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REGULATING THE RIGHT TO PEACEFUL ASSEMBLY IN INDIA: PUBLIC ORDER, PROPORTIONALITY, AND THE CONSTITUTIONAL LIMITS OF STATE DISCRETION

Abstract

The right to peaceful assembly occupies a central position in constitutional democracy because it enables citizens to collectively express dissent, demand accountability, and participate in public life beyond periodic elections. In India, this right is guaranteed under Article 19(1)(b) of the Constitution, which protects the right of citizens to assemble peaceably and without arms. However, the practical exercise of this right is shaped by Article 19(3), which permits reasonable restrictions in the interests of public order and the sovereignty and integrity of India. This paper argues that the central difficulty in India is not the absence of a constitutional guarantee, but the excessive discretion available to executive and police authorities in regulating assemblies. Through a doctrinal legal analysis of constitutional provisions, statutory laws, judicial decisions, and international standards, the paper examines how peaceful assemblies are regulated through criminal law, prohibitory orders, police powers, and public order justifications. It argues that restrictions on assemblies must be tested, not only under Article 19(3), but also under Article 14, Article 21, and the doctrine of proportionality. The paper concludes that

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India must move from a permission-and-control model to a facilitation-and-proportionality model that protects democratic dissent while maintaining legitimate public order.

Keywords

freedom of assembly; Article 19(1)(b); public order; proportionality; Article 14; police power; BNSS; peaceful protest; constitutional rights; executive discretion

Introduction

The right to freedom of peaceful assembly is a core democratic practice. It enables citizens to assemble, dissent, demand accountability for government performance, and engage in decision-making processes beyond the electoral process. Elections cannot be the only measure of political participation in a constitutional democracy. Citizens also voice their opinions to the State by means of demonstrations, marches, sit-ins, public meetings, religious processions, labour strikes, and social movements between elections. The right to assembly thus has a structural democratic role: it transforms individual grievance into collective constitutional expression.[1]

The right to peaceful assembly is explicitly mentioned in Article 19(1)(b) of the Constitution, which guarantees citizens the right "to assemble peaceably and without arms." This right is closely linked with the freedom of speech and expression under Article 19(1)(a) and association under Article 19(1)(c). When a public protest occurs, it is typically not silent – it is a collective political expression. Likewise, people gather in associations, unions, student organizations, religious communities, political movements, and civil society organizations. Thus, limitations on assembly impact the wider democratic system of speech, association, and participation.[2]

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[1] S. Choudhry, M. Khosla and P. Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution*, Oxford University Press, 2016, pp. 834–848; M. Khosla, *India's Founding Moment: The Constitution of a Most Surprising Democracy*, Harvard University Press, 2020, pp. 153–160.

[2] The Constitution of India 1950, art 19(1)(b); G. Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution*, Oxford University Press, 2016, pp. 3–24; U. Bhatia (ed), *The Indian Constituent Assembly: Deliberations on Democracy*, Routledge, 2017, pp. 103–162.

The right under Article 19(1)(b) is not however an absolute right. The State can place reasonable restrictions on this right under Article 19(3) to ensure the sovereignty and integrity of India and public order.[3] This constitutional restraint is required as in some cases, assemblies can pose a real threat of violence, obstruction, disorder, or threat to public safety. However, the presence of a restriction clause does not imply that the State has unlimited powers to regulate public assemblies. The constitutional issue is not whether the State can regulate assemblies, but how far it can go without its being suppression.

This is a significant question for present-day India. Prior permission, bans on assembly, criminal law provisions on unlawful assembly, police powers to disperse assemblies, and internet restrictions relating to mobilization are often used to regulate peaceful assemblies. The legal framework is not composed of a specific law on peaceful assembly. It is, rather, spread throughout the Constitution, the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, colonial era police laws, election laws, and executive orders. This disjointed structure provides a lot of room for manoeuvre to police and executive bodies. Some administrative regulation is inevitable, but too much discretion leaves too much room for public order to be broadly invoked as a means of limiting assemblies of dissenters, or inconvenient or politically sensitive assemblies.[4]

The issue thus is not only doctrinal, but institutional. While the constitution of India guarantees the right to peaceful assembly, the practice of that right is subject to administrative authorization and police evaluation of public order. This creates a conflict between freedom guaranteed in the constitution and control exercised by the executive. Public order and the rights of those who do not participate must be protected, which is a duty of the State. Yet peaceful protest, sometimes, has a disruptive, visible, and inconvenient aspect. A democracy must not confuse all inconveniences that stem from protest with threats to public order. A too expansive definition of "public order" would make the right to assembly a matter of executive indulgence, not a right.[5]

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[3] The Constitution of India 1950, art 19(3).

[4] Bharatiya Nyaya Sanhita 2023, s 189; Bharatiya Nagarik Suraksha Sanhita 2023, ss 148–150, 163; Police Act 1861, ss 30, 30A and 31.

[5] V. Grover, *Assessing India's Legal Framework on the Right to Peaceful Assembly*, International Center for Not-for-Profit Law, December 2021, pp. 7–13, 21–25.

The Supreme Court of India has given a number of landmark judgments on the importance of peaceful assembly. The Supreme Court in Kameshwar Prasad v State of Bihar had ruled that peaceful demonstrations are covered under Article 19 and can be subjected to reasonable restrictions, even if it is being done by government employees. In Himmat Lal K. Shah v Commissioner of Police, the Court refused to accept that the State can totally ban public meetings in public places, and made it clear that regulation should not amount to arbitrary denial. In Re: Ramlila Maidan Incident, the Court declared that the excessive police use of force against peaceful demonstrators is constitutionally unacceptable, and stressed the importance of reasonableness and proportionality. Meanwhile, in the Shaheen Bagh protest case, Amit Sahni v Commissioner of Police, the Court ruled that the public ways cannot be occupied indefinitely and that there has to be a balance between the rights of protestors, commuters, and citizens at large.[6]

The cases demonstrate that Indian assembly jurisprudence has evolved significant principles, yet it has not given rise to a completely coherent doctrinal test. Courts have at various times upheld peaceful protest, looked to the executive's assessment of public order, and focused on the rights of non-participants. What is still not well developed is a clear constitutional measure for determining when restrictions on assemblies are warranted. This paper suggests that the answer may be found in a reading of Article 19(1)(b) and Article 19(3) along with Article 14, Article 21, and the doctrine of proportionality. Article 14 is a check against arbitrariness and discrimination. Dignity, bodily integrity, and fair procedure are protected by Article 21, especially in the use of police force. Proportionality means that the restrictions have to be a means to a legitimate aim, appropriate to that aim, indispensable for that aim, and strike a fair balance between the right and the public interest.[7]

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[6] *Kameshwar Prasad v State of Bihar* AIR 1962 SC 1166; *Himmat Lal K Shah v Commissioner of Police, Ahmedabad* AIR 1973 SC 87; *In Re: Ramlila Maidan Incident Dt. 4/5.06.2011 v Home Secretary, Union of India* (2012) 5 SCC 1; *Amit Sahni v Commissioner of Police* (2020) 10 SCC 782.

[7] *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3; *Maneka Gandhi v Union of India* (1978) 1 SCC 248; *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353; *KS Puttaswamy v Union of India* (2017) 10 SCC 1.

This is also in line with the international standards in terms of Indian constitutional laws. The right of peaceful assembly is guaranteed under Article 21 of the International Covenant on Civil and Political Rights, which allows only lawful, necessary, and proportionate restrictions.[8] General Comment No. 37 by the United Nations Human Rights Committee highlights that States' obligations are not only to refrain from interfering where it is not justified, but also to facilitate peaceful assemblies.[9] Likewise, international standards for policing assemblies condemn any blanket bans or excessive force, and call for the authorities to take the least repressive measures.[10] The standards are not intended to supplant Indian constitutional law, but rather, they help flesh out what a rights-based model of assembly regulation might look like.

The central argument of this paper is that India should shift from a permission-control approach to a facilitation-proportionality approach in regulating peaceful assemblies. While the State can take reasonable measures to ensure public order, any restrictions on assemblies must be reasoned, non-arbitrary, non-discriminatory, necessary, and proportionate. The use of force must be just, fair, and reasonable. Prohibitory orders must be kept to the exceptional and not the routine. Digital restrictions, such as internet shutdowns, should not be implemented to hinder peaceful mobilization. Finally, the constitutional aspiration of Article 19(1)(b) can be fulfilled only if peaceful assembly is not regarded as a problem to be solved, but as a democratic right to be supported.

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[8] International Covenant on Civil and Political Rights 1966, art 21.

[9] UN Human Rights Committee, *General Comment No 37 on Article 21: Right of Peaceful Assembly*, CCPR/C/GC/37, 17 September 2020.

[10] UN Human Rights Council, *Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, A/HRC/31/66, 4 February 2016; UN Human Rights, *Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (2020); OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (3rd edn, 2020).

I. Constitutional Framework: Article 19, Article 14 and Article 21

The right to peaceful assembly in India is rooted in Article 19(1)(b) of the Constitution which assures citizens of their right "to assemble peaceably and without arms." The language of the provision is important on two points. That the right is available only to citizens, as opposed to some other constitutional protections which are available to all persons. Second, the constitutional safeguard applies only to 'peaceful and unarmed assemblies'. This includes the provision that the Constitution does not cover violent assemblies, armed mobilization, or assemblies with a common object that is in terms of the criminal law an unlawful assembly. But the strength of the assembly is not the only factor that will take an assembly out of constitutional protection; inconvenient or noisy gatherings, or those that are politically uncomfortable, are not necessarily beyond the pale. A democratic assembly can be "disruptive" in the ordinary sense of the word, but disruptive does not necessarily mean "causing public disorder".[11]

Article 19(3) allows the State to put reasonable restrictions on the right to peaceful assembly. But there are constitutional boundaries for the reasons of restriction. Assemblies can be limited by the State only for the sake of public order and the sovereignty and integrity of India. Morality is not a limitation provided by Article 19(3). This distinction is relevant, as it is a wide or incorrect interpretation of the restriction that has the potential to weaken the right itself. The inclusion of more grounds in Article 19(3) makes the constitutional safeguard susceptible to arbitrary government tastes. Hence, the text of Article 19(3) calls for a narrow and disciplined interpretation, which would mean that restrictions have to be lawfully authorized, related to one of the enumerated constitutional grounds, and reasonable in scope and application.[12]

The term "public order" has been at the heart of constitutional debates in India. In early free speech and public order cases, the Supreme Court demonstrated awareness of the importance of not allowing the

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[11] The Constitution of India 1950, art 19(1)(b); *Kameshwar Prasad v State of Bihar* AIR 1962 SC 1166; *Himmat Lal K Shah v Commissioner of Police, Ahmedabad* AIR 1973 SC 87.

[12] The Constitution of India 1950, art 19(3); State of Madras v VG Row AIR 1952 SC 196.

State to use general allegations of disorder to stifle civil liberties. In *Romesh Thappar v State of Madras*, the Court took a rights-based approach in considering restrictions on expression. Subsequently in the Ram Manohar Lohia line of cases, the Court made a distinction between "law and order", "public order", and "security of the State".[13] This difference is important when it comes to assemblies. Not all offences against law and order are necessarily a threat to public order. There must be a greater impact on public order and a close connection between the assembly and the predicted disorder. The constitution cannot be used as a justification for remote, speculative, or politically convenient apprehensions.[14]

This principle applies especially if the authorities are prohibiting or preventing demonstrations on the basis that they could cause disorder. Public order cannot simply be used as a formula in the constitutional test. The State must demonstrate that there is a real and proximate risk and present relevant material. In Madhu Limaye v Sub-Divisional Magistrate, the Supreme Court agreed that Section 144 of the Code of Criminal Procedure could be used for a preventive purpose, but added that the use of such power should be when urgent necessity arises, and not as a substitute for regular administration of law and order. In Himmat Lal K. Shah v Commissioner of Police, the Court found that the State could regulate public meetings in a public place, but it could not completely bar the exercise of the right or give unchecked discretion to authorities. These rulings uphold the constitutional distinction between regulating and suppressing.[15]

The right to peaceful assembly is strengthened by reading it with reference to Article 14. Article 14 is not just about formal equality, it also forbids arbitrary State action. The doctrine of arbitrariness was evolved by the law in *E.P. Royappa, Maneka Gandhi, Ajay Hasia and Shayara Bano*, to require that the State action should be fair, reasonable, non-discrimi-

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[13] *Romesh Thappar v State of Madras* AIR 1950 SC 124; *Brij Bhushan v State of Delhi* AIR 1950 SC 129.

[14] *Superintendent, Central Prison, Fatehgarh v Ram Manohar Lohia* AIR 1960 SC 633; *Dr Ram Manohar Lohia v State of Bihar* AIR 1966 SC 740.

[15] *Madhu Limaye v Sub-Divisional Magistrate, Monghyr* (1970) 3 SCC 746; *Babulal Parate v State of Maharashtra* AIR 1961 SC 884; *Himmat Lal K Shah v Commissioner of Police, Ahmedabad* AIR 1973 SC 87.

natory, and should be based on relevant considerations.[16] This doctrine is of direct relevance with regard to the restrictions on assemblies. The question is not just about public order when one group is given permission to meet and another group in the same circumstances is denied permission because of the political message or ideology, religion, or social identity. It turns into an issue of arbitrary and discriminatory State action. Thus, Article 14 bars the State from employing public order as a selective mechanism against unpopular and dissenting assemblies.

The significance of Article 14 is better understood when one considers the discretion accorded to the executive magistrates and the police. Permission, route, timing, dispersal, and use of force are often decided at the admin level. In the absence of explicit criteria, these choices can be biased and inequitable. Protest in favour of the government may be allowed, while protest against the government may be considered a threat. This kind of regulation is selective and therefore is not what is expected from constitutional governance. Thus, any restriction on an assembly must not only meet the test of Article 19(3), but also the Article 14 requirement of non-arbitrariness.[17]

Another dimension added to the constitutional framework is Article 21. Although Article 19(1)(b) guarantees the right to assembly, Article 21 is pertinent when the State resorts to force to break up an assembly. In the event of police response to protests, life, bodily integrity, dignity, liberty, and due process may be impacted. Following *Maneka Gandhi*, Article 21 imposes a requirement that State action which impacts personal liberty needs to be just, fair, and reasonable.[18] Thus, even if the State has a legitimate reason for regulating or dispersing an assembly, the means chosen must meet constitutional requirements. Any force used must not be unduly harsh, excessive, or disproportionate.

The Supreme Court's verdict on the *Ramlila Maidan Incident* is key to this. The case stemmed from the police crackdown on Baba Ramdev's supporters who were present at the Ramlila Maidan in June 2011 in re-

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[16] *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3; *Maneka Gandhi v Union of India* (1978) 1 SCC 248; *Ajay Hasia v Khalid Mujib Sehravardi* (1981) 1 SCC 722; *Shayara Bano v Union of India* (2017) 9 SCC 1.

[17] *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3; *Ajay Hasia v Khalid Mujib Sehravardi* (1981) 1 SCC 722.

[18] The Constitution of India 1950, art 21; *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

lation to an anti-corruption protest that took place at the venue. The Court condemned the way in which force was applied. and, in particular, stressed the need for police action to be reasonable, necessary, and proportionate.[19] The judgment is significant because it focuses from the general authority of the State to control assemblies to the specific way in which that power is exercised. Although an assembly may be subject to regulation, it does not mean that it can be broken up by force. Force may only be used if there is legal authority to use it, clear justification, warning (where possible), and a response proportionate to the threat.

This reading of Articles 19, 14, and 21, therefore, provides a more comprehensive constitutional structure for peaceful assembly. The right is recognized in Article 19(1)(b); the grounds on which it can be restricted are limited and set out in Article 19(3); arbitrary, discriminatory, or selective restrictions are barred by Article 14; and the way in which coercive State power is exercised is regulated by Article 21. This approach is needed as the most dangerous form of interference with peaceful assembly is not always the express prohibition. It is frequently the result of discretionary policing practices, loose public order grounds, overzealous policing, and selective authorizations and restrictions. A rights-approach should therefore consider not only the power of the State to regulate, but whether such regulation is constitutionally justifiable, non-arbitrary and proportionate.

II. Statutory Regulation and Executive Discretion

There is no one law in India that is specifically focussed on rights to regulate and facilitate peaceful assemblies. Rather, a patchwork of constitutional provisions, criminal law and preventive procedure, police laws, and executive orders governs assemblies. There is a significant implication to this broken system: peaceful assembly is not considered a constitutional right to be facilitated, but rather an administrative event to be permitted, monitored, reduced, or broken up. Lack of a specific statute on peaceful assemblies further fails to ensure that the principles of le-

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[19] *In Re: Ramlila Maidan Incident Dt. 4/5.06.2011 v Home Secretary, Union of India* (2012) 5 SCC 1.

gality, necessity, proportionality, non-discrimination, and accountability are fully integrated into the statute.[20]

In keeping with the criminal law approach of collective action, the Bharatiya Nyaya Sanhita, 2023 has a provision on unlawful assembly. Section 189 states that an assembly of five or more persons with one of the objects mentioned in the section, which are overawing the government or public servants by criminal force, resisting lawful process, committing mischief, committing criminal trespass, taking possession of property by force, or compelling a person to do what he is not legally bound to do, is an unlawful assembly.[21] The provision is needed to address true violence or coercion in group behaviour. But its use in a constitutional context is a fine balance between peaceful assembly, civil disobedience, disruptive but non-violent protests, and violent assembly. An association of five or six persons cannot be considered as constitutionally suspicious. The common object and the character of conduct is what is important. Otherwise, the criminal law can intrude into the realm of constitutionally protected protest.

The Bharatiya Nagarik Suraksha Sanhita, 2023 contains the main procedural provisions relating to dispersal of assemblies. Section 148-150 allows for executive magistrates and police officers to issue a dispersal order, or, in some cases, request assistance for dispersal.[22] The provisions are aimed at addressing assemblies which are likely to disrupt public peace or pose a threat to public security. But the provisions are designed mostly from the point of view of State control. They recognize who might have the power to make dispersal decisions and when it might be required, but they do not clearly express rights-based safeguards that should precede or accompany dispersal. There should be a constitutionally sufficient framework for the authorities to consider the following: is the assembly peaceful? Is the risk imminent? Can communication with the organizers be considered? Are less stringent measures sufficient to deal with the threat? Is force absolutely necessary?

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[20] V. Grover, *Assessing India's Legal Framework on the Right to Peaceful Assembly*, pp. 21–25; OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 3rd edn, 2020, pp. 31–36.

[21] Bharatiya Nyaya Sanhita 2023, s 189.

[22] Bharatiya Nagarik Suraksha Sanhita 2023, ss 148–150.

One of the most important clauses relating to assemblies is Section 163 of the BNSS which is similar to the earlier Section 144 of the Code of Criminal Procedure. It provides powers for a designated magistrate to make orders of urgency in the event of apprehended danger, annoyance, injury, danger to human life, health, or safety, disturbance of public tranquillity, riot or affray.[23] There are constitutionally permissible preventive powers of this sort in true emergencies. The problem comes when, however, emergency powers are used regularly for the control of crowds and preventing demonstrations. The logic of Section 163 is preventive and exceptional – its misuse would be that of using it as a wide-ranging justification for prior restraint of assembly.

The Supreme Court's previous decisions on Section 144 CrPC are still applicable in the interpretation of Section 163 BNSS. The Court in Babulal Parate allowed the restrictions under the preventive part of the law, but recognized the extraordinary nature of the power.[24] In *Madhu Limaye*, the Court had observed that these powers are provided for emergency situations and the exercise of these powers should be within constitutional bounds.[25] As recently as in *Anuradha Bhasin*, with respect to the restrictions in Jammu and Kashmir, the Supreme Court had said that any order which impairs the freedom of speech and expression has to be published, is subject to review, and cannot be used to stifle legitimate expression.[26] Assemblies are no different with regards to these principles. A ban on assembly cannot be so broad as to be vague and indefinite or extend beyond the area where the assembly is taking place. It must be backed with reasons, have a time and place restriction, and be subject to genuine review.

The Police Act, 1861, is another piece of evidence of the colonial continuity in the assembly system in India. The Act gives powers to the police authorities to control public meetings and processions, lay out the route, and ensure order in public places.[27] Whilst it is essential to police public gatherings in any legal system, the fact that the police continue to use colonial policing logic produces a structural problem. Colonial

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[23] Bharatiya Nagarik Suraksha Sanhita 2023, s 163.

[24] *Babulal Parate v State of Maharashtra* AIR 1961 SC 884.

[25] *Madhu Limaye v Sub-Divisional Magistrate, Monghyr* (1970) 3 SCC 746.

[26] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

[27] Police Act 1861, ss 30, 30A and 31.

police law was not created to encourage democratic dissent, but rather to maintain order and authority. A different starting point is needed for a constitutional democracy. Assemblies should be presumed to be peaceful, and the job of the police should be to allow and facilitate them, unless there is a specific and proportionate basis for restricting them.

This is the difference between a control model and a facilitation model, which is at the heart of the critique of the existing statutory framework in India. In a control model, the citizen goes to the State and asks it to permit the assembly; the State determines whether or not the assembly can go ahead. In a facilitation model, the starting point is the lawfulness of the assembly, and the job of the State is to manage competing interests and facilitate the right as much as possible. International standards are increasingly oriented towards a notification-based system as opposed to a permission-based system which provides authorities with a gatekeeping authority over dissent. There is a lack of a complete internalization of this change in India's legal framework. The consequence is that the exercise of a fundamental right can be greatly dependent on administrative discretion.[28]

A second issue is that it fails to protect against viewpoint discrimination as required by law. In practice a formally neutral legal power may be selectively used. Authorities might be more inclined to permit assemblies that are politically convenient, and limit oppositional or minority-led assemblies or demonstrations. This sort of selectivity cannot be simply explained as being in the interests of public order. It is an issue of arbitrariness and discrimination as per Article 14. It is therefore necessary to include in the statutory framework the following elements: written reasons for denying permission, objective assessment of risk, equal treatment of similarly situated assemblies, and swift review. If these safeguards are not in place, public order is at risk of being politicized.

The legislation also does not provide specific guidelines on police use of force at assemblies. While BNSS allows for dispersal and use of force, a rights-based approach must go further. A rights-based statute should state that force may be used only when necessary; that the means used must be the least harmful available; that warnings should be given

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[28] UN Human Rights Committee, *General Comment No 37 on Article 21: Right of Peaceful Assembly*, CCPR/C/GC/37, 17 September 2020; OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (3rd edn, 2020).

before dispersal wherever possible; that medical assistance must be provided; and that independent investigation must take place after serious injury or death. Without such protections, it is difficult to know where the line is between lawful dispersal and excessive force. Statutory reinforcement is needed to the constitutional standard developed in Ramlila Maidan.[29]

It is therefore the absence of adequate protection from over-regulation which is the main fault in India's statutory provisions for the regulation of assemblies, not the absence of power to regulate them. The law provides the State with extensive powers to prevent, limit, and disperse assemblies, while its obligations with regard to facilitating peaceful assembly, justifying restrictions, and holding the State accountable are weaker. Such a situation is not tolerable in regard to the democratic role of Article 19(1)(b). It is, therefore, necessary to replace the current assembly framework with a legal, proportional, transparent, and facilitative framework.

III. Judicial Balancing and the Missing Proportionality Standard

The judgments of the Supreme Court have been rights-protective and deferential. The Court has acknowledged that peaceful protest is an integral part of democratic citizenship, but has not consistently applied a proportionality test to the review of restrictions. This is important because Article 19(1)(b) has meaning only if courts are very careful about the reasons, scope, and necessity of the restrictions placed by the State.[30]

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[29] UN Human Rights, *Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (2020); UN Human Rights Council, *Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, A/HRC/31/66, 4 February 2016; *In Re: Ramlila Maidan Incident Dt. 4/5.06.2011 v Home Secretary, Union of India* (2012) 5 SCC 1.

[30] M.P. Jain, *Indian Constitutional Law*, 8th edn, LexisNexis, 2018, p. 1408; H.M. Seervai, *Constitutional Law of India*, vol. 1, 4th edn, Universal Law Publishing, 1991–1996, pp. 390–399; D. Das Basu, *Commentary on the Constitution of India*, vol. 2, 9th edn, LexisNexis, 2014, p. 1111.

The rights-protective approach is evident in the case of *Kameshwar Prasad v State of Bihar* where the Court ruled that peaceful demonstrations cannot be totally banned just because the protesters were government employees.[31] In the same way, in *Himmat Lal K. Shah v Commissioner of Police*, the Court disaffirmed the unguided executive discretion in the matter of public meetings, and ruled that the State can impose certain restrictions on public meetings in public places, but it cannot ban all such public gatherings.[32] These decisions mark the beginning of an understanding of public spaces as places of democratic expression and not just of administrative control.

The approach was further entrenched by the decision in the case of In Re: Ramlila Maidan Incident where the use of police force in the context of protests was constitutionalized. The Court discussed the midnight arrests of protesters, and stated that State action must be reasonable, necessary, and proportionate.[33] The importance of the decision is that the State's decision to intervene must be justified, as well as the way and to what extent it intervenes.

A more complicated balancing strategy is found in *Mazdoor Kisan Shakti Sangathan v Union of India*, where the Court acknowledged the right to protest as well as the rights of the residents who were impacted by the ongoing protest at Jantar Mantar.[34] The case is important for being an effort to reconcile competing constitutional claims. It also, however, shows the need for a more explicit doctrinal test. Balancing can be impressionistic if there is no structured proportionality.

The deferential tendency is reflected in matters relating to preventive restrictions. The Court found that the powers of prevention like Section 144 CrPC are of urgent and exceptional nature in *Babulal Parate* and *Madhu Limaye*.[35] These decisions are not to be interpreted as being allowances for routine or indefinite restrictions. Immediacy, necessity, and limited scope are the criteria for their constitutional legitimacy.

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[31] *Kameshwar Prasad v State of Bihar* AIR 1962 SC 1166.

[32] *Himmat Lal K Shah v Commissioner of Police, Ahmedabad* AIR 1973 SC 87.

[33] *In Re: Ramlila Maidan Incident Dt. 4/5.06.2011 v Home Secretary, Union of India* (2012) 5 SCC 1.

[34] *Mazdoor Kisan Shakti Sangathan v Union of India* (2018) 17 SCC 324.

[35] *Babulal Parate v State of Maharashtra* AIR 1961 SC 884; *Madhu Limaye v Sub-Divisional Magistrate, Monghyr* (1970) 3 SCC 746.

Judicial balancing is found in the Shaheen Bagh decision in *Amit Sahni v Commissioner of Police.* The Court rightly ruled that public roads cannot be taken over indefinitely and the rights of non-participants should be taken into account.[36] But care needs to be taken in the judgment. Protests that take place in limited areas of protest could be rendered invisible and ineffective in a democratic sense. The job of the constitutional law is not to stop there being any disruption, but to distinguish between legitimate democratic disruption and disproportionate obstruction.

This is where proportionality is a must. Proportionality has been developed in various contexts in Indian constitutional law. The Court in *V.G. Row*, connected the concept of reasonableness with the nature of the right, purpose, and extent of restriction.[37] In *Om Kumar,* proportionality was mentioned in regard to administrative review.[38] In *Modern Dental College,* the Court had developed a framework of test, which includes legitimate aim, rational connection, necessity, and balancing.[39] In *K.S. Puttaswamy*, proportionality came to the heart of the scrutiny of rights.[40]

The test is applied to assemblies and consists of four questions: whether the restriction is aimed at one of the legitimate Article 19(3) purposes; whether the restriction is suitable to achieve that aim; whether there is a less restrictive alternative to the restriction; and whether the restriction is compatible with a fair balance between the right to freedom of assembly and the public order interest.[41] Therefore, a blanket ban, an indefinite prohibitory order, or an immediate use of force should be justified by specific and compelling reasons.

Digital restrictions are not an exception to the proportionality principle. In *Anuradha Bhasin,* the Supreme Court has ruled that any restriction on the internet that impacts fundamental rights must be necessary, proportionate, published, and reviewable.[42] Internet shutdowns may in-

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[36] *Amit Sahni v Commissioner of Police* (2020) 10 SCC 782.

[37] *State of Madras v VG Row* AIR 1952 SC 196.

[38] *Om Kumar v Union of India* (2001) 2 SCC 386.

[39] *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.

[40] *KS Puttaswamy v Union of India* (2017) 10 SCC 1; *KS Puttaswamy v Union of India* (2019) 1 SCC 1.

[41] *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353; *KS Puttaswamy v Union of India* (2017) 10 SCC 1.

[42] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637; *Internet and Mobile Association of India v Reserve Bank of India* (2020) 10 SCC 274.

directly limit the right to peaceful assembly since modern assemblies are often organized online. So, any such restrictions have to be proportional as well.

In general, Indian assembly jurisprudence has noted important principles, but has not been able to apply them in a consistent manner with a stable doctrinal framework. In some instances, courts have upheld protest and in others, they have given way to appeals of public order. What is missing is a structured proportionality test that would entail the authorities defining the exact danger, assessing whether less intrusive options are available, and providing reasons for the territorial and temporal limitations on the restrictions.

IV. Digital Assemblies, Religious Assemblies, and International Standards

The right to peaceful assembly is not just about physical assemblies. Nowadays, assemblies are often organized, publicized, and co-ordinated digitally. Social media allow for mobilization, documentation of police action, and more. Thus, limitation of access to the internet or digital communication can have an impact on speech as well as association and the practical exercise of Article 19(1)(b).[43]

The case of *Anuradha Bhasin v Union of India* is important as the Supreme Court has decided that the restrictions on the internet, which impact on the fundamental rights of citizens, must meet the test of legality, necessity, and proportionality. It also mandated such orders to be published and reviewed.[44] This reasoning can be directly applied to protest situations. Internet restrictions which prevent mobilization can have an indirect effect on the right to peacefully assemble and should be exceptional, reasoned, time-limited, and proportionate.

Digital restrictions are often justified in terms of public order, particularly during protests. Proportionality, however, demands that the State demonstrate a particular and imminent threat, why anything less

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[43] *Shreya Singhal v Union of India* (2015) 5 SCC 1; *Faheema Shirin RK v State of Kerala* 2019 SCC OnLine Ker 2976.

[44] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

is not enough, and why the restriction is necessary for a specific period of time and in a particular area. "Blanket digital shutdowns cannot be justified on the basis of a general fear of mobilization or misinformation."[45]

The right to assembly also overlaps with the right of religious freedom. The freedom of conscience and the right freely to profess, practice, and propagate religion is protected by Article 25. Thus, religious processions and congregational events may entail both the exercise of assembly rights and religious freedom. There are however different restriction grounds to Article 25 as compared to Article 19(3). The restrictions to Article 25 are public order, morality, and health, while the restrictions to Article 19(3) are public order and sovereignty and the integrity of India.[46]

The Supreme Court has acknowledged that religious assembly can be regulated if needed, to maintain public order. The Court in *Gulam Abbas v State of Uttar Pradesh* had to determine competing religious claims and the need for peace.[47] In *Acharya Jagadishwaranand Avadhuta v Commissioner of Police*, the ban on a religious procession of the Tandava dance with weapons was found to be valid. As the foregoing cases illustrate, religious assemblies are entitled to protection, but not immunity from neutral and constitutionally-sound regulation.[48]

The international standards are helpful. The International Covenant on Civil and Political Rights guarantees the right to freedom of assembly in the peaceful enjoyment of this right (Article 21), which can only be restricted when lawful, necessary, and justified by legitimate aims.[49] The UN Human Rights Committee's General Comment No. 37 also makes clear that peaceful assembly should be assumed to be legal, and that States have a positive obligation to promote peaceful assembly. It also acknowledges the importance of digital technologies to organize and monitor assemblies.[50]

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[45] Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules 2017; *Foundation for Media Professionals v Union Territory of Jammu and Kashmir* (2020) 5 SCC 746; *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

[46] The Constitution of India 1950, art 25; The Constitution of India 1950, art 19(3).

[47] *Gulam Abbas v State of Uttar Pradesh* (1982) 1 SCC 71.

[48] *Acharya Jagadishwaranand Avadhuta v Commissioner of Police, Calcutta* AIR 1984 SC 512.

[49] International Covenant on Civil and Political Rights 1966, art 21; Universal Declaration of Human Rights 1948, art 20.

[50] UN Human Rights Committee, *General Comment No 37 on Article 21: Right of Peaceful Assembly*, CCPR/C/GC/37, 17 September 2020.

International standards in the field of protest policing also focus on necessity, proportionality, precaution, and accountability.[51] Likewise, the OSCE/ODIHR and Venice Commission Guidelines tend to uphold the principle of the presumption in favour of freedom of peaceful assembly, notification-based systems, narrow restrictions, and the least restrictive means. Comparative European jurisprudence is in favour of the identical approach.[52] The European Court in *Oya Ataman v Turkey* acknowledged that there is some disruption involved in protest.[53] The Court in the cases of *Kudrevičius v Lithuania and Lashmankin v Russia* agreed that disruptive assemblies can be regulated, but not in a way that undermines the substance of the right.[54]

The standards do not supplant the Indian constitutional law, but they reinforce what is already available in articles 14, 19, and 21 of the Constitution. They promote a paradigm change from controlling towards facilitating, from general claims of public order to proportionality, and from discretionary policing to accountable regulation.

V. Reform Proposals and Conclusions

The foregoing analysis reveals that it is not as if there is no constitutional right to peaceful assembly in India; rather it is the lack of a rights-based regulatory regime. Article 19(1)(b) provides for the right to assemble peacefully and Article 19(3) provides certain restrictions; Article 14 ensures that restrictions on freedom of assembly are not arbitrary; Article 21 protects dignity, bodily integrity, and fair procedure. However, assemblies continue to be controlled mainly by the criminal law, pre-

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[51] UN Human Rights Council, *Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, A/HRC/31/66, 4 February 2016; UN Human Rights, *Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (2020).

[52] OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 3rd edn, 2020; OSCE/ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly*, 2nd edn, 2020.

[53] *Oya Ataman v Turkey* App no 74552/01, Judgment of 5 December 2006.

[54] *Kudrevičius v Lithuania* App no 37553/05, Judgment of 15 October 2015; *Lashmankin v Russia* App nos 57818/09 and others, Judgment of 7 February 2017.

ventive measures, public order, and police discretion. This establishes a structure in which the State is given significant powers to hinder and disperse assemblies, and less responsibility to facilitate them.[55]

The first reform would be of the law relating to peaceful assemblies. The legislation should start from the premise that assemblies are lawful, peaceful, and should be facilitated. It should be meant to regulate time, place, and manner, and not to require protest to be dependent upon administrative permission. Currently, the law is fragmented and found in the BNS, BNSS, police legislation, and executive orders, and promotes a control-based rather than a rights-based approach.[56]

Secondly, India should be shifted from a permission to a notification model. In a notification model organizers notify authorities beforehand and allow for arrangements to be made regarding traffic, public services, and safety. The assembly is presumptively lawful, that is, unless the State gives a specific constitutional rationale for restricting it. This would limit the abuse of denial of permission and bring Indian law in line with the standards of democratic assembly.[57]

Thirdly, each restriction ought to be accompanied by a written proportionality assessment. Authorities must determine exactly what the threat is, the evidence for the threat, the constitutional basis for the restriction, and what less restrictive means have been considered, and the reasons for the selected restriction. The mere allegation that public order is likely to be disturbed is not sufficient.[58]

Fourthly, there is a need for protection from the regular use of BNSS Section 163. Preventive orders must be limited in scope and published, and must be subject to prompt review and have a limited duration. Re-

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[55] The Constitution of India 1950, arts 14, 19(1)(b), 19(3) and 21; M.P. Singh, *V.N. Shukla's Constitution of India*, 14th edn, Eastern Book Company, 2022 (reprinted with supplement 2025), p. 261.

[56] V. Grover, *Assessing India's Legal Framework on the Right to Peaceful Assembly*, pp. 21–25, 59, 71–72; Bharatiya Nyaya Sanhita 2023, s 189; Bharatiya Nagarik Suraksha Sanhita 2023, ss 148–150, 163; Police Act 1861, ss 30, 30A and 31.

[57] UN Human Rights Committee, *General Comment No 37 on Article 21: Right of Peaceful Assembly*, CCPR/C/GC/37, 17 September 2020; OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (3rd edn, 2020).

[58] *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353; *KS Puttaswamy v Union of India* (2017) 10 SCC 1; *Internet and Mobile Association of India v Reserve Bank of India* (2020) 10 SCC 274.

orders should be based on new reasons. Courts should also consider if such orders are in response to a real threat or simply to stop 'politically inconvenient' assemblies.[59]

Fifthly, there is a need for more explicit guidelines regarding police use of force. Legislation should provide for communication with organizers where feasible, warnings before dispersal, graduated response, least harmful means, medical assistance, and independent inquiry if serious injury or death occurs. These are needed in case Article 19(1)(b) is undermined by the ability to disperse peaceful protesters by the use of excessive force.[60]

Finally, digital restrictions need to be incorporated within the same constitutional framework. Internet shutdowns or communication restrictions should not be used solely to prevent mobilization. They have to meet the requirements of legality, necessity, and proportionality, and be published and subject to evaluations. In a digital world, the limitations on communication may have an indirect effect on peaceful assembly.[61]

One of the most obvious signs of constitutional democracy in action is the right to peaceful assembly. While public order is an acceptable concern, it cannot be allowed to devour the right. The assembly system in India needs to shift from an executive-dominated one to a constitutional facilitation system, from a public order jurisprudence to a proportionality-based one, and from police discretion to legal accountability. The promise of Article 19(1)(b) will not be complete unless peaceful assembly is not seen as a disturbance to be tolerated, but as a democratic right to be protected.

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[59] Bharatiya Nagarik Suraksha Sanhita 2023, s 163; *Madhu Limaye v Sub-Divisional Magistrate, Monghyr* (1970) 3 SCC 746; *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

[60] *In Re: Ramlila Maidan Incident Dt. 4/5.06.2011 v Home Secretary, Union of India* (2012) 5 SCC 1; UN Human Rights, *Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (2020); UN Human Rights Council, *Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, A/HRC/31/66, 4 February 2016.

[61] Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules 2017; *Anuradha Bhasin v Union of India* (2020) 3 SCC 637; *Foundation for Media Professionals v Union Territory of Jammu and Kashmir* (2020) 5 SCC 746.