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GUARDIAN OR FACILITATOR? STATE INTERVENTION, RISK MANAGEMENT, AND THE GLOBAL EROSION OF FREEDOM OF ASSEMBLY IN GERMANY, JAPAN, INDIA, AND GEORGIA

Abstract

This text provides an overview of the key legal provisions and practical issues relating to freedom of assembly in Germany, Japan, Georgia and India, which are discussed in greater detail in the respective articles in this volume. As authors, we have selected several criteria to illustrate the spectrum of solutions currently in place in the law and in administrative and policing practice in these countries, as well as the critical issues currently affecting this classic civil liberty. We analyse the role of the state – whether, in its policies, it seeks to facilitate citizens' exercise of this freedom, or whether it regulates it according to principles that suit the authorities. We examine the process of authorising assemblies, the role of the courts in establishing legal and practical standards, the issue of venue, risk management, and the approach to sanctions.

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Introduction

Freedom of assembly in democratic legal systems and liberal political cultures has long been recognised as a key instrument of civic expression. It is no coincidence that it features in the foundational acts of modern constitutionalism – the Virginia Bill of Rights was adopted in 1776 during a 'free assembly', and it is guaranteed by the First Amendment to the United States Constitution ('the right of the people to peaceably assemble'). It is one of the most frequently recurring classic elements in the catalogues of civil rights and freedoms found in constitutional acts. At the same time, tensions are evident in many countries – even those regarded as liberal democracies – suggesting that this freedom cannot be considered effectively 'won' by citizens or fully guaranteed by the authorities. On the contrary, it appears to be under threat even in places where restricting it, manipulating its scope or holding people accountable for taking part in peaceful protests once seemed unimaginable.

This text is devoted to a review of articles on freedom of assembly in various countries and systems, compiled for this dedicated volume.[1] We analyse articles concerning freedom of assembly in Germany, Geor-

[1] In this volume: C. Arzt, *Freedom of Assembly and Speech in Germany under Pressure. (Un-)Lawful Restrictions by Authorities, Police, and the Courts*; M. Kadota, *Freedom of Assembly in Japan in Past, Present, and Future: The przed Rise Rise of a Distinctive ZAMIAST the Unique Fundamental Right?*, D. Gegenava, *Freedom of Assembly v. Freedom from Assembly: The Curious Case of Georgia*; V. Shekhawat, S. Agarwal, *Regulating the Right to Peaceful Assembly in India: Public Order, Proportionality, and the Constitutional Limits of State Discretion*, P. Singh, *Examining Right to Peaceful Assembly in India in Compliance with ICCPR Norms*. The authors of these texts accepted for the volume are members of the *International Research Group on the Law of Assembly*, based at the Faculty of Law and Administration of the Nicolaus Copernicus University. It should be added that the impetus for establishing this research group, which currently brings together academics from three continents and eight countries (Poland, Germany, Romania, Hungary, Ireland, Japan, Georgia, India and Brazil) and has undertaken numerous inspiring research initiatives, came from research carried out under the aforementioned grant from the Polish National Science Centre.

gia, India and Japan, whilst also drawing on illustrative references to the Polish legal system governing assemblies and its practice. Prabhpreet Singh's[2] article also offers a brief overview of international standards, including European ones, and provides a final assessment of the legal situation in India in light of the standards of the International Covenant on Civil and Political Rights. Over the years, international standards have proved highly significant for the Polish system as well, as evidenced by the Constitutional Tribunal's domestic case law.

We are thus dealing with cases of both stable democracies (Germany and Japan) and electoral democracies/electoral autocracies (India, Georgia).[3] As the authors' findings demonstrate, there is a widespread divergence between the standards of assembly law – often well-established and underpinned by valuable case law – and the practices of the administration and police. This divergence is observed not only in countries experiencing an erosion of the democratic model (India) but also in the aforementioned countries with consolidated democracies (Germany). Georgia, in turn, is experiencing a clear departure from democratic standards, not only through administrative practices but also through increasingly restrictive regulations.

We intend to take a closer look at freedom of assembly in the countries in question, using several criteria to enable comparison. The first such criterion is the model of the citizen–state relationship, which, in the context of freedom of assembly, translates into the relationship between the organiser of the assembly, or, where applicable, its participant, and the state, represented by a specific administrative body or the police, authorised to make decisions on matters relating to assemblies. We will ask whether the basic procedure for authorising an assembly in a given legal system is based on obtaining formal administrative permission or relies solely on notification/registration. This allows us to assess the nature of this relationship: is the state a strict guardian or a facilitator in the exercise of freedom of assembly?

Another issue of interest to us is the standard and extent of judicial review. Poland's domestic experience demonstrates that case law

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[2] P. Singh, *Examining Right to Peaceful Assembly…* in this Issue.

[3] As after 2025, Germany ranks 21st V-Dem Democracy Indices (16th edition), Japan 24th, Georgia 101st, India 106th, available at https://v-dem.net/data/the-v-dem-dataset/ (accessed 15 August 2026).

can have a significant impact on the development and consolidation of high standards of freedom of assembly; this applies both to cases heard before the European Court of Human Rights (the ECtHR) and to those before domestic courts, including administrative and, for the last few years, ordinary courts.[4]

In research into the very nature of freedom of assembly, the issue of space is increasingly coming to the fore – this primarily concerns the physical dimension of public spaces and any restrictions in this regard, which, whilst ostensibly aimed at improving traffic flow, may nevertheless be exploited to suppress organisers and participants, for example by imposing administrative fines for stepping onto a road. Increasingly, however, we are seeing the use of virtual tools, such as social media platforms, in the organisation and control of the course of assemblies, and in this regard, the authorities have the means to block the flow of information. The virtual space is likely to become increasingly important. However, the issue of online gatherings/assemblies, such as cyber-activism, virtual communities and e-protests, falls outside the scope of our discussion, even though it has recently been the subject of intriguing research.

The issue of risk management can be situated relatively close to the first criterion – the state as guardian or facilitator. Here, one can examine how the legislature and the administration perceive this freedom – whether the legal framework and practice establish a system that upholds the proportionality of measures, or whether they prioritise prevention, and thus how the state manages any risks associated with assemblies.

And finally, the last issue we wish to examine more closely concerns sanctions. However, we are not focusing on breaches of the criminal law occurring during an assembly – such as when it ceases to be peaceful – but primarily on procedural breaches. We are interested in whether the system operates with minimal administrative measures, which have a distinctly regulatory or almost educational tone, or whether it resorts to severe financial or criminal penalties, which are clearly intended to, or at least may, produce the well-known chilling effect.

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[4] A. Bień-Kacała, T. Brzezicki, T. Kucharski, A. Tarnowska, W. Włoch, "Freedom of Assembly before the Courts: A Case Law Overview from the European Court of Human Rights and Polish Courts", *Gdańsk Legal Studies,* 2025, issue 3 (68), pp. 171–194.

I. What role does the state play in the context of freedom of assembly: guardian or facilitator of civil liberties

The case law of the European Court of Human Rights clearly emphasises the critical importance of this freedom for democratic societies. Its essence lies in the right to publicly express opinions and dissent in various forms, and such dissent may obviously involve challenging the policies and decisions of public authorities, including criticism of the bodies responsible for authorising assemblies.[5] Paradoxically, therefore, the state acts as the guardian of this freedom, whilst the exercise of this freedom may provoke and intensify anti-government sentiment, thereby leading to a change in political leadership. At the same time, the extent to which state authorities take this freedom seriously serves as an excellent test of the true nature of a particular system – how much democracy and liberalism it contains. An analysis of several issues can help to assess the state's role in the actual realisation of freedom of assembly.

Of course, it matters whether freedom of assembly is enshrined in the constitution – that is, whether it is directly and precisely set out in provisions of constitutional rank, regardless of whether this takes the form of a unified constitution or a charter of rights and freedoms with constitutional status. Of course, the constitutional enshrinement of a right does not in itself determine its practical nature; a prime example of this is the Constitution of the Polish People's Republic of 22 July 1952,[6] in which Article 71 assemblies were perfunctorily positioned between freedom of speech, the press, rallies, marches and demonstrations, in a significant and disparaging manner. At the same time, this constitutional law existed in name only, and the largest protests – which were suppressed by the Communist authorities – took place outside the statutory procedure. In all the countries studied – Germany, Georgia, India, and Japan – freedom of assembly is enshrined in the constitution. The

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[5] ECHR judgment in the case of Çiloğlu and others v. Turkey, 6 March 2007, application no. 73333/01, § 51; judgment in the case of Primov and others v. Russia, 12 June 2014, application no. 17391/06, § 135.

[6] The Constitution of the Polish People's Republic, adopted by the Constituent Sejm on 22 July 1952, Journal of Laws 1952 No 33 item 232.

concept of 'peaceful and unarmed assemblies' recurs. The Indian legislation is extensive and must be viewed comprehensively, taking into account Articles 19, 14 and 21 of the Indian Constitution, whilst the other regulations are a bit more concise.

Legal systems adopt different approaches to further sub-constitutional clarification of the freedom of assembly. Some countries, including **Poland**, have a long tradition of enacting separate assembly laws as administrative legislation. In federal **Germany**, the individual *Länder* have been authorised to set their own rules governing the right to assembly since 2006. In **India**, by contrast, the framework consists of a conglomeration of criminal, procedural and police regulations, as well as lower-level executive orders. In **Japan**, the Road Traffic Act, the so-called Public Safety Regulations, and the Criminal Code are of normative significance for assemblies; however, court rulings carry considerable weight, so the system governing assemblies here is, in a sense, based on precedent. The **Georgian** Constitution allows for the definition and restriction of freedom of assembly through ordinary legislation, a practice criticised by, amongst others, the Venice Commission. The primary piece of legislation is the Law on Assemblies and Demonstrations, which was significantly amended in 2023, 2024 and 2025. In turn, breaches of the rules governing the organisation and conduct of assemblies are penalised under the provisions of the Code of Administrative Offences of 1984, which has recently been amended. The Police Act is also of significance.

It is generally the provisions of subordinate legislation that determine whether the legislature introduces a system of notification to the competent authority for the legalisation of assemblies, or whether it establishes an obligation to obtain formal permission. The ECtHR promotes a facilitative system – that is, a notification-based one – although, according to the judgment in the Çiloğlu case, the mere obligation to submit a notification, or even to obtain authorisation, does not constitute a violation of Article 11, unless such a measure is aimed at preventing a peaceful assembly. The purpose of notification is to enable the competent authorities to prepare – it allows the authorities to make the necessary preparations and take the appropriate measures to ensure that the assembly takes place without hindrance. Conversely, the consequence of a lack of, or improper, authorisation may be that participants

in an 'illegal' assembly could be held liable; for this reason, the ECtHR has emphasised that no one should be punished merely for taking part in a demonstration that was not prohibited – the authorities must act proportionately.[7] Proportionality is a key concept in the approach to public gatherings.

Over the course of a century, **Polish** legislation on public assemblies has reflected both a model of formal authorisation (interwar and communist-era laws) and a model of notification – the change actually took place at the very outset of the democratic transition (in 1990) and was enshrined in the more comprehensive Act of 2015[8]. The straightforward notification model, linked to the principle of priority (earlier notification secures the venue and time for the assembly), has become firmly established in Polish assembly practice. The same model operates formally in **Germany** and **Japan** – an assembly is lawful by virtue of the law, but requires notification. In the latter country[9], if an assembly is likely to significantly affect public traffic, the organiser must obtain permission from the relevant police station commander. Local public safety regulations, in turn, operate on the basis of notification (e.g. the Tokyo Metropolitan Ordinance). This model is also theoretically confirmed by a Supreme Court ruling on the Public Safety Ordinance in Niigata. However, Japanese legislation does not recognise the concept of a spontaneous assembly (as found in Germany and Poland), and therefore every assembly must be formally notified. **India**, on the other hand, remains entrenched in an authoritarian-control model, characterised by a high degree of arbitrariness, in which officials expect citizens to request 'permission' to protest. The police authorities have considerable scope for manipulation in this regard – Sonu Agarwal explicitly argues that the colonial police law of 1861 was intended to maintain order and authority, rather than to support democratic dissent; therefore, only a profound systemic change, embodying the principles of proportionality and transparency, can transform the existing model of assemblies and the associated culture of civic dependence.[10] **Georgia** is currently

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[7] See, inter alia, Kudrevičus and Others v. Lithuania, application no. 37553/05, § 149.

[8] Law on Assemblies of 24 July 2015, Journal of Laws 2015 item 1485.

[9] Kadota, *Freedom of Assembly in Japan…*, in this Issue.

[10] Shekhawat, Agarwal, *Regulating the Right to Peaceful Assembly in India…*, in this Issue.

drifting from a notification-based model towards restrictive bans – since 2023, it has been the scene of a rapid deconstruction or even dismantling of the standard of freedom of assembly. In his study, Dimitry Gegenava expresses grave concern regarding the construction of a 'state of laws' rather than the 'rule of law'.[11] Formally, a gathering requires notification five days in advance if it is likely to disrupt traffic. This deadline was initially also expected to apply to spontaneous gatherings, which effectively undermined their very nature and was ultimately deemed unconstitutional.[12] The aforementioned rapid reforms of 2023–2025 introduced, amongst other things, contentious prohibitions on covering one's face with masks, pitching tents, or standing on pavements, and drastically increased fines (to four times the average wage) to intimidate those taking part in protests.

It should be emphasised that the very model of 'legalising' an assembly does not, in itself, determine how easily the freedom of assembly is exercised in a given country. Of course, obtaining a formal positive decision is more difficult than simply submitting a notification. However, even a notification system can involve administrative harassment. In the Third Republic of Poland, it is easy to identify cases where assemblies were banned because they were expected to feature demands that did not sit well with certain mayors, for various reasons – whether political or ideological. Organisers would then appeal to the courts, which generally overturned the poorly substantiated decisions of local executive authorities, and thus the assemblies ultimately went ahead. Mayors could have anticipated such a court ruling, but by issuing a ban, they presented themselves as politicians condemning specific demands, thereby strengthening their position.[13]

Ultimately, therefore, it is not only the legal system – including the constitutional enshrinement of freedom of assembly – that matters. It is essential that legislation and practice do not diverge significantly, and that the relevant authorities interpret the law in good faith.

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[11] Gegenava, *Freedom of Assembly v. Freedom from Assembly…*, in this Issue.

[12] Decision No. N3/3/1635 of the Constitutional Court of Georgia of 14 December 2023.

[13] See also: Bień-Kacała, Brzezicki, Kucharski, Tarnowska, Włoch, "Freedom of Assembly…", pp. 184-186.

II. Courts as a last resort: Do the courts effectively protect freedom of assembly against authoritarian action by the executive?

The countries under study represent both civil law and common law systems; consequently, the models of judicial review and the nature of their actions to protect freedom of assembly differ significantly between them. Nevertheless, they play a key role.

In **India**, a key role must be attributed to the rulings of the Supreme Court (*Kameshwar Prasad v. Bihar, Mazdoor Kisan Shakti Sangathan v. Union of India, Babulal Parate, Madhu Limaye* and others), which, however, are not without inconsistencies. The Court recognises the need to clarify the law and emphasises that the police's preventive powers must, by necessity, be exceptional in nature. It has also sought to conceptualise proportionality by formulating a proportionality test, particularly in the cases of *K.S. Puttaswamy* and *Modern Dental College*. It consists of four questions: whether the restriction pursues one of the legitimate aims set out in Article 19(3) of the Indian Constitution [i.e. the sovereignty and integrity of India or public order, Authors]; whether the restriction is suitable for achieving that objective; whether there is a less restrictive alternative to the restriction; and whether the restriction strikes a fair balance between the right to freedom of assembly and the interest of public order.[14]

German courts have played an enormous positive role in shaping the standard for assemblies in Germany, alongside the landmark 1985 *Brokdorf* judgment[15] of the Federal Constitutional Court (*Bundesverfassungsgericht*). However, their body of case law has now been challenged in certain respects by current practice – the COVID-19 pandemic is a key factor in this context, during which the administration and the police essentially established a new norm of completely suspending the right of assembly for specific periods. Whilst this extraordinary sit-

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

[15] The ruling of 14 May 1985 (sign. 1 BvR 233/81), *Entscheidungen des Bundesverfassungsgerichts* (BVerfGE), Vol. 69, p. 315.

uation could be explained by the unpredictability of the circumstances and concerns for public health, once this tool had been used, it became a regular feature in subsequent practice. It is also worth noting that the German courts appear to have been slow to undertake the task of analysing the legal situation and assessing the unconstitutionality of such bans (Clemens Arzt asserts that the courts initially 'capitulated'[16]), whilst the Federal Constitutional Court (BVG) has, in essence, avoided taking a clear stance and issuing a consolidating judgement. Conversely, bans on the organisation of pro-Palestinian protests have been deemed justified in a significant proportion of judgements; however, there are also numerous cases where courts have overturned such bans (the Administrative Court in Frankfurt am Main, and also in Hessen), emphasising above all the weak justifications for the bans, which were based on mere assumptions.

Japanese legal scholarship incorporates the American doctrine of the 'double standard', according to which constitutional case law should distinguish between regulations concerning economic freedoms and those concerning civil or personal freedoms, with the latter subject to more rigorous judicial scrutiny. Miki Kadota notes, however, a divergence not so much between the law and administrative practice, as in some of the countries studied, but rather between constitutional doctrine—which defends freedom of assembly from the perspective of liberal, constitutional individual rights—and case law, which is generally deferential to administrative decisions and emphasises their broad margins of discretion.[17] The Supreme Court employs a distinctive methodology – it practises a flexible yet casuistic balancing of interests, which almost always favours values of solidarity: 'public order' (we shall devote more attention to this category below) and, for example, the smooth flow of traffic at the expense of the right to assembly. Miki Kadota notes that this case law thus lacks an in-depth analysis of the significance and essence of assemblies. However, the rulings *the New Tokyo International Airport Case*[18] and *Izumisa-*

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[16] Arzt, *Freedom of Assembly and Speech in Germany…,* in this Issue.

[17] Kadota, *Freedom of Assembly in Japan…,* in this Issue.

[18] SaikōSaibansho [Sup. Ct.] July 1, 1992, 1986 (Gyo-Tsu) 11,46 Saikō Saibansho minji hanreishū [Minshū] 437(Japan).

no City Community Hall Case[19] cannot be denied their groundbreaking, formative nature.

Finally, it is worth acknowledging the elements of the expansive interpretation adopted by the Constitutional Court of **Georgia**. However, in an authoritarian system, given the current legal framework governing assemblies, the courts cannot be a significant safeguard for freedom of assembly. The assessments and recommendations of the Venice Commission and the OSCE regarding necessary amendments or clarifications are being ignored, whilst the legislature is openly taking steps in the opposite direction.

III. Public Forum vs. the Internet: where, both physically and virtually, can the right to protest be exercised, and how does the state regulate these spaces?

Traditional physical spaces obviously translate into freedom of assembly – some are more potent symbolically than others. In response to legislation or a controversial court ruling, assemblies are organised outside the parliament building or a court; unpopular policies may consequently lead to protests even outside politicians' private homes. These spaces are treated very differently in legislation – laws may prohibit assemblies in the immediate vicinity of public buildings or, conversely, the private residences of politicians. Sometimes legislation is enacted to protect specific zones which, in the public view, should not become the scene of noisy and aggressive demonstrations – and so, in **Poland,** protective zones have been established around former Nazi concentration camps.[20]

In **Japan**, the 'public forum' doctrine (also derived from American law) is gaining ground. It does not advocate bans on assemblies in specific public places, but accepts the establishment of specific conditions for holding assemblies and their possible restriction. In May 2024,

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[19] SaikōSaibansho [Sup. Ct.] March 7, 1995, 1989(O)762,49 Saikō Saibansho minji hanreishū [Minshū] 687 (Japan).

[20] Act of 7 May 1999 on the protection of the sites of former Nazi extermination camps, Journal of Laws 1999 No. 41, item 412.

the Hiroshima authorities, in response to incidents from the previous year, decided to issue restrictive regulations prohibiting the bringing of sound equipment, political symbols, leaflets, helmets and armbands into the Peace Memorial Park, on the day of the ceremony commemorating the tragedy of 1945, i.e. 6 August each year. In doing so, they cited the need to ensure safety and the ceremony's solemn, respectful nature (*solemn setting*).[21] At the same time, the local Bar Council deemed the restrictions to be excessive and unconstitutional.[22]

Protests planned in a particularly disruptive manner – such as blockades of major roads, junctions and squares, or organised as 'tent cities' – also have a special connection with space. In **Germany**, there are numerous such examples linked to climate protection rallies; in **Poland**, on the other hand, farming communities have for years been organising gatherings in the form of road blockades using slow-moving agricultural vehicles, and even permanent blockades of junctions. It is worth recalling that one of the interesting and controversial issues, ultimately resolved by the administrative courts in favour of the participants, was the matter of occupying a traffic lane – fines were imposed on participants for this reason, due to the road authority's lack of consent. Such fines were clearly intended to serve as a specific sanction and could have had a chilling effect. However, the administrative courts consistently quashed such fines, emphasising that in the conflict of interests, priority must be given to freedom of assembly.[23] Clemens Arzt, for his part, notes that in Germany, the nuisance caused by protests involving road-glueing tactics ('*Klimakleber*') proved to be a catalyst for a more restrictive approach by the authorities – restrictions familiar from the COVID-19 era were invoked, and the organisation 'Last Generation' was even designated as a terrorist group.[24] It is telling, however, that when the same form of protest – road blockades – was employed,

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[21] Y. Minami, *'Hiroshima seeks tighter security at annual atomic bomb ceremony'*, available at: https://www.asahi.com/ajw/articles/15487615, last accessed 15 August 2026.

[22] *Peace Ceremony restrictions violate the constitution: Hiroshima Bar Association,* available at: *https://gethiroshima.com/news/peace-ceremony-restrictions-violate-constitution-hiroshima-bar-association/*, last accessed 15 August 2026.

[23] Bień-Kacała, Brzezicki, Kucharski, Tarnowska, Włoch, "Freedom of Assembly…", pp. 187–188.

[24] Arzt, *Freedom of Assembly and Speech in Germany…,* in this Issue.

the German police acted with far greater restraint. Similarly, in **Poland**, disruptive forms of farmers' protests are challenged and criticised primarily by road users, whilst the authorities and the police seem to fully protect this form of protest.

In **Georgia**, assemblies are prohibited in buildings of public importance, such as public prosecutor's offices, police stations, prisons, railway stations, airports and ports, as well as within a 20-metre radius of these buildings. Following a ruling by the Constitutional Court, a judge's place of residence is also protected. Protests involving the blocking of roads with vehicles or other structures are not permitted; road closures are permitted only when they result from a large number of demonstrators. In 2024, however, blocking building entrances and access to motorways and roads was prohibited. As early as 2023, the erection and use of temporary structures, such as tents, had been banned. Despite the recommendations of the OSCE/ODIHR, this prohibition was not restricted; on the contrary, it was extended. Finally, organising a gathering in a public institution's building now requires the written consent of the building's owner. The example of Georgia also demonstrates that measures adopted on a temporary basis remain permanently in the authorities' arsenal.

New technologies are exacerbating the problems associated with freedom of assembly in a multifaceted way. On the one hand, the internet – and above all social media platforms – serve as an efficient tool for organising and publicising planned assemblies. For this reason alone, they may find themselves subject to censorship – whilst this is not yet a very serious issue in developed democracies, in flawed democracies, decisions are taken to cut off access to platforms or, more generally, to the internet itself. In **India**, there is evidence of the abuse of internet shutdowns; such measures generally fail to meet the proportionality test. On the other hand, one cannot overlook the fact that advanced technologies are also becoming tools of restriction and surveillance in the hands of the authorities. A prime example of this is Flock cameras, which, supported by artificial intelligence and installed on a massive scale in the US, already enable the identification of participants in assemblies and the monitoring of their movements.[25]

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[25] S. Hamid, *'EFF's Investigations Expose Flock Safety's Surveillance Abuses: 2025 in Review'*, available at https://www.eff.org/deeplinks/2025/12/effs-investigations-expose-flock-safetys-surveillance-abuses-2025-review [last accessed 15.08.2025].

IV. Freedom of assembly and risk management: how sacred and inviolable is 'public order'?

The regulation of peaceful assemblies raises a fundamental question about the balance between protecting public order and the effective enjoyment of the freedom of assembly. A central distinction is whether state authorities may restrict assemblies only in response to a sufficiently concrete and imminent threat, or whether preventive intervention is permissible based on speculative risk assessments. State approaches differ in many respects. The states compared usually provide constitutional grounds for restricting rights and freedoms. Only the Japanese Constitution lacks sufficient regulation in this regard.

In **India**, the constitutional framework places particular emphasis on legality, necessity and proportionality.[26] As already mentioned, Article 19(1)(b) protects the right to peaceful assembly, whilst Article 19(3) permits restrictions only on specified grounds, principally public order and the sovereignty and integrity of the State. The Supreme Court has repeatedly emphasised that restrictions must have a sufficiently close connection with an actual threat to public order. The distinction between 'law and order', 'public order' and 'security of the State', developed in the *Romesh Thappar* and *Ram Manohar Lohia* cases, limits the possibility of relying on remote or speculative fears to justify restrictions.[27] This approach is also reflected in the Court's treatment of preventive powers. In *Madhu Limaye v Sub-Divisional Magistrate*, the Court accepted that preventive measures may be necessary in urgent situations, but emphasised that such powers should not replace ordinary law enforcement. Similarly, *Himmat Lal K. Shah v Commissioner of Police* recognised the State's authority to regulate assemblies in public spaces whilst rejecting unchecked administrative discretion or an absolute prohibition on exercising the right. The case law, therefore, draws an important distinction between regulation and suppression.[28]

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[26] Shekhawat, Agarwal, *Regulating the Right to Peaceful Assembly in India…*, in this Issue.; Singh, *Examining Right to Peaceful Assembly…*, in this Issue.

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

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

The requirement of proportionality becomes particularly significant where State authorities use force. Article 21, as developed in *Maneka Gandhi*, requires State interference with personal liberty to be just, fair and reasonable.[29] In *the Ramlila Maidan Incident*, the Supreme Court further emphasised that police intervention must be lawful, necessary and proportionate.[30] Thus, even where dispersal is legally justified, the means employed must correspond to the nature and seriousness of the threat.

The Indian framework nevertheless reveals a degree of doctrinal inconsistency. Although the Supreme Court has recognised peaceful protest as an important element of democratic citizenship, proportionality has not always been applied through a clearly structured and consistent test. A more systematic assessment would require the authorities to identify the specific risk, consider less restrictive alternatives, and justify the temporal and territorial scope of any restriction.

The **Japanese** approach differs in that it relies more heavily on flexible judicial balancing than on a clearly articulated proportionality framework.[31] The Supreme Court generally assesses restrictions on a case-by-case basis by weighing the necessity of the restriction against the nature of the right and the extent of the interference. This approach provides flexibility but may place greater emphasis on competing interests, including perceived risks associated with assemblies, rather than on the intrinsic value of the freedom of assembly.

The **German** experience illustrates the practical difficulties of preventive restrictions in situations characterised by heightened political or social tensions.[32] This questionable practice, as we analysed above, began with the COVID-19 pandemic and continues in the context of climate protests and demonstrations concerning Israel's activities. In these cases, the practice deviates from previously established standards for restricting the constitutional freedom of assembly, thereby highlighting the proportionality clause. Following 7 October 2023, administrative authorities and courts initially accepted a number of preventive bans on assemblies concerning Gaza and Palestine. Subsequently, however, sev-

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[29] *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

[30] *Ramlila Maidan Incident, 4–5 June 2011 v Home Secretary, Union of India* (2012) 5 SCC 1.

[31] Kadota, *Freedom of Assembly in Japan…,* in this Issue.

[32] Arzt, *Freedom of Assembly and Speech in Germany…,* in this Issue.

eral administrative courts adopted more nuanced approaches, demonstrating the importance of assessing restrictions in light of the circumstances of each individual assembly rather than relying on generalised assumptions of risk.

The **Georgian** framework, following a series of constitutional and legislative amendments, exhibits a stronger preventive orientation.[33] Legislative amendments have expanded the grounds and mechanisms by which assemblies may be restricted, including circumstances in which verified police information indicates a potential threat to the constitutional order or to citizens' lives and health. At the same time, Georgian law formally requires an assessment of necessity and proportionality and provides for judicial review of prohibitions. The effectiveness of these safeguards, however, depends on the existence of sufficiently precise criteria to constrain administrative discretion. The current systemic trend towards autocratisation leads to greater restrictions on freedom of assembly.

By comparison, the four jurisdictions reveal different relationships between **risk prevention and proportionality**. India places relatively strong emphasis on a concrete link between the restriction and an identifiable threat, although its case law on proportionality remains inconsistent. Japan relies on flexible balancing, which allows for judicial adaptability but may weaken the independent weight accorded to the right of assembly. Germany demonstrates a shift from broad preventive restrictions towards more context-sensitive judicial review, particularly in politically sensitive cases. Georgia, by contrast, provides a comparatively broad scope for preventive intervention whilst formally retaining proportionality and judicial review as safeguards.

The comparative analysis, therefore, suggests that the decisive issue is not whether States may prevent disorder, but what evidential threshold and constitutional safeguards must be met before preventive interference. Effective protection of freedom of assembly requires that restrictions be based on concrete and demonstrable risks, pursue a legitimate legal objective, and remain necessary and proportionate to that objective. Without sufficiently precise standards, preventive risk management may transform a legitimate regulatory function into

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[33] Gegenava, *Freedom of Assembly v. Freedom from Assembly…*, in this Issue.

a mechanism for suppressing constitutionally protected participation in public life.

V. The Nature of Sanctions and Penalties: Administrative Regulation, Criminalisation and the Chilling Effect

The nature and severity of sanctions for breaches of assembly-related rules constitute an important aspect of the effective protection of freedom of assembly. Whilst procedural breaches may justify limited administrative measures, heavy fines, detention or criminal prosecution may produce a significant chilling effect, discouraging individuals from exercising the right to peaceful assembly. The comparative experience of the examined countries demonstrates considerable variation in the relationship between procedural regulation and punitive enforcement.

In **India**, the principal concern is not so much the existence of sanctions as the extensive use of preventive administrative powers.[34] The legislation empowers magistrates to introduce preventive measures, including restrictions on assemblies, where there is a perceived danger to public tranquillity.[35] Such orders should remain limited in scope and duration, be publicly accessible, and be subject to prompt judicial review. Their repeated renewal should require new and specific reasons rather than merely continuing an earlier restriction. The courts should therefore examine whether preventive measures respond to a demonstrable threat or are being used to prevent politically inconvenient assemblies.

A related concern arises from the use of police force. The Indian legal framework requires that force used to disperse an assembly comply with the principle of proportionality. The *Ramlila Maidan* judgement emphasises the necessity of lawful and proportionate police intervention, whilst international standards favour communication with organisers, prior warnings where feasible, graduated responses and the use of the least harmful means. These safeguards are particularly impor-

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[34] Agarwal, Shekhawat, *Regulating the Right to Peaceful Assembly in India…*, in this Issue.

[35] Singh, *Examining Right to Peaceful Assembly…*, in this Issue.

tant because excessive force can transform an otherwise lawful regulatory intervention into a serious interference with the right to peaceful assembly.

The **German** experience highlights a different problem: the limited availability of timely judicial review of sanctions and police interventions occurring during an assembly.[36] Unlike a preventive ban or restriction, the dissolution of an assembly whilst it is taking place, as well as other police measures directed against participants, may be difficult to challenge before administrative courts in a sufficiently timely manner. The resulting time and financial costs may substantially reduce the practical effectiveness of subsequent judicial review. This creates a structural risk that, even where formal legal protection exists, excessive police intervention may remain insufficiently constrained in practice.

In **Japan**, conduct related to assemblies may, in certain circumstances, fall within the scope of general criminal law.[37] Participants engaging in protest activities on privately controlled or otherwise restricted premises may, for example, face prosecution under provisions concerning trespass or unlawful conduct on railway property. The *Kichijoji Station leaflet distribution case* illustrates how general criminal provisions may indirectly restrict expressive activities in public or semi-public spaces.[38] The Japanese model therefore demonstrates that the chilling effect does not necessarily arise from legislation specifically regulating assemblies. It may also result from the application of ordinary criminal provisions to conduct associated with protest.

The **Georgian** framework demonstrates the most pronounced interaction between administrative and criminal sanctions.[39] The Law on Assemblies and Demonstrations constitutes the principal legislative framework, whilst violations may trigger administrative liability under the Code of Administrative Offences. Depending on the conduct involved, however, matters may escalate from administrative offences to criminal proceedings, particularly in cases involving violence, disruption of the constitutional order or related conduct. Police powers and

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[36] Arzt, *Freedom of Assembly and Speech in Germany…*, in this Issue.

[37] Kadota, *Freedom of Assembly in Japan…*, in this Issue.

[38] Supreme Court [Sup.Ct.] 18 December 1984, 1984 (A) 206, 38 Supreme Court Case Reports [Keishū] 3026 (Japan).

[39] Gegenava, *Freedom of Assembly v. Freedom from Assembly…*, in this Issue.

administrative measures concerning traffic and public order further reinforce the State's capacity to regulate assemblies. Recent legislative developments have intensified these concerns. The latest amendments have expanded executive and police powers and increased the severity of liability for certain violations. Administrative and criminal sanctions have consequently become an important component of the State's response to demonstrations, with reports indicating the use of detention, imprisonment and exorbitant fines against participants.[40] The combination of severe penalties and politically sensitive enforcement raises particular concerns regarding the chilling effect and the compatibility of punitive practices with the right to a fair trial in self-critical Georgia.

A comparison of the four jurisdictions reveals different mechanisms through which sanctions may affect the exercise of freedom of assembly. India illustrates the risks associated primarily with preventive administrative measures and the excessive use of force. Germany demonstrates the importance of effective and timely judicial review of police interventions. Japan illustrates how general criminal law provisions can indirectly constrain protest activity. Georgia illustrates the strongest potential chilling effect when administrative restrictions are combined with severe financial and criminal penalties.

The comparative perspective, therefore, suggests that the proportionality of sanctions must be assessed not only by reference to the formal classification of an offence, but also to its practical deterrent effect. Sanctions imposed for procedural or organisational violations should remain proportionate to the underlying conduct and should not turn the regulation of assemblies into a mechanism to discourage participation. Effective judicial review, precise statutory criteria and safeguards against excessive police intervention are consequently essential to ensure that enforcement does not undermine the substantive enjoyment of freedom of peaceful assembly.

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[40] T. Bochorishvili, Ph. Chapchipadze, T. Kirtava, *The Results of Monitoring Politically Motivated Cases relating to Detainees during Protests in 2024–2025 at First Instance Courts,* Gyla, 2025, p. 51.

Conclusions

An interesting conclusion – albeit an expected one, but clearly documented – is the significance of the cultural and historical context, which shapes the conditions for the education and subsequent work of civil servants and judges, and indeed of citizens themselves. Nor is this context static – whilst it rarely changes in response to sudden upheavals, certain distinctive elements of it may change and erode over the long term. Post-war Germany, with its culture of legalism and respect for fundamental rights, enjoys a high standard of freedom of assembly. However, the issue of public safety is rising on the political agenda, just as political expediency influences the practical exercise of the freedom of assembly. In India, the ethos of a state born out of Mahatma Gandhi's peaceful protests legitimises a strong moral right to dissent. On the other hand, a hierarchical bureaucratic culture and policing mechanisms inherited from the British Empire mean that protests are sometimes perceived not as an expression of the views of communities constituting a sovereign authority, but as a threat to the colonial order. Japan presents a particularly interesting case of how freedom of assembly is shaped by the conditions of a culture based on bonds of solidarity. Although the legal system has its roots in German and American models, maintaining public order and avoiding disturbances remain values that take precedence over other legally protected interests of a more individualistic nature. This is reflected in case law – the courts interpret assemblies through the lens of crowd psychology and clearly express concerns about the potential escalation of such gatherings. When the latter may become an anomaly or a threat to social harmony, it is easier to issue a ban by invoking the concept of 'political neutrality'. Finally, in post-Soviet Georgia, two processes are converging – an unconsolidated democratic transition, stopped in 2023, and the deepening polarisation of society. Current illiberal authorities use the law instrumentally: mass protests are portrayed as attempted coups and trigger extremely repressive legislative responses.

At the same time, the specific 'stress tests' on freedom of assembly that societies worldwide have experienced in recent years are ex-

acerbating the deterioration in standards. Various circumstances have proved to be catalysts for restrictions on freedom of assembly – ranging from the COVID-19 pandemic, during which many countries imposed blanket bans on assemblies, which proved to be unconstitutional (Germany, Poland), to the actions of the Israel Defence Forces in Gaza, and more recently in the West Bank – where pro-Palestinian protests, including those at universities, were not only met with restrictions and excessive severity on the part of the authorities, but also with the stifling of freedom of debate (Germany, USA). It must be assumed that the development of modern technologies, including the digital organisation of protests, can easily be used to justify increasing restrictions and, paradoxically, the use of these very technologies for that purpose.

A worrying, broadly global trend thus emerges from the authors' analysis: contemporary states that declare themselves democratic and liberal regimes tend to roll back, or, in a sense, water down, standards for freedom of assembly. We observe *the* full *spectrum* of this regressive trend: from overt and direct methods – such as sudden and sweeping changes to assembly laws in Georgia, the practical use of direct coercive measures, the arrest of assembly participants, and draconian fines – through to police discretion, which employ post-colonial tools, as in India, through bureaucratic obstacles and even forms of cultural discouragement in Japan – forms of action that are, in a sense, subtle and characteristically bureaucratic – and finally, the selective suspension of elements of assembly protection in the name of political expediency, as in Germany. Across all studied cases, there is a distinct tendency towards preventive measures: the police and officials prefer to prevent protests (*ex ante* bans, arbitrary refusals) rather than manage them whilst they are taking place. 'Public order' is the key justification: in Germany, Japan, India and Georgia alike, the vague concept of public safety and order serves as a universal master key used by governments to restrict politically inconvenient demonstrations.

It is evident that protests, particularly anti-government ones, have historically posed, and continue to pose, significant challenges to ruling authorities. However, and this needs to be constantly emphasised, the way in which the authorities systematically organise their response to them is one of the most important tests of democratic maturity.