns or objections regarding government actions or lack thereof. Protests act as an important counterbalance to the dominance of majority rule and provide a platform for those who may not have access to privilege or representation. They solidify the boundaries of democratic engagement. While at the same time, they strengthen a system, especially a democratic system, as it promotes direct participation by the citizens and makes the government stand accountable for all its actions and inactions.

Further, protests give people strength by showing them that they are not isolated in their struggle against an issue and that many others share their views, fostering a sense of unity. Additionally, protests create pressure on officials, initiating discussions. This process also contributes to ensuring transparency between the government and its citizens. The right to protest serves as an essential mechanism for citizens to oversee and express their discontent with governmental actions. Consequently, it is crucial for holding the ruling government

² https://teacch.com/wp-content/uploads/sites/553/2020/09/What-is-a-Protest_TEACCH-Tip.pdf

³ <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf>

accountable. Protests have been a common means in India and around the world to oppose government policies or actions. During pre-colonial times, this was the primary method for individuals to voice their opinions.

1.1 INDIAN HISTORY OF RIGHT TO PROTEST

India is the largest democracy in the world and it cannot happen that it is without its own share of protests, especially when India was colonised for the longest period of time and had to fight back to gain its Independence. India has a rich history of protests, some of which ended in bloodshed and some which were conducted peacefully. A protest can be conducted. In fact, India's transformation into a republic is rooted in a long history of anti-colonial resistance against British rule. Protests—whether the 1905 Swadeshi Movement or Gandhi's 1930 Satyagraha or the Mahatma Gandhi led landmark campaigns like Civil Disobedience and Non-Cooperation movement—embodied this struggle. Demonstrations have long been a part of Indian political and social life, with people repeatedly voicing against government actions or inaction and why it shouldn't be. In a true democracy, the right to protest is essential; if citizens cannot freely challenge the State's decisions or omissions, the democratic system itself is in jeopardy.⁴

In order to understand the rich history of the protests in India, we can conveniently divide the protests into pre-independence and post-independence. While it may be hard to imagine the pre-independence period without protests, the reality is that even the post-independence period is full of a rich history of protests. The goals might have changed in both periods but the motive has always been the same, to engage the authorities so that the conflicted thought can be revolutionized and changed for something better.

India has a long and rich history of protests, which mainly against the Britishers led East India Company ("EIC") who had been colonising India and exploiting it for the longest period of time. While there are many protests to regain the lost freedom of India, there are some protests that had paved for the others or had instilled a sense of pride and spark in the Indian to regain their lost territory, dignity and freedom. There are so many protests from the Civil Disobedience movements to the Dandi walk, to the Non-Cooperation movement. The history of India in

⁴ Amisha Mittal and Shubhi Agarwal, Reasonable Restriction on Right to Protest vis a vis the Citizenship Amendment Act, 2019, 1.4 JCLJ (2021) 1017

protest in pre- independence era is so rich that it is not possible to summarise it in few words but given above is just a glimpse of the rich history of protests of India to highlight the fact that protests in India have always been a method to raise their dissenting voices.

The Post- Independence period is also full of protests that have put forward the rights of the segment of the people. Unlike the protest in the pre-independence era, which were primarily concerned about the freedom of the country, the post-independence protests are more concerned with the specific problem at the hand, the problem against which the protestors raised their voices The Protest against the Citizenship Amendment Act is another protest that would be considered as one the biggest protest in the history of India down in the future. The 2019 Amendment to the Citizenship Act has sparked significant controversy, with critics arguing that it violates constitutional principles such as equality, secularism, and the Constitution's basic structure.

2. UNDERSTANDING PUBLIC ORDER

It is often heard that public order should be maintained and should not be disturbed. Often, importance to public order is given prime importance by the administrative authorities of the region and by the government so that the public order is not disturbed and there is harmony in the fabric of the society. But what exactly is public order. It is quite important to understand the meaning of public order, because upholding public order and enforcing the rule of law is a fundamental responsibility of the State, equally vital as protecting the country from foreign threats or preserving the nation's unity and integrity and hence understanding the meaning of the term is essential.

The term “public order” does not have a precise or fixed definition. is broadly interpreted to encompass both legal and physical safeguards that ensure individuals can coexist peacefully, securely, and freely within a society. In the context of humanitarian law, public order—or law and order—refers to the essential conditions required for people to fully exercise their rights and liberties. Public order goes beyond just the routine enforcement of law and order. It represents a state of public peace, safety, and calm. Any act that disrupts social harmony or disturbs the peaceful environment is considered a breach of public order. For example, communal tensions or strikes aimed solely at stirring unrest among workers are seen as violations of public order. In essence, public order reflects a condition free from violence, where individuals can carry on with their daily lives without disruption. It also encompasses

public safety, meaning that actions causing internal turmoil or rebellion can threaten both public order and security.⁵

Harold Laski once noted that the rule of law serves not only to prevent the obvious risks of unchecked executive power but also to guarantee that a citizen's rights are determined by an impartial body whose position is secure and unaffected by fluctuating public sentiment, thus maintaining the public order. Laski defined the public order in reference to rule of law and till date it is one of the most referred definitions of public order.⁶

Similarly, the renowned thinker Locke aptly stated, “where law ceases, tyranny begins.” When the lives and freedoms of ordinary citizens are placed in jeopardy, any breakdown in public order and the rule of law can shake people's confidence in the government and undermine its authority. Widespread unrest and violence can unravel a nation's social cohesion, threaten its unity, and hinder economic progress. A failure to maintain public order often points to shortcomings across all branches of governance—legislature, executive, and judiciary—necessitating a comprehensive approach to reform and improvement.⁷

However, the term public order can be understood as a stable and orderly condition in society where activities align with established legal norms, reflecting peace, calm, and adherence to the rule of law. It signifies the lack of chaos, violence, rebellion, disorder, or lawlessness. Regardless of the form of government, be it democratic, autocratic, federal, or unitary, ensuring public order is acknowledged globally as one of the most fundamental responsibilities of the State. A failure to uphold this duty could result in widespread disorder, which, if sustained, may lead to the deterioration, collapse, and eventual fragmentation of the State itself. The concept of public disorder varies depending on the type of political system. In advanced societies governed by the rule of law, even minor violations may be considered threats to public order. Conversely, in liberal democracies, only significant disruptions that interfere with normal life are typically seen as breakdowns of public order. In contrast, autocratic regimes often view even calm and lawful demonstrations against the government as disturbances to public order.

⁵ <https://www.ramauniversity.ac.in/online-study-material/law/llm/isemester/constitutionallaw/lecture-12.pdf>

⁶ <https://blog.iasscore.in/wp-content/uploads/2017/05/Public-Order-Binder5-1.pdf>

⁷ <https://blog.iasscore.in/wp-content/uploads/2017/05/Public-Order-Binder5-1.pdf>

Historically, the public order has been maintained through the Police. They have long been seen as an essential part of state authority, whether in ancient Indian kingdoms or in the city-states of Greece. During colonial rule, the British understood the need to maintain public order using a well-armed police force, realizing that their control over the vast Indian population could collapse if faced with widespread unrest. To ensure this control, they established effective communication systems like the railways and postal services and relied on state force to suppress any opposition to British rule.⁸

The police in India were thus created as a militarized force, not to serve the Indian public, but primarily to uphold the dominance of the British Crown. It became an instrument of repression, designed to protect colonial interests and sustain British rule, resulting in a mistrustful relationship between the police and the public. However, after Independence, Sardar Vallabhbhai Patel envisioned a transformed role for the police in a free India. He pointed out that although the police once served a different regime under different circumstances, the reasons for public hostility had disappeared. He believed it was time for the police to earn the trust and respect of the people. Moreover, 'Public order' and 'Police' are listed as Entry 1 and Entry 2, respectively, in List II (the State List) of the Seventh Schedule of the Indian Constitution. This means that the primary responsibility for ensuring public order lies with the State Governments. As a key component of the civil administration, the police are typically the first line of response in upholding law and order.

Further, Article 355 of the Indian Constitution places a duty on the Union to protect every state from external aggression and internal disturbances, and to ensure that the governance in each state adheres to the constitutional framework. Moreover, the foundation of police operations in India continues to rest on the Police Act of 1861, a colonial-era legislation that still serves as the principal statute regulating the structure, duties, and responsibilities of the police force in the country. Despite several reforms and recommendations over the years, this Act remains the core legal framework for policing in India.

3. RIGHT TO PROTEST AND PUBLIC ORDER VIS A VISA LEGAL, CONSTITUTIONAL AND JUDICIAL FRAMEWORK

⁸ Public Order, Second Administration Reforms Commission, 5th Report, https://darpg.gov.in/sites/default/files/public_order5.pdf

CONSTITUTIONAL FRAMEWORK

India is a nation that is often referred to as ‘the world’s largest democracy,’ and characterized by its vast diversity in terms of culture, religion, language, and socio-political ideologies, naturally becomes a space where debates, disagreements, and dissent frequently arise. In a healthy democracy, the true test lies in how responsive and tolerant the State is to differing opinions expressed through speech, collective gatherings, and associations. Yet, the right to assemble peacefully has remained one of the more contentious areas. Various interpretations by the judiciary, state authorities, and the general public have led to differing understandings of both Indian legal provisions and international norms—raising critical concerns about the consistent safeguarding of the right to peaceful assembly in India.⁹

The Constitution of India lays down the fundamental values, rights, and responsibilities that define the relationship between the State, its institutions, and its citizens. At the heart of this framework is the Preamble, which asserts that the Constitution derives its authority from “We the People of India.” This declaration is not just symbolic—it plays a key role in interpreting the extent and meaning of fundamental rights and is firmly recognized as a vital component of the Constitution itself. The powerful phrasing of the Preamble emphasizes that ultimate power lies with the people, rather than with their elected leaders. Within this framework, the right to assemble peacefully must be understood through the lens of popular sovereignty, the legacy of India’s collective resistance during the freedom struggle, various social reform movements, and the ongoing necessity of this right for nurturing and preserving India’s democratic and parliamentary traditions.

Article 19(1)(b) of the Indian Constitution recognizes the right to peaceful assembly as a fundamental right granted to every citizen, stating that “all citizens shall have the right to assemble peacefully and without arms.” This constitutional guarantee extends to include the right to conduct public gatherings and processions, a principle that has been affirmed in several SCI rulings. By elevating the right to assemble into the realm of FR’s, the Constitution empowers citizens to seek judicial remedies in case of its violation, thereby imposing a clear constitutional duty on the Indian State to enable and protect this right.

⁹ Vrinda Grover, Assessing India’s Legal Framework on the right to Peaceful Assembly, <https://www.icnl.org/wp-content/uploads/India-freedom-of-assembly-report-2021-final.pdf>

However, the right to assemble is not without limitations. The Constitution permits reasonable restrictions to be placed on this freedom in specific circumstances. These limitations are intended to ensure public order, decency, and the sovereignty and integrity of India. The SCI has emphasized that the Constitution seeks to achieve a careful balance between individual freedoms and societal interests. This principle of 'harmonious balancing' acknowledges the necessity of protecting personal liberties, such as the right to protest and gather, while also recognizing the role of the State in maintaining peace, order, and security for the broader community.

Article 19(3) of the COI outlines the limitations that can be lawfully imposed on the right to freedom of assembly granted under Article 19(1)(b). According to this provision, the right to assemble peacefully and without arms may be subject to reasonable restrictions enacted through existing laws or new legislation, provided such restrictions are in the interest of (i) safeguarding the sovereignty of India, (ii) maintaining the integrity of the nation, or (iii) ensuring public order.

Any limitation placed on this right must not only align with one of these three constitutionally sanctioned grounds but must also meet the standards of reasonableness, necessity, and proportionality. These criteria were strongly reaffirmed by the Supreme Court in the landmark *KS Puttaswamy*¹⁰ judgment. In practice, particularly in the context of political and social movements in India, many of the restrictions imposed on assemblies are often justified on the grounds of protecting public order. Judicial decisions and real-life examples of activism suggest that public order remains the most commonly invoked reason for curbing or controlling public gatherings and protests.

We have already looked at the meaning of public order and protest through the lens of judiciary in the above chapter, however, in order to understand the effect of the integration of the topics, it is necessary that we focus the judicial lens on the precedents that delve deeper into the integrated section rather than focussing solely on the individual important topics.

For any restriction on a fundamental right to be legally valid, it must first satisfy the criteria of *reasonableness*, which encompasses both the content of the law (substantive reasonableness) and the manner in which it is implemented (procedural reasonableness). The term "reasonable

¹⁰ *KS Puttaswamy vs Union of India* (2017) 10 SCC 1

restriction," as used within Article 19 of the Indian Constitution, is designed to create a balance between the freedoms assured under Article 19(1) and the limitations that may be imposed through clauses (2) to (6) of the same Article.

Substantively, a restriction is only deemed reasonable if it bears a logical and fair relationship to the objective that the law aims to achieve. It must not be arbitrary or excessive in nature. On the procedural side, the legitimacy of a restriction also depends on how it is enforced. Even a restriction that appears reasonable in intent or substance can be unconstitutional if it is imposed in an unjust or flawed manner.

Procedural reasonableness generally involves ensuring that the principles of natural justice are respected—this includes giving affected individuals a fair chance to be heard. But even in cases where a formal hearing is not mandated, other safeguards must be present. These could include assigning the decision-making power to a neutral and responsible higher authority, or requiring that decisions are accompanied by clear and reasoned justifications—commonly referred to as a *speaking order*—rather than arbitrary approvals or denials.

Importantly, if the law gives an authority unchecked or arbitrary power to decide whether or not a public assembly may be held, such a provision would be invalid. This is because it would amount to an unreasonable restriction on the constitutional right to assemble. For instance, an order that imposes a blanket prohibition on all public gatherings without offering a valid, well-reasoned explanation would violate the norms of natural justice and fail the test of procedural reasonableness. It would therefore be unconstitutional, as it would infringe on the citizen's fundamental right to freedom of assembly.

In sum, both the intent and the execution of any restriction on fundamental freedoms must stand up to scrutiny. The law must aim to achieve a legitimate public interest without being overly harsh or disproportionate, and the process of enforcing that law must be transparent, fair, and just. Anything less would fall short of constitutional standards.¹¹

3.1 JUDICIAL PRECEDENTS

In the landmark case of *Madhu Limaye vs Sub-Divisional Magistrate*¹², the Supreme Court of

¹¹ *Himmat Lal K Shah v Police Commissioner*, (1973) 1 SCC. 227

¹² *Madhu Limaye v Sub-Divisional Magistrate*, (1970) 3SCC 746

India clarified the nuanced difference between the concepts of "public order" and "public tranquillity." The Court emphasized that while these two terms may appear similar, they are not entirely synonymous. Public tranquillity is a broader term, encompassing situations that may cause disturbance or discomfort but do not necessarily constitute a threat to public order. For instance, someone playing loud music at night may disrupt the peace in a neighbourhood, but such behaviour does not amount to public disorder.

The Court further explained that "public order" pertains to the absence of serious disruptions such as riots, insurrections, or acts of violence that pose a threat to the security of the state or social harmony, akin to the French notion of *ordre public*. This interpretation implies that not all disturbances qualify as breaches of public order—only those that carry potential for larger unrest or threaten the public peace in a substantial way.

Building on this interpretation, the Court reasoned that inconveniences caused by peaceful protests—such as traffic delays or disruptions to local residents—do not automatically amount to a disturbance of public order. A non-violent assembly cannot be disbanded simply because it causes some level of public inconvenience. Protests and demonstrations, by their nature, involve people gathering in public spaces, often in significant numbers. Consequently, some disruption to everyday routines is inevitable. However, the right to assemble and protest includes the right to make one's message seen and heard by the intended audience. If visibility and audibility are removed, the protest loses its essence.

The Court also observed an inconsistency in how authorities respond to such disruptions. Religious processions, political rallies, and celebratory public events also inconvenience the public in similar or even greater ways. Yet, these gatherings are rarely met with prohibitory orders. This selective approach suggests that the inconvenience caused is not the real concern. Instead, such reasoning is frequently used to control or suppress assemblies when they involve dissenting voices, challenge authority, or demand accountability from those in power.

In essence, the Indian judicial understanding recognizes that public inconvenience alone is not sufficient grounds to curtail a peaceful protest. Instead, the use of such justifications is often a pretext to silence critical or dissenting views, thereby undermining the very spirit of the constitutional right to freedom of assembly.

In the case of *Railway Board vs. Niranjan Singh*¹³, the Supreme Court of India emphasized that while the fundamental freedoms granted under the Constitution—such as the right to free speech, peaceful assembly, and association—are immensely important and must be safeguarded, these freedoms are not absolute. The Court underscored that it would be reluctant to allow any curtailment of these rights beyond what is expressly permitted by the Constitution. However, the judgment made it clear that the enjoyment of these rights does not entitle citizens to exercise them in any location of their choosing without consideration of others' rights.

The Court explained that these constitutional freedoms must coexist with the rights of others, including the right to property and the right to unhindered movement. Therefore, if a public assembly obstructs access to property or interferes with the free movement of people—such as commuters or pedestrians using a public road—then such a gathering may legitimately be regulated or restricted. In essence, the right to assemble peacefully must be balanced against the public's right to access shared spaces, and cannot be exercised in a way that infringes on the lawful rights of others.

In the *Himmat Lal* ¹⁴judgment, the Supreme Court affirmed that individuals possess a fundamental right to hold public meetings on public streets, and emphasized that allocating specific zones for protests should not dilute this right. The Court made it clear that designating certain areas for assemblies cannot be used to imply a blanket prohibition on protests in other public spaces. Any restriction imposed on holding a gathering outside a designated area must be assessed against the principles of reasonableness, necessity, and proportionality in order to be constitutionally valid.

Importantly, when applied in a fair and balanced way, restrictions can serve a positive role in fostering an inclusive environment that supports the exercise of rights by all members of society. Given existing structural and social inequalities—such as economic hardship, cultural exclusion, or political influence—some groups may naturally have an upper hand in accessing and utilizing public spaces. This imbalance can lead to a situation where the rights of dominant groups thrive while those of more marginalized communities are side-lined.

To correct such disparities, reasonable restrictions on the freedom of assembly may be

¹³ *Railway Board v Niranjan Singh*, AIR 1969 SC 966

¹⁴ *Himmat Lal K Shah v Police Commissioner*, (1973) 1 SCC 227

necessary. They can help prevent influential or majority groups from monopolizing public forums and ensure that less privileged voices also have the opportunity to be heard. In this way, constitutionally justified restrictions should not suppress free expression but rather be implemented thoughtfully to support equity, diversity, and fairness in public discourse and protest.

In the case of *Rakesh Vaishnav v UOI*¹⁵, the SCI held that the Constitution recognizes the right to peaceful protest as an essential part of democratic expression, grounded in the freedoms of speech, expression, and assembly. However, this right is not absolute and must be exercised within the bounds of law and order. The Supreme Court has affirmed that while individuals have the right to protest, it must be carried out peacefully, without the threat or occurrence of violence or harm to the lives and properties of others. Protests are valid so long as they adhere to legal parameters and do not disturb **public order**. The Court emphasized that no restriction should be imposed merely on the basis of inconvenience if the protest remains peaceful and law-abiding.

3.2 LEGAL FRAMEWORK

The exercise of the right to freedom of assembly in India is shaped by a complex network of laws, regulations, and administrative procedures that collectively determine how this constitutional right is realized in practice. These legal provisions differ across states, given that both "police" and "public order" fall under the State List, granting each state the authority to legislate independently on these matters. Additionally, criminal law falls within the Concurrent List (List III) of the Constitution's Seventh Schedule, meaning both the central and state governments have legislative competence in this area. As a result, states may enact amendments to the Code of Criminal Procedure that apply specifically within their jurisdiction.

Most states operate under Police Acts, many of which are derived from the colonial-era Police Act of 1861. These Acts define the powers and responsibilities of police personnel, supplementing provisions already laid out in the Criminal Procedure Code. In addition, state governments exercise executive authority through the issuance of Police Manuals and, periodically, Standing Orders that address the conduct and regulation of public assemblies.

¹⁵ *Rakesh Vaishnav v UOI* (2021) 15 SCC 331

One of the legislative framework around protest and public order is around the prior restraint on right to assemble. The right to assemble in India is regulated through a framework that includes prior notification, the requirement of obtaining permission, and the possibility of prohibitions. This system of anticipatory control, often termed prior restraint, has been justified by the Supreme Court as a necessary mechanism for maintaining public order proactively. In a 1961 ruling, the Court explained that public order must be preserved in advance to prevent disturbances, and that it is within the legislature's power to authorize relevant authorities to impose anticipatory measures or restrictions during emergencies to safeguard public order. This broader criterion allows for pre-emptive state action even when an actual or imminent threat is not immediately evident.¹⁶

Another legislative framework is for prior permission for conducting public assembly. In many states across India, Police Standing Orders require that protests or public gatherings held at officially designated locations within cities or towns can only take place after obtaining prior approval from the police. This approval typically comes in the form of a Police Permit and a 'No Objection Certificate' ("NOC"). Organisers are required to submit a formal application several days in advance—usually about a week—detailing specific information and attaching valid identification documents. The decision to grant or deny permission rests with the police, who assess whether the proposed assembly might obstruct traffic, pose a threat to public safety, or disrupt public tranquillity. For instance, Karnataka has issued a specific Police Order that mandates all processions or assemblies in Bangalore to be licensed under the terms of that directive. Generally, organisers are expected to provide detailed information such as the date, time, duration, expected number of participants, and the intended route of any procession or rally. Additionally, they must disclose the purpose or issue being addressed. Approval often hinges on the submission of this information along with assurances that the event will remain peaceful, including formal undertakings that no breach of peace will occur during the gathering.¹⁷

Another legislative framework would be under Cr.P.C. One of the most commonly invoked legal tools to restrict the formation of public assemblies is Section 144 of the Code of Criminal Procedure, 1973 (Cr.P.C.), which empowers District Magistrates, Sub-Divisional Magistrates,

¹⁶ Vrinda Grover, Assessing India's Legal Framework on the right to Peaceful Assembly, <https://www.icnl.org/wp-content/uploads/India-freedom-of-assembly-report-2021-final.pdf>

¹⁷ Vrinda Grover, Assessing India's Legal Framework on the right to Peaceful Assembly, <https://www.icnl.org/wp-content/uploads/India-freedom-of-assembly-report-2021-final.pdf>

or other Executive Magistrates to issue prohibitory orders. The Supreme Court has upheld the constitutionality of these powers, reasoning that such orders are intended to maintain ‘public order’ and thereby qualify as reasonable restrictions on the right to assembly.

These orders may be targeted at specific individuals or groups, or they may impose a sweeping ban on public gatherings within a defined area. A typical application of Section 144 involves the District Magistrate prohibiting the assembly of five or more people within a certain region of the district. Additional measures often taken under this provision include restricting the movement of people or vehicles, closing down educational institutions and commercial establishments, and, in more recent times, suspending internet and telecommunications services.

However, in actual practice, Section 144 orders are frequently renewed one after another, resulting in the de facto continuous prohibition of assemblies. These successive orders are often worded identically and are issued without any genuine assessment of the prevailing conditions, suggesting a mechanical application of power. This practice was scrutinised in the case of *Mazdoor Kisan Shakti Sangathan v. Union of India*¹⁸, where the Supreme Court found that the repeated use of identical prohibitory orders in Delhi effectively amounted to a ban on public gatherings, rather than a regulatory measure. Despite the Court's ruling and its reaffirmation in 2020 that repetitive orders under Section 144 amount to an abuse of authority, such orders continue to be issued regularly in contravention of judicial guidance.

Other legislative framework would also include The police also possess the authority to impose prohibitory actions that affect the right to assemble. For instance, Chapter V of the Delhi Police Act empowers the police to implement “Special Measures for Maintenance of Public Order and Security of State,” which includes the issuance of preventive prohibitory orders. Measures related to managing crowds and the regulation of force are closely linked.

The Armed Forces (Special Powers) Act, 1958 (AFSPA), which applies in parts of the North-East, and the AFSPA, 1990, applicable in Jammu and Kashmir, specifically authorise the military and CAPF to use force against any assembly of more than five individuals in areas designated as ‘disturbed.’ Additionally, the Criminal Procedure Code permits preventive

¹⁸ *Mazdoor Kisan Shakti Sangathan vs. Union of India* (2018) 17 SCC 324

detention—a restriction on personal liberty that has been upheld by the Supreme Court as constitutionally valid. Under this framework, a police officer is allowed to arrest a person without a warrant or prior order if it is believed that the individual intends to commit a cognizable offence and that such a crime cannot be prevented by any other means.

CONCLUSION

To uphold the fundamental right to protest and voice dissent—an essential element of any democratic society that thrives on the principle of allowing disagreement—it is crucial to distinguish clearly between peaceful, lawful demonstrations and unlawful activities. This differentiation helps establish the limits and scope within which individuals can legitimately exercise their right to protest. It is important to emphasize that the State must not permit opponents of a protest to act in ways that would hinder or obstruct peaceful demonstrations. Even if a protest causes discomfort or offends those who disagree with the demonstrators' views, this alone cannot justify a violent counter-response. The law clearly mandates that individuals must be allowed to voice their opinions peacefully, without fear of physical harm from those who oppose them. If such fear exists, it could discourage groups—especially those with shared interests or common causes—from expressing their views, particularly on sensitive or divisive matters.