
THE RIGHT TO PROTEST UNDER ARTICLES 19(1)(A) & 19(1)(B) OF THE CONSTITUTION OF INDIA: A CONSTITUTIONAL ANALYSIS OF STATE REGULATION OF PUBLIC ASSEMBLY, WITH THE 2026 STUDENT PROTESTS AT JANTAR MANTAR AS A CASE STUDY

Sushant Singh, University School of Law & Legal Studies, GGSIPU, New Delhi, India.¹

ABSTRACT

Public assemblies occupy a paradoxical position in Indian constitutional law. In principle, they are celebrated as a vital expression of democratic self-governance and an essential means for citizens to hold power to account. In practice, however, they are routinely hemmed in by a complex web of prior permissions, designated protest zones, prohibitory orders, and preventive policing tactics. This paper examines whether this regulatory framework, as it operates today, truly aligns with the fundamental guarantees of freedom of speech and expression under Article 19(1)(a) and the right to peaceful assembly under Article 19(1)(b) of the Constitution of India, read alongside the permissible restrictions in Articles 19(2) and 19(3).

The problem is of continuing importance because the mechanisms used to regulate protest such as licensing under police enactments, prohibitory orders under Section 163 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and ad hoc barricading trace their origins to a colonial administrative model focused primarily on maintaining order rather than fostering democratic dissent. These mechanisms have not been fully modernized to reflect the Supreme Court's evolving emphasis on proportionality, necessity, and procedural fairness.²

The study adopts a doctrinal methodology, drawing on the constitutional text, the Constituent Assembly Debates, statutory provisions governing policing and preventive action, and the trajectory of Supreme Court and High Court decisions. It treats the 2026 student-led demonstrations at Jantar Mantar, precipitated by grievances over examination integrity and unemployment, and marked by an initial grant of permission, a subsequent denial of permission for a march to Parliament, extensive barricading, and the removal

¹ Author is a student at University School of Law & Legal Studies, GGSIPU, New Delhi, India.

² Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, §§ 163–164, 170 (India).

of a hunger-striking protester as a case study through which to test the operative content of constitutional doctrine, rather than as the primary object of inquiry.

The paper finds that while the regulated-access framework established by the Supreme Court has moved Indian law away from blanket prohibition³, the persistence of undefined administrative discretion, the absence of a dedicated statutory code for assembly regulation, and inconsistent judicial insistence on reasoned, time-bound orders leave the right vulnerable to erosion through informal and unreviewed executive action.

Keywords: Right to Protest, Articles 19(1)(a) and 19(1)(b), Reasonable Restrictions, Proportionality Doctrine, Public Order, Jantar Mantar Protests, Executive Regulation of Assemblies, Freedom of Speech and Assembly, Constitutional Democracy and Dissent.

I. INTRODUCTION

The right to protest is one of the defining features of a constitutional democracy. While elections provide citizens with the opportunity to choose their representatives, democracy does not end at the ballot box. Between electoral cycles, individuals and groups must retain the freedom to express dissent, question governmental action, and participate in public discourse. Peaceful public assemblies therefore serve as an indispensable constitutional mechanism through which citizens engage with the State and influence public decision-making.

The Constitution of India recognises this democratic value by guaranteeing the freedoms of speech and expression under Article 19(1)(a) and peaceful assembly under Article 19(1)(b). These freedoms, however, are not absolute. The Constitution permits the State to impose reasonable restrictions in the interests of public order, sovereignty and integrity, and other constitutionally recognised grounds. Consequently, the constitutional debate has rarely centred on whether a right to protest exists; instead, it has focused on the extent to which the State may regulate the exercise of that right without undermining its constitutional guarantee.

The judicial understanding of the right to protest has evolved considerably since the Constitution came into force. In its early years, courts generally adopted a deferential

³ *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324 (India).

approach towards executive regulation of public assemblies, often placing significant emphasis on considerations of public order. A more rights-oriented approach emerged with *Himat Lal K. Shah v. Commissioner of Police*, where the Supreme Court held that while the State possesses the authority to regulate public meetings, such regulation cannot be based on unfettered executive discretion.⁴ Subsequent decisions have gradually refined this position by requiring regulatory measures to conform to constitutional standards of reasonableness, fairness, and proportionality.

A significant development in this jurisprudence came with *Mazdoor Kisan Shakti Sangathan v. Union of India*⁵, in which the Supreme Court acknowledged that public protests are an essential component of democratic governance while simultaneously recognising the State's obligation to balance competing public interests. The Court accepted the legitimacy of designated protest sites, such as Jantar Mantar, but emphasised that regulatory measures should facilitate rather than extinguish the exercise of constitutional freedoms.

Against this constitutional backdrop, the recent student protests at Jantar Mantar in 2026 assume particular legal significance.⁶ Originating from concerns relating to alleged irregularities in national-level entrance examinations and youth unemployment, the protests raised important constitutional questions regarding permission requirements, police regulation, restrictions on movement, and attempts by demonstrators to march towards Parliament. Rather than examining the political merits of these protests, this paper uses them as a contemporary case study to assess whether the existing legal framework governing public assemblies adequately reflects the constitutional guarantees embodied in Articles 19(1)(a) and 19(1)(b).

Ultimately, the paper argues that the constitutional legitimacy of regulating public protest depends not merely upon the existence of statutory authority but upon whether executive action satisfies established constitutional standards of legality, proportionality, non-arbitrariness, and procedural fairness.

⁴ *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad*, (1973) 1 SCC 227 (India).

⁵ *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324 (India).

⁶ <https://www.bbc.com/news/articles/cedj9j911p8o>

(A) Statement of the Problem

Whether the increasing regulation of public assemblies through permission requirements, designated protest sites, police orders, and preventive measures conforms to Articles 19(1)(a) and 19(1)(b) of the Constitution.

(B) Research Questions

- (i) Is the right to protest constitutionally protected under Articles 19(1)(a) and 19(1)(b), and if so, what is its doctrinal content and its relationship to Article 21?
- (ii) What constitutes a “reasonable restriction” under Articles 19(2) and 19(3), and whether the narrower grounds contained in Article 19(3) impose stricter constitutional limitations on State regulation of public assemblies.
- (iii) Whether the practice of confining protests to designated locations, such as Jantar Mantar, constitutes a constitutionally permissible regulatory mechanism or amounts to an unreasonable restriction on the exercise of fundamental rights.
- (iv) What constitutional standards, especially those of proportionality, non-arbitrariness under Article 14, and procedural fairness, must executive authorities satisfy when regulating protests? Are these standards being applied consistently in practice, or do significant gaps remain?

(C) Objectives

- (i) To examine the constitutional protection afforded to peaceful protest under Articles 19(1)(a) and 19(1)(b), read with Articles 14, 19(2), 19(3), and 21.
- (ii) To analyse the judicial interpretation of these provisions from the early post-Independence cases to the present.
- (iii) To evaluate the statutory and administrative framework through which the executive regulates public assembly.
- (iv) To study the 2026 Jantar Mantar protests as a constitutional case study through which the preceding doctrinal framework can be tested.

(D) Research Methodology

This study adopts a doctrinal research methodology, focusing primarily on constitutional interpretation, statutory analysis, and judicial precedent. The analysis is based on primary legal materials, including the Constitution of India⁷, decisions of the Supreme Court and various High Courts, the Delhi Police Act, 1978⁸, the Bharatiya Nagarik Suraksha Sanhita⁹, 2023, and relevant government notifications regulating public assemblies and designated protest sites.

In addition to these primary sources, the study draws upon secondary materials such as the Constituent Assembly Debates¹⁰, scholarly journal articles, constitutional law treatises, Law Commission reports, and academic commentaries. These sources are used to examine the theoretical foundations of the right to protest and the evolving standards governing State regulation of public assemblies.

The recent student protests at Jantar Mantar are employed solely as a constitutional case study to evaluate the practical application of the legal principles discussed.¹¹ The paper does not seek to assess the political objectives or merits of the protests; rather, it examines whether the executive measures adopted in response satisfy the constitutional standards established by the judiciary.

II. CONSTITUTIONAL FRAMEWORK OF THE RIGHT TO PROTEST

(A) Articles 19(1)(a), 19(1)(b), and 19(1)(c): An Interlocking Triad

A public protest is rarely about just one constitutional right. In practice, it draws upon several overlapping freedoms guaranteed by the Constitution. It involves the freedom of speech and expression under Article 19(1)(a), the actual message or grievance being voiced. At the same time, it engages the freedom to assemble peaceably and without arms under Article 19(1)(b), the very act of people coming together in a visible, collective gathering. When the protest is organized by a group, it may also invoke the

⁷ INDIA CONST. art. 19.

⁸ The Delhi Police Act, 1978, No. 34, Acts of Parliament, 1978 (India).

⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, §§ 163–164, 170 (India).

¹⁰ 7 CONSTITUENT ASSEMBLY DEBATES 731–38 (Dec. 1, 1948).

¹¹ Delhi Police Puts Blockades at Jantar Mantar Ahead of CJP's Protest March to Parliament, THE PRINT (July 20, 2026), <https://theprint.in/india/delhi-police-puts-blockades-jantar-mantar-ahead-of-cjps-protest-march-to-parliament/2990640/>.

freedom to form associations under Article 19(1)(c).

The Supreme Court has consistently recognized these as distinct yet interconnected rights. Speech can exist without any physical gathering, while the act of assembly itself carries powerful expressive value. Simply by showing up together in large numbers, citizens convey a sense of shared concern, solidarity, and the depth of their discontent, something that individual voices alone often cannot achieve.

Importantly, Article 19(1)(b) is not merely a supporting tool for free speech. It stands as an independent dimension of expressive liberty. It comes with its own built-in condition that, the assembly must remain peaceful and unarmed, and is subject to a somewhat narrower set of permissible restrictions under Article 19(3) compared to speech in general.¹²

(B) Constitutional Philosophy Underlying the Right to Assemble

The Preamble to the Constitution declares India a sovereign democratic republic. This commitment inherently envisions spaces for citizens to openly disagree with the government and its institutions. Democracy, understood in this deeper sense, goes far beyond casting a vote every few years. It demands ongoing accountability, and one of the most important ways citizens exercise that accountability between elections is through public assembly and protest.

The rule of law further requires that any restriction on the right to assemble must come through clear, general laws that are known in advance, not through arbitrary, case-by-case administrative orders.

Adding another important layer is the doctrine of constitutional morality, which the Supreme Court has invoked in landmark cases such as *Government of NCT of Delhi v. Union of India*¹³ and *Navtej Singh Johar v. Union of India*¹⁴. This doctrine reminds us that even if a restriction on protest enjoys popular or administrative support, it must still be judged against the Constitution's deeper, counter-majoritarian values, chief among

¹² INDIA CONST. art. 19(1)(b), 19(3); H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 690–710 (4th ed. 1991).

¹³ *Gov't of NCT of Delhi v. Union of India*, (2018) 8 SCC 501 (India).

¹⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

them, the willingness to tolerate dissenting or inconvenient voices.

Finally, the principle of popular sovereignty, the idea that all governmental power ultimately flows from the people explains why Indian courts have consistently shown strong principled support for the right to expressive assembly, even as they allow reasonable regulation of how it is exercised.¹⁵

(C) The Constituent Assembly Debates

When the Constituent Assembly debated what eventually became Article 19(1)(b), two deep concerns ran through the discussions¹⁶. First, the framers were determined to constitutionally protect the very freedom to gather and protest that many of them had personally fought for during the independence movement, often at great personal risk and sacrifice. Several members reminded the Assembly of this shared history, arguing that the right to peaceful assembly should be firmly enshrined in the Constitution itself, rather than left vulnerable to ordinary laws that could be changed by future governments.

At the same time, they were acutely aware of the dangers of disorder. Colonial India had seen tragic instances of communal violence sometimes cloaked as public gatherings. To address this, the framers deliberately wrote the words “peaceably and without arms” directly into the text of the right. This was not left only to the restriction clause, it was built into the very definition of the protected freedom, making it clear from the outset that the right did not extend to violent or armed assemblies.

The First Amendment's insertion of “public order” as a ground of restriction under Article 19(2), following *Romesh Thappar v. State of Madras*¹⁷ and *Brij Bhushan v. State of Delhi*¹⁸, was primarily directed at speech, but its effect was subsequently read across, through Article 19(3), to shape the permissible restriction of assembly as well.

(D) Reasonable Restrictions: Articles 19(2) and 19(3)

Article 19(2) lets the State restrict speech on eight grounds: the sovereignty and

¹⁵ GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 65–80 (1966).

¹⁶ 7 CONSTITUENT ASSEMBLY DEBATES 731–38 (Dec. 1, 1948).

¹⁷ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124 (India).

¹⁸ *Brij Bhushan v. State of Delhi*, AIR 1950 SC 129 (India).

integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation, and incitement to an offence. Assembly gets narrower treatment. Article 19(3) confines restrictions on it to just two of those grounds; sovereignty and integrity, and public order.¹⁹ That gap between eight grounds and two isn't a drafting accident. It reflects a deliberate choice by the framers: once a gathering is peaceable and unarmed, the only interests weighty enough to justify curbing it are the two gravest ones on the list. Decency, morality, protecting someone's reputation; none of that is enough to shut down an assembly, even though it might justify restricting speech.

What counts as "public order" has been worked out mostly through the courts, starting with *Superintendent, Central Prison v. Ram Manohar Lohia*.²⁰ That case drew a three-way line: security of the State sits at the top as the most serious concern; public order is a step down, a disturbance to the even tempo of community life; and law and order sits below both, covering ordinary, localised breaches of the peace that don't really destabilise anything beyond the immediate incident. Only the top two tiers can support a restriction on assembly under Article 19(3). And it's not enough for the State to gesture vaguely at one of these categories, the link between the restriction imposed and the harm it's meant to prevent has to be direct and immediate, not speculative or several steps removed.

The doctrine has since been folded into a broader proportionality analysis, developed across *Modern Dental College and Research Society v. State of Madhya Pradesh*,²¹ *K.S. Puttaswamy v. Union of India*,²² and *Anuradha Bhasin v. Union of India*.²³ Courts now ask four things: Is the restriction actually aimed at one of the objectives Article 19(2) or 19(3) recognises? Is it a sensible way of achieving that aim? Could the same aim have been achieved through something less intrusive? And, weighing it all up, does the restriction cost the right more than it's worth given what it actually protects? This four-part test is what turns the bare constitutional text into a workable yardstick for judging the kind of administrative orders this paper is concerned with; permission refusals,

¹⁹ INDIA CONST. art. 19.

²⁰ *Superintendent, Cent. Prison, Fatehgarh v. Ram Manohar Lohia*, AIR 1960 SC 633 (India).

²¹ *Modern Dental Coll. & Rsch. Soc'y v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India).

²² *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

²³ *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).

prohibitory orders, and barricading directions.

III. JUDICIAL EVOLUTION OF THE RIGHT TO PROTEST

(A) Early Constitutional Cases

In *Kameshwar Prasad v. State of Bihar*²⁴, a group of government servants challenged Rule 4-A of the Bihar Government Servants' Conduct Rules, 1956. This rule imposed a complete ban on any form of "demonstration" by government employees in connection with their service conditions. The Supreme Court struck down the rule, holding that it was unconstitutionally overbroad. It prohibited even peaceful, orderly, and completely non-disruptive demonstrations, which could not be justified as a reasonable restriction under Articles 19(1)(a) and 19(1)(b). The Court drew a clear distinction between a peaceful demonstration, which is constitutionally protected, and a strike, which it did not recognise as a fundamental right. This early judgment firmly established that the right to demonstrate peacefully enjoys constitutional protection and that blanket prohibitions, which fail to distinguish between disruptive and non-disruptive conduct, cannot survive judicial scrutiny.

In *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad*²⁵, the petitioner challenged rules made under the Bombay Police Act, 1951. These rules gave the Commissioner of Police virtually unlimited discretion to grant or refuse permission for public meetings on streets, without any obligation to give reasons or lay down clear criteria to guide the decision. The Supreme Court ruled that the right to hold public meetings on public streets forms an integral part of the freedom of assembly under Article 19(1)(b). While reasonable restrictions could be imposed in the interests of traffic and public order, a rule that conferred absolute, unguided discretion on the licensing authority was unconstitutional. Such unchecked power could not be saved merely because it was purportedly exercised for public order. The judgment remains the foundational authority for the principle that administrative discretion over public assemblies must be structured by clear, objective, and published criteria, and must remain open to judicial review.

²⁴ *Kameshwar Prasad v. State of Bihar*, AIR 1962 SC 1166 (India).

²⁵ *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad*, AIR 1973 SC 87 (India).

(B) Expansion of Article 19: The Article 21 Linkage and the Public Forum

The constitutional understanding of personal liberty underwent a significant transformation with the Supreme Court's decision in *Maneka Gandhi v. Union of India*.²⁶ Rejecting a narrow interpretation of Article 21, the Court held that any procedure by which a person is deprived of life or personal liberty must be just, fair, and reasonable, rather than arbitrary or oppressive. Although *Maneka Gandhi* primarily concerned Article 21, its reasoning has had a profound influence on the interpretation of other fundamental rights, including those guaranteed under Article 19.

In the context of public protests, this means that the constitutional validity of a restriction cannot be assessed solely by examining whether it falls within one of the permissible grounds under Article 19(3). The process through which such a restriction is imposed must itself satisfy the standards of procedural fairness. Executive authorities are therefore expected to act transparently, record reasons for their decisions, and, wherever practicable, provide affected persons with an opportunity to be heard before imposing restrictions on the exercise of fundamental rights. Procedural fairness thus becomes an essential safeguard against arbitrary or excessive interference with the freedom of peaceful assembly.

Alongside this development, Indian constitutional jurisprudence has gradually moved towards an understanding of public spaces that bears a close resemblance to the public forum doctrine developed in American constitutional law, even though the Supreme Court has rarely referred to it by that name. Public streets, parks, and open spaces have increasingly been recognised as places that have historically served as forums for public discussion, political participation, and collective expression. While the State may regulate the use of these spaces through reasonable time, place, and manner restrictions to maintain public order and ensure the rights of others, it cannot selectively deny access merely because it disagrees with the ideas or viewpoints being expressed.²⁷

This evolving jurisprudence reflects a broader constitutional vision of democracy. The Constitution does not envisage citizens as participants only during elections; rather, it recognises them as continuing contributors to public debate and democratic

²⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

²⁷ *Cf. Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 (1984).

governance. Peaceful protest, therefore, is not merely an exercise of individual liberty but an important means through which citizens engage with the State, express collective concerns, and hold public authorities accountable. Protecting the freedom to assemble in public spaces is consequently central to preserving a participatory and deliberative constitutional democracy, where dissent is viewed not as a threat to governance but as an essential feature of it.

(C) Modern Jurisprudence

In *Mazdoor Kisan Shakti Sangathan v. Union of India*,²⁸ the petitioner organisation challenged a series of prohibitory orders that, in effect, created a blanket and indefinite ban on demonstrations, dharnas, and protests across large parts of Lutyens' Delhi, including sensitive areas around Parliament. The core issue was whether such a standing, non-time-bound, area-wide prohibition on all forms of protest was consistent with Articles 19(1)(a) and 19(1)(b). The Supreme Court held that the right to peaceful protest and demonstration is an essential facet of the freedoms guaranteed under these articles. A blanket, unreasoned, and effectively permanent prohibitory order could not be sustained. The Court directed the authorities to formulate specific guidelines for regulating; rather than prohibiting protests. This led to the formal designation of sites like Jantar Mantar, subject to reasonable capacity limits, time restrictions, and prior intimation. The ratio of the case is clear: prohibitory orders restricting assembly must be tied to a specific, demonstrated public-order concern, must be time-bound, and must be subject to periodic review. They cannot serve as a permanent, area-wide substitute for individualised assessment. This judgment remains the doctrinal foundation of contemporary Indian protest law. It rules out blanket prohibitions while endorsing a regulated-access model.

In *Amit Sahni v. Commissioner of Police (the Shaheen Bagh case)*²⁹, protesters against the Citizenship (Amendment) Act, 2019, occupied a public road at Shaheen Bagh in Delhi for over a hundred days, seriously obstructing a route used by daily commuters. The central issue was whether the right to protest under Article 19(1)(b) includes the indefinite occupation of a public thoroughfare to the exclusion of its ordinary users.

²⁸ *Mazdoor Kisan Shakti Sangathan v. Union of India*, AIR 2018 SC 3476 (India).

²⁹ *Amit Sahni v. Commissioner of Police* (2020) 10 SCC 439 (India).

The Supreme Court held that while the right to peacefully protest against a law is undoubtedly protected, it does not extend to the indefinite blockage of a public road. Such protests must be confined to designated areas. The ratio emphasises that the right to assemble must be balanced against the general public's right to freedom of movement. Prolonged, indefinite occupation of a public road is not a proportionate way of exercising protest rights when alternative avenues, including designated protest sites, are available. Constitutionally, this decision added an important spatial and temporal dimension to proportionality analysis: the location and duration of a protest matter, not just its content. However, it has drawn criticism for appearing to endorse site-restriction in broad terms without always demanding the kind of case-specific, individualised proportionality inquiry seen in other contexts.

In *Anuradha Bhasin v. Union of India*,³⁰ following the reorganisation of Jammu and Kashmir in August 2019, the government imposed sweeping restrictions on internet access, mobile communication, and movement, partly to prevent public disorder. The key issue was the standard that executive orders must meet when restricting fundamental freedoms, including speech and movement, on public-order grounds. The Supreme Court held that any such restriction must satisfy a strict four-fold proportionality test: legitimate aim, rational connection (suitability), necessity (least restrictive alternative), and overall balance between the restriction and the right affected. Additionally, such orders must be in writing, state reasons, be published or otherwise made available for judicial review, and be subject to periodic review rather than allowed to continue indefinitely. Although decided primarily in the context of Article 19(1)(a) and freedom of movement, this judgment provides the most rigorous and widely applicable proportionality framework in Indian law. High Courts have frequently applied it by analogy to prohibitory orders and permission regimes affecting the right to protest.

(D) Emerging Judicial Standards

- (a) Proportionality: the four-fold *Anuradha Bhasin* test; legitimate aim, suitability, necessity, and balancing, has become the dominant analytical framework for testing

³⁰ Id.

restrictions on assembly.

- (b) Least restrictive alternative: derived from *Om Kumar v. Union of India*³¹ and refined in *K.S. Puttaswamy*, this requires the State to show that no less intrusive measure; a smaller cordon, a shorter duration, an alternative route, would have served the stated public-order interest equally well.
- (c) Balancing test: articulated most explicitly in *Amit Sahni*, weighing the interest of protesters in visible, effective assembly against the interest of third parties, such as commuters or residents, in the unimpeded use of public space.
- (d) Judicial deference and its limits: courts have generally accorded the police a measure of deference in assessing operational public-order risk, but *State of Karnataka v. Dr. Praveen Bhai Thogadia*³² and subsequent decisions insist that such deference is not unconditional, a mere apprehension of disorder, unsupported by cogent material, cannot justify a restriction.
- (e) Procedural fairness: increasingly treated as a free-standing requirement, distinct from the substantive proportionality of the restriction. Reasons must be recorded, communicated where feasible, and made amenable to challenge, in keeping with the due-process reading of Article 21 and the non-arbitrariness principle under Article 14.

IV. EXECUTIVE REGULATION OF PUBLIC PROTESTS

(A) Police Powers

In Delhi, the primary statutory basis for regulating public assembly is the Delhi Police Act, 1978,³³ which empowers the Commissioner of Police to regulate and, in specified circumstances, to prohibit processions and public meetings on public roads, and to impose conditions concerning the route, timing, and conduct of such assemblies in the interests of public safety and convenience. Licensing under the Act and subsidiary rules requires prior written permission for the use of specified public spaces, including Jantar Mantar, and is administratively linked to traffic-management considerations, since

³¹ *Om Kumar v. Union of India*, (2001) 2 SCC 386 (India).

³² *State of Karnataka v. Dr. Praveen Bhai Thogadia*, (2004) 4 SCC 684 (India).

³³ The Delhi Police Act, 1978, No. 34, Acts of Parliament, 1978 (India).

large assemblies in the vicinity of Parliament and central government offices have direct implications for vehicular and pedestrian movement in an area subject to heightened security regulation under separate legislation, including the Parliament (Prevention of Disruption) Act, 1985 and connected security protocols for the Parliament precinct.³⁴

(B) Preventive Powers

The Bharatiya Nagarik Suraksha Sanhita, 2023 has replaced the Code of Criminal Procedure, 1973 with effect from 1 July 2024, and Section 163 BNSS now performs the function previously performed by Section 144 of the former Code: it empowers an Executive Magistrate, in cases of apprehended danger to human life, health, safety, or public tranquillity, to issue a written order, directed against a specific individual or the public generally, prohibiting certain conduct, for a period not ordinarily exceeding two months except where the State Government extends it for reasons to be recorded, and subject to review or rescission under Section 164 BNSS on application by an aggrieved person.³⁵ Preventive detention statutes, such as the National Security Act, 1980, remain available in principle but raise acute due-process concerns when invoked against protest leaders, given the truncated procedural safeguards attaching to preventive as opposed to punitive detention.

Preventive arrest under Section 170 BNSS (corresponding to Section 151 of the former Code) permits arrest without a magistrate's order to prevent the commission of a cognizable offence, but requires credible information of a design to commit such an offence, not a generalised apprehension of disorder. The physical use of barricades to seal off a protest site is not governed by any dedicated statutory provision. It is simply exercised as part of the police's general authority to manage traffic and maintain order. Precisely because it lacks a clear, order-specific legal foundation, this measure is especially vulnerable to constitutional challenge on the ground of manifest arbitrariness.

³⁴ The Parliament (Prevention of Disruption) Act, 1985, No. 32, Acts of Parliament, 1985 (India).

³⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, §§ 163–164, 170 (India).

(C) Constitutional Limits on Executive Action

Beyond the requirement of proportionality already discussed, Indian administrative law also recognises the doctrine of manifest arbitrariness. In *Shayara Bano v. Union of India*,³⁶ the Supreme Court described this as action that is capricious, irrational, or taken without any adequate determining principle. This doctrine operates as an independent ground on which orders regulating protests can be struck down, separate from any failure to meet the specific requirements of Article 19(3).

Equally important is the doctrine of colourable exercise of power, explained in *State of Punjab v. Gurdial Singh*,³⁷ and rooted in the broader principle that a power given for one purpose cannot be used to achieve a different one. This doctrine is especially relevant when a facially neutral power such as traffic regulation or the maintenance of public order is, used to suppress the content or the organisers of a particular protest rather than to address a genuine and specific public-order problem. Such misuse amounts to a fraud on the power conferred and renders the action void, regardless of the official label under which it is exercised.

V. CONSTITUTIONAL ANALYSIS OF THE RECENT STUDENT PROTESTS AT JANTAR MANTAR

(A) Factual Matrix

In 2026, a youth-led movement, organised initially online and popularly styled the “Cockroach Janta Party,” emerged following remarks made by a sitting judge of the Supreme Court that were widely reported as comparing unemployed youth and social-media activists to “cockroaches” and “parasites.”³⁸ Although the immediate trigger for the demonstrations was the alleged irregularities in the NEET-UG examination, contemporaneous reporting suggests that the protests quickly evolved into a broader movement reflecting concerns regarding educational governance, youth unemployment, and governmental accountability, thereby increasing both their

³⁶ *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

³⁷ *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471 (India).

³⁸ <https://indianexpress.com/article/explained/cockroach-janta-party-founder-motive-bjp-congress-details-10705858/>

constitutional significance and their impact on public administration.³⁹ Demonstrations at Jantar Mantar were initially permitted by the Delhi Police from around early June 2026. Later that month, the activist Sonam Wangchuk joined the demonstration and commenced an indefinite hunger strike. Following a change in the leadership of the Delhi Police in mid-July, barricades at the protest site were removed and Mr. Wangchuk was reported to have been forcibly taken to hospital.

Tensions escalated further around a planned march to Parliament (Sansad Chalo) announced for 20 July 2026, timed to coincide with the opening of Parliament's Monsoon Session, for which the Delhi Police publicly stated that no permission had been sought or granted, and in respect of which the police erected extensive, multi-layered barricades around Jantar Mantar and deployed a large security contingent, including the Rapid Action Force, together with inter-state checks on incoming vehicles.⁴⁰

(B) Executive Measures Adopted

- (a) An initial grant of site-specific permission for demonstrations at Jantar Mantar, consistent with the regulated-access model established by the Supreme Court.
- (b) A subsequent public statement denying permission for the proposed march to Parliament and characterising it as an “unauthorised procession,” without, on the available record, a published, individually reasoned order of the kind contemplated by Section 163 BNSS or by Anuradha Bhasin.⁴¹
- (c) Extensive multi-layered barricading of the Jantar Mantar site itself — a site previously designated for protest together with a substantial police and paramilitary deployment.
- (d) The removal of a hunger-striking protester to hospital, reported as forcible, without a

³⁹ <https://indianexpress.com/article/cities/delhi/at-jantar-mantar-anger-over-leaks-but-also-anxiety-over-jobs-inflation-10727759/>

⁴⁰ Delhi Police Puts Blockades at Jantar Mantar Ahead of CJP's Protest March to Parliament, THE PRINT (July 20, 2026), <https://theprint.in/india/delhi-police-puts-blockades-jantar-mantar-ahead-of-cjps-protest-march-to-parliament/2990640/>.

⁴¹ Delhi Police Puts Blockades at Jantar Mantar Ahead of CJP's Protest March to Parliament, THE PRINT (July 20, 2026), <https://theprint.in/india/delhi-police-puts-blockades-jantar-mantar-ahead-of-cjps-protest-march-to-parliament/2990640/>.

stated legal basis on the public record.⁴²

- (e) Reported registration of cases and detentions in connection with the demonstrations.

(C) Constitutional Scrutiny

Article 14: The shift from an initial grant of permission to a subsequent, differently justified denial invites scrutiny for intelligible differentia; was there a demonstrable change in circumstances (proximity to Parliament, scale of the proposed march, the Monsoon Session calendar) capable of justifying the reversal, or does the record disclose an unexplained change of position that itself suggests arbitrariness?

Article 19(1)(a) and 19(1)(b): The denial of permission for the march restricts assembly directly; because the movement's genesis lay substantially in criticism of a remark attributed to a sitting judge, any restriction that can be shown to target the content or source of the protest, rather than its manner, time, or place, would fall outside the content-neutral regulation that Article 19(3) permits and would approach the kind of viewpoint-based restriction disapproved of in *Communist Party of India (M) v. Bharat Kumar*⁴³ and, by extension, in Anuradha Bhasin's insistence that restrictions address specific, demonstrated risks rather than the disfavoured character of the speech itself.

Article 21: The forcible removal of a hunger-striking protester engages both his liberty and, given the State's countervailing interest in preserving life, a genuine public-interest justification; the constitutional question is not whether the State may act at all, but whether it did so through a fair, minimally intrusive, and, ideally, medically warranted procedure rather than through an undocumented use of force.

Proportionality: The Mazdoor Kisan Shakti Sangathan⁴⁴ framework requires that any restriction on protest at a designated site be specific and time-bound rather than a blanket exclusion; blanket, site-wide barricading of the whole of Jantar Mantar, as opposed to a targeted restriction on the specific march route to Parliament, is difficult to reconcile with the least-restrictive-alternative requirement, since the stated security

⁴² <https://indianexpress.com/article/india/sonam-wangchuk-removal-jantar-mantar-delhi-police-10792040/>

⁴³ *Communist Party of India (M) v. Bharat Kumar*, (1998) 1 SCC 201 (India).

⁴⁴ *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324 (India).

concern (protection of the Parliament precinct) could plausibly have been addressed by route- and time-specific measures without foreclosing assembly at the designated site altogether.

Precedent: Amit Sahni permits denial of indefinite occupation of a public thoroughfare, and by extension supports denial of an unauthorised march along a public road toward a security-sensitive precinct;⁴⁵ it does not, however, extend to justifying the closure of a site that the Court had itself designated for the exercise of the right.

Natural justice and administrative fairness: A public police statement denying permission, without a corresponding written, reasoned order made available to the organisers and open to challenge, falls short of the procedural standard Anuradha Bhasin and S.N. Mukherjee require.⁴⁶

(D) Whether State Action Meets Constitutional Standards

On the facts as publicly reported, the executive response to the 2026 Jantar Mantar protests exhibits a mixed constitutional character. The initial grant of permission, and the specific denial of permission for an unauthorised march toward the Parliament precinct on the day Parliament convened, are each independently defensible on public-order and security grounds recognised under Article 19(3), provided that denial can be shown to have rested on a genuine, demonstrated risk rather than on the content of the movement's criticism.

What is harder to reconcile with the doctrinal standards developed is, first, the extension of that denial into blanket, site-wide barricading of Jantar Mantar itself, in apparent tension with the regulated-access commitment discussed above; second, the absence, on the public record, of a written and reasoned order of the kind Section 163 BNSS and the proportionality doctrine contemplate; and third, the reported use of force to remove a hunger-striking protester without a documented legal basis. The case study therefore illustrates a recurring structural weakness identified throughout this paper: Indian doctrine supplies a reasonably rigorous substantive standard, but the administrative

⁴⁵ *Amit Sahni v. Comm'r of Police*, (2020) 10 SCC 439 (India).

⁴⁶ See *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (India).; *S.N. Mukherjee v. Union of India*, (1990) 4 SCC 594 (India).

practice of protest regulation continues to lag behind it in respect of documentation, reasoned justification, and susceptibility to timely judicial review.

VI. CRITICAL EVALUATION AND REFORM

(A) Judicial Inconsistencies

The relationship between the regulated-access model established in *Mazdoor Kisan Shakti Sangathan* and the site-restriction reasoning in *Amit Sahni* remains under-theorised: neither decision states with precision how much physical or temporal accommodation of an inconvenient protest the State is constitutionally obliged to make before a restriction becomes disproportionate, leaving lower courts and police authorities considerable, and inconsistently exercised, latitude.

(B) Need for a Statutory Framework

India has no dedicated statute governing the regulation of public assembly; the applicable provisions are drawn, largely by extension, from general police enactments and from preventive provisions in the criminal procedure code designed for law-and-order administration rather than for the calibrated balancing of a fundamental right. A dedicated Assembly Regulation Act, codifying the proportionality and procedural-fairness standards already recognised in the case law, would reduce reliance on ad hoc executive interpretation.

(C) Uniform Permission Guidelines

The site-specific guidelines for Delhi formulated pursuant to *Mazdoor Kisan Shakti Sangathan* have not been generalised into a pan-India model, with the result that the standard of regulation applicable to protest varies considerably by city and by state; a uniform, model set of guidelines, adaptable to local conditions but anchored in common constitutional minima, would reduce this variance.

(D) Constitutional Safeguards

The requirements of written orders, stated reasons, and periodic review recognised in *Anuradha Bhasin* should be treated as generally applicable to any order restricting

assembly, not confined to the specific context of internet or movement restrictions in which that case arose.

(E) Judicial Review of Prohibitory Orders

Given the acutely time-sensitive character of the right, a protest permission granted after the planned date is of little value, there is a strong case for a dedicated, fast-track mechanism, whether through a standing roster or a defined expedited-hearing procedure, for challenges to the grant, refusal, or conditions of protest permissions.

(F) Accountability of Executive Authorities

Independent, documented oversight of decisions to barricade, restrict, or forcibly clear a protest site, including a clear record of the reasons, the officer authorising the action, and the legal provision relied upon, would address the accountability gap illustrated by the Jantar Mantar case study, and would provide the evidentiary basis on which any subsequent judicial review could meaningfully proceed.

(G) Balancing Rights and Public Order

Rather than leaving the balance between the rights of protesters and the interests of third parties and the State to be struck anew, and inconsistently, in each case, the proportionality standard already recognised in the case law could be given legislative texture, for instance, by specifying the categories of demonstrated risk that may ground a restriction, and by requiring that any restriction identify the specific, less intrusive alternatives considered and rejected.

VII. CONCLUSION

The right to protest occupies a central place within India's constitutional framework, reflecting the democratic principle that citizens must remain active participants in governance beyond the electoral process. As this paper has demonstrated, peaceful protest derives constitutional protection primarily from Articles 19(1)(a) and 19(1)(b), while Articles 14 and 21 reinforce the requirement that any restriction upon these freedoms must be fair, non-arbitrary, and constitutionally justified.

The judicial evolution of protest jurisprudence establishes that although the State possesses the authority to regulate public assemblies in the interests of public order, such regulation cannot amount to the denial of the right itself. Through decisions such as *Himat Lal K. Shah*, *Mazdoor Kisan Shakti Sangathan*, and *Amit Sahni*, the Supreme Court has consistently held that executive discretion must be exercised within constitutional limits and remain subject to the principles of proportionality, procedural fairness, and reasoned decision-making.

The recent student protests at Jantar Mantar illustrate the continuing tension between maintaining public order and preserving democratic freedoms. While designated protest sites and regulatory measures may serve legitimate administrative purposes, they cannot be employed in a manner that renders the exercise of the right to protest ineffective or illusory. The Constitution permits regulation, but it does not authorise the State to silence dissent under the guise of administrative convenience or speculative concerns regarding public order.

The research questions addressed in this paper therefore lead to a clear conclusion. The right to protest is firmly protected under the Constitution, but its exercise is subject to reasonable restrictions that must satisfy the requirements of legality, necessity, proportionality, and procedural fairness. Designated protest sites such as Jantar Mantar are constitutionally permissible only when they facilitate, rather than undermine, meaningful public participation. Likewise, executive actions regulating assemblies must be supported by objective reasons and remain open to effective judicial scrutiny.

Ultimately, the strength of a constitutional democracy lies not in the absence of dissent but in its willingness to protect peaceful disagreement within the framework of the rule of law. The challenge before the State is therefore not merely to maintain public order, but to ensure that constitutional freedoms remain meaningful in practice. A transparent and consistent legal framework governing public assemblies, coupled with restrained executive action and vigilant judicial oversight, is essential to preserving the delicate balance between individual liberty and collective security envisioned by the Constitution.