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EXAMINING RIGHT TO PEACEFUL ASSEMBLY IN INDIA IN COMPLIANCE WITH ICCPR NORMS

Abstract

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) safeguards the right to peaceful assembly, which is the essence of democratic participation. This paper examines assembly restrictions in India using the principles of proportionality, necessity, and legitimate purpose, as defined in Article 21 of the ICCPR. The initial section of the paper deals with the legal framework that governs assembly restrictions under Article 21 of the ICCPR. It then analyses the constitutional and statutory frameworks in India, specifically under Article 19(1)(b) read with and 19(3) of the Constitution of India. The state authorities are required to play a balanced role in safeguarding public order on the one hand and upholding the right to protest on the other hand. In conclusion, the paper suggests some recommendations through which India can uphold its compliance with ICCPR.

Keywords

Right to Peaceful Assembly, Article 21 of the ICCPR, Proportionality, Legitimate Aim; Necessity, Public Order, Restrictions.

Introduction

The essence of democracy lies in a belief that people are able to express and share their opinion without any fear. This leads to constructive crit-

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icism, accountability, and progress.[1] The right to assemble is one of the rights that helps spread ideas and beliefs.

India's freedom struggle was largely driven by protests, demonstrations, and collective public resistance against colonial rule. However, the character of protests in an independent democratic nation is different from protests during colonial times. In a democracy, citizens are not protesting against a foreign power but are exercising constitutional freedoms within a system of self-governance. Recognising this importance, the Constitution of India guarantees the freedom of speech and expression under Article 19(1)(a) and the right to peaceful assembly under Article 19(1)(b). These rights form an essential part of democratic participation and allow people to peacefully express disagreement with governmental policies and actions. At the same time, these freedoms are not absolute. The State may impose restrictions in the interest of sovereignty, public order, and security, but such restrictions must satisfy the principles of legality, necessity, and proportionality. This research therefore focuses on specific aspects of protest regulations in India, including restrictions on assemblies, preventive measures, use of force, detention of protesters, and punitive sanctions.

The study analyses protest regulations in India through Article 21 of the International Covenant on Civil and Political Rights (ICCPR) with specific reliance on General Comment No. 37 of the Human Rights Committee in 2020. India ratified the covenant in 1979. Methodologically, the research follows doctrinal and normative comparative analysis. The doctrinal analysis examines India's legal framework on assemblies, while the normative framework examines whether State restrictions imposed in India comply with international standards of legality, necessity, and proportionality under ICCPR. Reference to European Court of Human Rights (the European Convention on Human Rights (ECHR)), Austria, Hungary, Belarus, and Singapore, particularly the "Wham framework" help explain how legality, necessity, and proportionality are applied when regulating peaceful assemblies.

These comparative decisions help in understanding the broader interpretation and practical requirements of Article 21 of the ICCPR and

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[1] S. Basu, S. Sen, *Silenced Voices: Unravelling India's Dissent Crisis through Historical and Contemporary Analysis of Free Speech and Suppression*, "Information & Communications Technology Law", Vol. 33(1), 2024, pp. 42–65.

provide a framework to evaluate India's evolving approach towards regulating the right to peaceful assembly.

I. The right to peaceful assembly under Article 21 of ICCPR

Chapter I of the paper examines the basic framework of international law relating to the right to peaceful assembly. Article 21 of the ICCPR guarantees the right to peaceful assembly. However, this right is not absolute and can be subject to reasonable restrictions which includes "Public order, public safety, national security, public health, and public morality." The restrictions imposed by the State on this right have to be in consonance with principles of proportionality, necessity and legitimacy.

1. Legitimate Objective, Necessity and Proportionality

Whenever the State restricts peaceful assemblies, such action must remain lawful, necessary and proportionate. Law enforcement authorities should justify why restrictions are required and use force only as a last resort. In a democratic society, the role of a State is to facilitate and protect the exercise of the peaceful assembly rather than unnecessarily restrict it.

The right to assemble peacefully is also guarded under "Article 11 of the European Convention on Human Rights." The government may limit this freedom when moral or health concerns rise, when the safety of others is essential, when national security and public safety are at stake, or when it is crucial to inhibit criminal behaviour or public disorder. It makes the State responsible for making sure that meetings happen peacefully. The State should limit its arbitrary measures that undermine the "fundamental right to freedom of assembly."

The case of "Wham Kwok Han Jolovan v. Public Prosecutor" ("the Jolovan Wham framework") is very relevant to understand legitimacy, proportionality and necessity. In this case the Court held, in deciding whether to limit peaceful assembly, which is guaranteed under "Article 14 of the Singapore Constitution," the Court must take three steps.

In this instance, the courts affirmed the legitimacy of Public Order Act. The Court said that requiring permits for gatherings keeps people secure and safe. Article 14 of the Constitution of Singapore states that this kind of limitation is permissible. The Court set up a three-step process to look at the ideas of proportionality, legitimacy, and necessity. First, the Court looks at whether the statute limits the fundamental right or not. Second, it looks at the true motivation for setting the restrictions. Third, it assesses whether the limitation builds an authentic link to the permitted constitutional goal.

2. Right to Peaceful Assembly

Only peaceful meetings are granted the protection of this freedom. Only those who exhibit their right to peaceful protest are granted the right to peaceful assembly under the the European Convention on Human Rights (ECHR). Gatherings which incite violence do not enjoy the protection of Article 11 of the European Convention on Human Rights (ECHR).

3. Prior Restrictions on Assemblies and Use of Public Spaces

Article 21 of the ICCPR does not require a prior permission or permit to exercise the right of assembly. Although some countries may attach a special condition which may require the organisers of an assembly to inform the authorities to maintain public order. But in case of non-compliance of this condition, it should not result in dispersing the assembly.

In Bukta and Others v. Hungary, it was held by the "European Court of Human Rights (ECtHR)" that Hungary infringed "Article 11 of the Convention" by dispersing a peaceful assembly due to lack of prior notice. Although the Right to Peaceful Assembly Act, 1989 in Hungary requires prior notice of 3 days, Court stated that even though the organisers failed to comply with procedural requirements, dispersing the peaceful assembly on such grounds is disproportionate in law.

Peaceful assemblies can generally take place in any space open to the public including streets and public squares. Blanket bans on assem-

blies by the authorities infringe the right to peaceful assembly and is disproportionate.

In Ollinger v Austria, a parliamentarian planned a peaceful gathering at a cemetery on All Saint's Day to commemorate Jews killed during World War II. The authorities banned the event, fearing it might clash with another group honouring soldiers died in World War II and disrupt public order. However, the ECtHR noted that the ban was excessive and violates applicants the applicant's right to peaceful assembly in a public place.

4. Right to Peaceful Assembly for Citizens and Non-Citizens

Article 21 of the ICCPR and the resolution passed by Human Rights Committee extends the right to assemble to everyone on an equal footing with non-citizens & citizens.

5. Duty of the State to Facilitate and Protect Freedom of Assembly

States are not only required to permit peaceful assemblies but also to actively support them so that participants can effectively express their views. They must create a fair and non-discriminatory environment, backed by proper legal and institutional framework. This may involve facilitation by managing traffic, ensuring security, and managing public spaces by the State. It is also the "duty of the State to safeguard the members" of the assembly from violence or interference by others, including counter-protesters.

6. Restrictions on Right to Peaceful Assembly

The restrictions imposed on the right to peaceful assembly must flow from legitimate aim. The law must not be vague. Authorities cannot be given unlimited powers to control assemblies. In essence, restrictions should be transparent, reasonable and grounded in well-defined legal rules.

The idea of "restrictions" under Article 11 of the European Convention on Human Rights (ECHR) is broad as it covers actions taken before, during, and even after an assembly as stated in the case of Ezelin v. France. Even a prior ban on a protest can discourage people from participating, creating a chilling effect and interfering with the right, as recognised in Baczkowski and Others v. Poland.

7. Test of Proportionality and Burden of Proof

Restrictions imposed by the State on the right to peaceful assembly should be justified. The onus lies on the authorities to justify the legitimacy of restrictions. Limitation imposed must be proportionate and have a nexus with legitimate aim under Article 21. If authorities fail to meet this standard, it amounts to breach of the right. Most importantly, restrictions should enable and protect assemblies and not weaken the right or discourage people from participating.

In Vladimir Sekerko v. Belarus, it was held that the State must prove that any restrictions imposed by it are necessary under Article 21 of the ICCPR. Similarly, in Marina Statkevich v. Belarus, the Committee emphasised that it is the State and not the individual that must show the restriction is lawful, necessary, and proportionate.

8. Proportionality of Force to Disperse Assembly

The force used by the authorities to disperse the assembly must conform to the principles of proportionality. When police intervene during protest, either to manage traffic disruption or prevent violence their use of force aimed at maintaining public order must always be proportionate as highlighted in the case of Laguna Guzman v. Spain. Excessive force, especially during dispersal, can violate fundamental rights and may even amount to degrading treatment under Article 3 of the European Convention on Human Rights (ECHR).

In izci v. Turkey, it was held that force should not be used indiscriminately, particularly against individuals who are not acting violently, and must be in accordance with the principles of necessity and proportion-

ality. The Court has also stressed that methods like tear gas must be strictly regulated, with proper training, supervision, and accountability for law enforcement.

9. Detaining Members of Assembly

Courts have stressed that punishments given during peaceful protest must be fair and reasonable. Chkhartishvili v. Georgia,[2] an eight-day arrest for trivial activities during a rally was deemed unreasonable. Also, the authorities in this case failed to justify the reasons for such detention.

In Russ v. Germany (Application no. 44241/20), punishing a protester for just wearing a plastic visor was held to be unjustified. Court also stated there was no threat to public safety. The Court emphasised that criminal penalties require rationality, and authorities must consistently weigh them against them against right to peaceful assembly.

10. Punitive Action Against Members of Assembly

There can be a chilling effect, if people are punished just for participating in a peaceful protest. In Galstyan v. Armenia, the applicant was arrested for three days just for being part of a peaceful protest that wasn't even illegal. The Court said he was exercising his right to peaceful assembly, and penalising him for it constituted an unwarranted interference. This shows that imposing penalties in such situations can undermine and deter the exercise of fundamental freedoms under Article 11 of the European Convention on Human Rights (ECHR).

II. Right to Assembly in India

India chose to ratify "the International Covenant on Civil and Political Rights on the 10th of April, 1979," As such, it is one of the many rights protected under "Article 21 of the ICCPR." Though "Article 51(c) of the

[2] *Chkhartishvili v. Georgia,* Application no. 31349/20, Judgement of 11.05.2023, para 60.

Indian Constitution" requires the government to promote compliance with international law and treaty standards, international treaties are not always enforced in India. In "Vishaka v. State of Rajasthan," the Supreme Court of India (Supreme Court) determined that international conventions and treaties, albeit not being legally accepted, may be utilised to understand and uphold Fundamental Rights. In its ruling, the "Indian Supreme Court (SC)" incorporated "Convention on the Elimination of All Forms of Discrimination against Women" principles into Indian law.

1. Constitutional Framework of Right to Peaceful Assembly in India

One essential freedom that is closely linked to the core of democracy is the right to peaceful assembly. It is intimately related to the freedoms of expression and association. It is important to quote some examples which will justify the importance of right to peaceful assembly. The most extreme and unforgettable incidents, like the violent suppression of the communist atrocities against the Polish miners during the "Wujek" coal mine protests in 1981 can also result from arbitrary limitations on right to peaceful assembly.

The Jallianwala Bagh massacre of 13th April 1919 remains one of the darkest reminders of how unchecked State power can destroy democratic freedoms. Thousands of people had gathered peacefully at Jallianwala Bagh, many for the Baisakhi festival, when Brigadier General Dyer ordered troops to fire without warning on the unarmed crowd. Hundreds were killed and many more injured as the exits were deliberately targeted. The incident shocked both India and Britain, with Winston Chruchill calling it a "horrific catastrophe".[3] The massacre demonstrates why the right to peaceful assembly must always be protected. When authorities are given uncontrolled discretion to suppress gatherings in the name of public order, democracy itself becomes vulnerable to abuse. India which is founded on the principles of rule of law and democracy cannot permit such tragedies to be repeated.

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[3] K. L. Tuteja, *Remembering Jallianwala Bagh Massacre*, "Marxist", XXXV(1), 2019, pp. 8–27.

The Right to peacefully assemble in India is guaranteed under "Article 19(1)(b) of the Constitution," with an added condition: to peacefully gather without carrying weapons and arms. This fundamental democratic right is intimately connected with "Article 19(1)(a) of the Indian Constitution," which guarantees the right to freedom of speech and expression, permits citizens to join in public life by expressing dissent and engaging in political activities.

The Supreme Court repeatedly recognised dissent as an essential part of democracy, but recent developments show growing judicial concern toward speech and protests that may affect public order or institutional credibility. This became evident in 2020 Suo Moto contempt proceedings against Prashant Bhushan, where the Court held that his tweets criticising the judiciary had the potential to undermine public confidence in the institution. While many viewed the remarks as legitimate democratic criticism, the judgement reflected judicial sensitivity toward speech perceived as threatening institutional integrity. Similar concerns emerged in the 2026 NCERT textbook controversy relating to references of corruption in judiciary. Although the Court later removed adverse observations against the academicians, the proceedings demonstrated anxiety over expression capable of creating public disorder. At the same time, Article 19(3) permits only reasonable restrictions based on legality, necessity, and proportionality. In Himmat Lal Shah v. Commissioner of Police and Mazdoor Kisan Shakti Sangathan v. Union of India, the Court affirmed that the State cannot arbitrarily restrict peaceful assemblies and must balance public order with constitutional freedoms.

2. Regulatory Framework of Right to Peaceful Assembly in India

Section 189 of Bhartiya Nyaya Sanhita, 2023 defined the Unlawful assembly. The *Bhartiya Nagarik Suraksha Sanhita* (BNSS) Sections 148, 149, and 150 gives Magistrates, police, and, in extreme cases the defence forces the authority to break up illegal gatherings and restore public order. Section 163 BNSS grants Magistrates the authority to issue preventive and discretionary measures that prohibit gatherings or specific actions in circumstances when there is danger to public tranquillity.

An unlawful assembly, according to the Sanhita refers to any group: of five or more people whose shared goal is to subvert lawful authority or public order by using or threatening to use criminal force. Intimidating the government or public officials, opposing the application of the law, committing crimes like trespass or mischief, taking property by force or interfering with legal rights (like the "right of way" or the access to drinking water), or forcing someone to act against their legal rights or obligations are examples of such actions. According to the explanation attached to Section 189, even if an assembly is originally lawful, it may turn to unlawful if its aim later changes to include any of these forbidden acts.

The "Bhartiya Nagarik Suraksha Sanhita, 2023," establishes a procedural outline to maintain law and order when it comes to gatherings. Section 148 empowers a Magistrate (executive) or senior police officer of the authority to order for dispersal of unlawful gathering assembly or gathering that is likely to disturb public peace. The members are legally obligated to comply with this order. If they fail to do so, authorities may use necessary force, seek civilian assistance, and arrest individuals to restore order. Section 149 allows the District Magistrate or an authorised Magistrate to requisition the armed forces in the event that an assembly cannot be dispersed through conventional methods and poses a threat to public security. The armed forces are required to act proportionately, using minimal force and avoid unnecessary harm while dispersing the assembly and detaining participants. Section 150 also addresses urgent situations in which no Magistrate is available. It permits commissioned or gazetted armed forces officers to disperse assemblies and make arrests to protect public safety, but they are required to follow the instructions of a Magistrate once communication is re-established. Furthermore, Section 163 establishes preventive powers, which allow Magistrates to issue written orders that restrict specific acts or gatherings in circumstances of immediate danger to public order, health, or safety. These orders may be passed ex parte in emergencies, apply to individuals or the public at large, remain in force for a limited duration (generally up to two months, extendable by the State), and are subject to review, modification, and the right of affected persons to be heard, thereby incorporating procedural safeguards into exercising these powers. Sec 163 BNSS, priorly "Sec 144 of Code of Criminal Procedure, 1973" (CrPC, now BNSS, 2023) has been in controversy due to its misuse by authorities in some cases.

III. Right to Assembly in India and Its Implications from Article of ICCPR

Chapter III analyses the right to peaceful assembly in India in consonance with requirements stated under Article 21 of the ICCPR.

1. Right to Peaceful Assembly

From the legal framework, it can be implied the right to peaceful assembly and the restrictions it imposes are in line with "Article 21 of the ICCPR." In India, right to peaceful assembly is restricted on the grounds of "sovereignty, integrity, and public order," whereas the restriction under the "Article 21 of the ICCPR" it can be on the grounds of State's security, public safety and its public order.

2. Legitimacy, Necessity and Proportionality

Every act of the State in restricting freedom of assembly must carry a legitimate aim, grounds of necessity and must represent the least restrictive measure used. Through the cases stated later in this part, we can infer that authorities in India formally comply with these requirements while dispersing protesters.

3. Prior Restrictions on Assemblies and Use of Public Spaces

The right to assemble peacefully can only be exercised when people are given the liberty to organise peaceful protest in public places.

In Rakesh Vaishnav v. Union of India & Others, the Supreme Court held that the farmer's protest could not be suppressed merely because it expressed disagreement with government policies. The Court recognised that right to protest peacefully is a part of the fundamental freedoms guaranteed under the Constitution and is essential in a democratic society. It stated that citizens are entitled to raise their voices and

express dissent, so long as the protest remains peaceful and does not endanger public order. At the same time, the Court emphasised that there should be no violence, disturbance to the lives of ordinary citizens or destruction of property. The Court therefore allowed the farmer's protest to continue and stressed that both the protesters and the police had a shared responsibility to maintain peace and avoid escalation.

In "Amit Sahni v. Commissioner of Police and Ors.",[4] The freedom to peacefully oppose legislation was upheld by the Indian Supreme Court as expressed by Pulitzer Prize winner Walter Lippmann: "In democracy, the opposition is not only tolerated as constitutional, but must be upheld because it is indispensable" it is vital to state that public areas and thoroughfares cannot be used in this way permanently. Dissent and Democracy are inextricably connected; nonetheless, dissenting demonstrations must occur solely in defined areas. The existing situation involves blocking public roads, causing noteworthy inconvenience to pedestrians, rather than holding a rally at an unapproved location. The applicant's claim that people can gather and protest at any time is unacceptable. In the "Himat Lal case,"[5] Justice K.K. Mathew remarked that streets including public parks serve exactly alternative purposes, and the societal interest fostered by unrestricted freedom of expression along with assembling in public accommodations should serve the very societal interests that speech regulations and bans are designed to protect. Nevertheless, there is a legal distinction between arbitrary exclusion and proper control.

In "Himat Lal K. Shah v. Commissioner of Police, Ahmedabad & Anr,"[6] in pursuance to "sec. 33(1) (o) of Bombay Police Act 1951", rules issued by the Ahmedabad Police Commissioner were challenged. It required prior authorization before any public gathering could be held. As per the SC, the State may execute the laws that assist every citizen right to gather peacefully, free, and may impose reasonable limitations only to maintain public order. Regarding the possible infringement of rules, the right to hold meetings on "public roads is subject to the su-

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[4] *Amit Sahni v. Commissioner of Police and Ors*., Judgment of 17.02.2020, 2020 SCC OnLine SC 808 para no. 15, 16.

[5] *Himmat Lal Shah v. Commissioner of Police, Ahmadabad and Another,* (1973) 1 SCC 227, Judgment of 15.09.1972.

[6] *Ibid*., para 4.

pervision of the relevant authority with regard" to the place and time of meetings. State authorities are not permitted to impose any unreasonable limitations under Article 19(1)(b) of the Indian Constitution. The rule necessitating previous consent from the suitable authority did not bestow any standard for refusing authorization to hold a public meeting, giving the authority unfettered and arbitrary power to act at its own will. Therefore, it was declared to be "ultra vires under Article 19(1)(b)" of the Constitution.

In "Mazdoor Kisan Shakti Sangathan v. Union of India & Anr.,"[7] the Supreme Court recognised that law enforcement authorities (police) must balance public order with the constitutional right to protest. While protest at Jantar Mantar could be regulated for safety and traffic concerns, the Court warned that repeated prohibition under Section 144 CrPC cannot become a permanent mechanism to suppress democratic dissent and peaceful assemblies. In "Ramlila Maidan Incident, in re.,"[8] The SC put down three tests: (i) The exercise of executive authority cannot mandate a ban; it can only be done within the framework of law; (ii) such inhibition must be reasonable; and (iii) the inhibition must be linked with the objects specified in "clause (2) of Article 19."

The above-mentioned pronouncements of the Supreme Court of India have tried to limit the geographical application of the right to freedom of assembly to places exactly designated by the government for this object. These decisions knowingly leave from international best practices and standards. The judicial stance on restricting the freedom of assembly to specified areas due to public inconvenience and administrative necessities is inconsistent with ICCPR. The Indian approach requires recalibration by prioritising the successful implementation of fundamental rights and adopting a fair harmonisation of these rights within the democratic framework.

The State and local authority own a near discretion over all open spaces suitable for outdoor meetings. If the State or municipality may constitutionally prohibit public meetings in both its streets and parks, the practical outcome would be the impossibility of conducting any

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[7] *Mazdoor Kisan Shakti Sangathan v. Union of India & Anr,* Judgment of 23.07. 2018, AIR 2018 SC(CRI) 1105 para 54.

[8] *Ramlila Maidan Incident v. Home Secretary and Ors,* Judgment of 23.02.2012, 2012 AIR SCW 3660 para 33, 44, & 45.

open-air gatherings in large cities. In such situation, right to public assembly would have been a futile endeavour. If the government and local authorities could lawfully shut down all the usual venues where the majority of individuals may exercise their rights.[9]

4. Right to Peaceful Assembly for Citizens and Non-Citizens

According to Article 21 of the ICCPR, everyone has the right to assemble, regardless of nationality. Article 19(1)(b) of the Indian legal system limits the ability of people to assemble. Article 19(1)(b) of the Indian Constitution defines the right to assemble peaceful only to citizens.

5. Duty of State to Facilitate and Guard Freedom of Assembly

The duty of the State should be to act as facilitator rather than controlling right to peaceful assembly.

In India, prohibitive and preventive orders issued under Section 144 of the Cr.P.C. (Section 163 BNSS, 2023) have the power to forbid any kind of lawful protest, involving effigy burning, peaceful protest marches, and internet shutdowns. These actions directly invade the "unified freedoms of association and the right to peaceful assembly." Section 144 of the Cr.P.C. (BNSS, 2023) is used when immediate deterrence or urgent resolution is desirable.

According to Sec. 144(1) of the CrPC, 1973, a magistrate's view that there are adequate grounds for proceeding is enough to issue the order specified in that section. To address subjective concerns about Section 144(1), the Supreme Court of India has recognized certain objective standards (Babulal Parate v. State of Maharashtra).[10] The standard set forth in this provision goes outside mere probability or propensity. The magistrate must, amongst other things, exhibits that timely inter-

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[9] A. G. Noorani, *Right to Assembly*, "Economic and Political Weekly", Vol. 37(6), 2002, pp. 518–519.

[10] *Babulal Parate v. State of Maharashtra*, 1961 AIR 884.

ference is essential to stop certain acts in order to mitigate the danger to public protection. According to the "In Re: Ramlila Maidan Incident Dt. 4/5.06.2011 v. Home Secretary, Union of India & Ors.,"[11] "the essential prerequisites for an order" under Section 144 Cr. P. C (BNSS, 2023) are: a) It is an executive power granted to an elected official; b) there must be adequate cause for the action; c) timely remedy or anticipation must be required; and d) a written order must be delivered detailing the vital facts and helped on the suitable person. It has been established that evidence alone cannot assist the use of Sec.144 in situations where peace and calm are not immediately threatened. As a result, there is no single justification for the application of Sec. 144.

Supreme Court of India has evaluated in "Anuradha Bhasin v. Union of India"[12] that orders issued under this rule directly influence the fundamental right of the people, and careless and irresponsible misuse of this right would be a serious crime. The intended threat must be an "emergency" envisioned to hinder, harass, or harm any person correctly discharging their duties. The power deliberated by "Section 144 of the CrPC" is forbidden from being used to overpower genuine complaints, thoughts, or the practice of democratic rights. India experienced over 805 internet shutdowns between 2012 and 2024, with the highest number of cases occurring "in 2018 (136) and 2020 (134)," representing a determined and systematic dependence on digital restrictions.[13] Recurrent disruptions to internet services stifle the right to protest, decrease access to information, and hamper the appropriate practice of the right to peaceful assembly. This pattern increases important constitutional and human rights concerns, particularly at a time when digital platforms are progressively enabling dissent and mobilization.[14]

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

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

[13] Diana Elagina, *Number of internet shutdowns India 2012-2024,* available at: https://www.statista.com/statistics/1095035/india-number-of-internet-shutdowns/ [last accessed: 31.03.2026].

[14] Software Freedom Law Center, India, Internet Shutdowns Tracker, Internet Shutdowns Tracker 2025, available at: https://internetshutdowns.in/ [last accessed: 1.04.2026].

The enforcement of Section 144, the suspension of internet services, and the cessation of railway operations all constitute infringements on our freedom to peaceful assembly. [15]

6. Restrictions on the Right to Peaceful Assembly

According to "Article 19 (3) of Constitution of India," which provides right for assembling peaceably without arms can be restricted only on the grounds of "sovereignty, integrity of India and public order." Whereas, restrictions imposed has to be "just, fair and reasonable" as stated by the Supreme Court of India in the case of "Maneka Gandhi v Union of India."

"In Chintaman Rao v. State of Madhya Pradesh,"[16] it was observed by Mahajan J., that 'reasonable restrictions' imposed by the State on the very basic rights must not be arbitrary or disproportionate. Consequently, the notion that laws concerning limitations on fundamental freedoms may be evaluated through the lens of proportionality has never been questioned in India. This is referred to as the "primary review" by the judiciary regarding the validity of legislation that infringes upon fundamental freedoms.

In assessing proportionality to ascertain reasonable restriction, certain factors can be considered. Unjust restrictions on free expression should be avoided. Even in cases of a reasonable restriction, the government must explicitly substantiate the inadequacy of less restrictive options. The test of necessity requires that Courts should assess whether the imposed restriction is the least invasive means of reconciling conflicting rights. The notion of proportionality is stated by Lord Diplock's remark:

"One should not employ a steam hammer to crack a nut when a nutcracker suffices."[17] The proportionality test establishes a clear relation between means and ends.

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[15] Saxena Shivansh Protester's Freedom of Peaceful Assembly, 2021, available at: https://www.livelaw.in/columns/criminal-procedure-code-1973-international-covenant-on-civil-and-political-rights-human-rights-174087 [last accessed: 1.04.2026].

[16] *Chintaman Rao v. State of Madhya Pradesh,* Judgment of 08.11.1950 (1950) 1 SCR 759 para 9.

[17] *R v. Goldsmith,* Judgment of 1983 [1983] 1 W.L.R. 151, 155.

Like Indian jurisprudence, international law mandates that domestic laws imposing restrictions must be disclosed, generally disseminated, available to citizens, and must not be imprecise or overly broad, enabling individuals to accurately anticipate what constitutes a violation of such restrictions. The "Supreme Court of India in its ruling in Anuradha Bhasin v. Union of India,"[18] emphasises that an order issued under "Section 144 of the Cr.P.C.(Section 163 of BNSS, 2023)" must articulate the material facts to facilitate judicial review. The authority must be exercised in a reasonable and judicious manner, based on material facts that demonstrate thoughtful consideration. This will facilitate judicial review of the authority exercised.

7. Test of Proportionality and Burden of Proof

The test of proportionality ensures that authority is not abused by the State. The discretion which is vested is exercised in just, fair and reasonable manner.

"In Modern Dental College & Research Centre,"[19] consists of four proportional sub-parts that need to be fulfilled and recorded. They're:

- Any act limiting a right must have a genuine purpose.
- It must be a genuine means of attaining this drive, or it must be appropriate or have a logical relationship to it.
- There must be no other method that is equally effective but less restrictive.
- The measure must balance the influence without excessively distressing the right holder.

In "K.S. Puttaswamy v. Union of India,[20] Sanjay Kishan Kaul, J.," agreed that a four-dimensional probe should be used as follows:

- The planned act must be legally allowed;
- it must be essential to attain a genuine goal in a democratic society;

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[18] *Anuradha Bhasin v. Union of India*, Judgment of 10.01.2020, 2020(3) SCC 637, para 150–153.

[19] *Modern Dental College & Research Centre v. State of M.P.,* (2016) 7 SCC 353.

[20] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 p. 632, para 638.

- the degree of intrusion must be proportionate with its necessity; and
- there must be procedural protections against misuse.

Whenever the State is exercising its control on managing protest it is duty bound to follow these proportionality principles. In India through judicial review, the Courts have ensured that discretion vested in the authorities is not abused and remain withing the constitutional limits.

Indian constitutional jurisprudence on the right to assemble peacefully under Article 19 (1)(b) continues to apply a relatively strict and state-centric understanding of proportionality. In many recent cases, Courts have shown a tendency to rely on what may be described as a "risk assessment test" where restrictions are justified on the basis of anticipated disorder. Under this approach, executive authorities are given broad discretion to act preventively, even when there is limited evidence that a protest has actually turned violent or caused serious harm. As a result, protests are often regulated not because they have substantially threatened public order, but because authorities have anticipation of possible disruption in near future. This preventive model is contrary to Article 21 of the ICCPR standards. Article 21 of the ICCPR follows "substantial interference test." This test requires the State to demonstrate that a protest poses a real and significant threat to public order. Mere apprehension of disruption in public order is not sufficient to restrict peaceful assemblies. The observation made by Chief Justice of India in Prakashjhot Samajik Sanstha v. Union of India and Ors.,reflect the continuing judicial approach in India toward a "risk assessment test" rather than a "substantial interference test" while examining the constitutional limits of protest. The Court reaffirmed that citizens possess a democratic right to peaceful and lawful protest, yet simultaneously added a caution. The right to protest does not protesters to come on streets and create problems for the common man. This reasoning is more inclined towards preventive model of "risk assessment test" rather than "substantial interference test."

The burden is on the State to demonstrate that it has not surpassed its constitutional limits in regulating the right to peaceful assembly. India takes an alike stance, rendering to "Article 21 of the ICCPR."

8. Proportionality of Force to Disperse Assembly

From the colonial age to the post-independence era, police officers have mainly used batons or wooden sticks to penalize and discipline protesters without violence.

The Supreme Court has contended with the intricate concerns concerning police actions toward demonstrators. Protests against police officers, who have the authority to stop such protests, only make the condition worse. This substance was pondered by the Supreme Court of India in "Beenu Rawat v. Union of India,"[21] when it was found that protestor's right to life was in danger due to police demonstrations, who may abuse their authority and possess guns. In "Anita Thakur & Ors. v. Govt. of J&K & Ors.,"[22] The Supreme Court of India stated that while rallies can turn fierce against police officers, needful action, it also concluded that the use of police force during a peaceful gathering is not defensible. In instances where a crowd or assembly turns violent, the use of appropriate police force may be warranted and justified. However, the issue escalates when law enforcement resorts to such actions, engaging in excesses and employing excessive force, so exhibiting barbarism, or failing to cease their actions even when the situation is under control and persisting in their aggression. This infringes human rights and dignity. Because of this, human rights organizations claim that police frequently misuse their authority to employ force, discouraging the rule of law. The Court acknowledged that demonstrators may be viciously attacked by police. In the "Ramlila Maidan Incident, in re,"[23] The Court acknowledged that police officers' excessive use of force exceeded their authority under Delhi's Punjab Police Rules. Lathi-charge, violence against demonstrators who were sleeping, and the deployment of tear gas were examples of this excessive use of force. As a result, the "Supreme Court of India has based" its assessment of police force on how

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[21] *Beenu Rawat v. Union of India,* Judgment of 19.11.2013, (2013) 16 SCC 430, para 12.

[22] *Anita Thakur & Ors. v. Govt. of J&K & Ors.,* Judgment of 12.08. 2016 (2016) 15 SCC 525, para 17.

[23] *Ramlila Maidan Incident V. Home Secretary and Ors,* Judgment of 23.02.2012 (2012) 5 SCC 1, para 141–166.

it views protestor's behavior, which shows a concerning dependence on its own perceptions of the demonstrator's motivations and actions.

9. Detaining Members of Assemblies

Under international law, discriminating mass arrests or detentions before, during, or after public assemblies as is usually seen in India are arbitrary and therefore unlawful.[24] In May 2019, Delhi Police detained women activists and lawyers who were protesting at the "Indian Supreme Court" against the release of the then Chief Justice of India, who was accused of sexual harassment.[25]

The case "Gitanjali J. Angmo v. Union of India"[26] originated from the detention of Sonam Wangchuk, highlighting issues about the application of preventative detention against assembly members. The Supreme Court dismissed the petition as the revocation of the detention order by the government, without assessing the validity of the action. This case exhibits how imprisonment can indirectly limit the freedom to "peacefully assemble under Article 19(1)(b)" by stopping mobilisation and involvement. Lack of a definitive verdict indicates a trend in which executive measures avoid judicial examination due to later annulment. Such activities jeopardise the exercise of dissent and protest rights within a democratic society. From a constitutional standpoint, the detention of assembly members must adhere to stringent criteria of need and proportionality; otherwise, it compromises both domestic protections and India's commitments under ICCPR.

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[24] General Comment No.37, Human Rights Committee, September 17, 2020, CCPR/C/GC/37, p. 12, para 71, available at: https://digitallibrary.un.org/record/3884725?v=pdf [last accessed: 31.03.2026].

[25] "Women activists detained while protesting against CJI Ranjan Gogoi", The New Indian Express, available at: https://www.newindianexpress.com/cities/delhi/2019/may/10/women-activists-detained-while-protesting-against-cji ranjan-gogoi-1975179.html [last accessed: 31.03.2026].

[26] *Gitanjali J. Angmo v. Union of India, Judgment of 23.03.2026* Writ Petition(s)(Criminal) No(s). 399/2025.

10. Punitive Sanctions Against Members of Assemblies

The High Courts in India have examined numerous issues regarding the criminalisation of protests, focusing on the presence of overt violent actions as opposed to mere acts of protest or peaceful assembly.

On the grounds that no violent acts can be committed and that peaceful assembly is guarded by "Articles 19(1)(a) and 19(1)(b) of the Constitution," bail or cancellation applications are often granted. FIRs against nonviolent protesters have mostly been rejected by the Madras High Court. This is an obvious consequence of the High Court's ruling. In "Jeevanandham & Ors v. State," The Court said that it is common for such proceedings to be filed even when the essential legal ingredients are lacking and recognized the "misappropriation of Sec. 188, Indian Penal Code (IPC)." The Court affirmed that to prove an offense under Section 188 of the (IPC), the following four elements must be established. The first element requires proof of a Court order, and the second requires proof of the order's service. The third element requires proof that the accused person disobeyed the order. According to Section 188 of the IPC, the last element requires proof of harm, which punishes "disobedience to orders of public servants, including orders under Section 144 of the CrPC, as per the Section 163 of BNSS, 2023." To prevent the misuse of Section 188 of the IPC, the Court framed rules that require a documented complaint from a public officer and that According to the law, if someone violates this specific clause, no FIR should be filed. Section 30(2) of the Police Act requires that the order follow proper rules that prevent it from being used as a means of suppressing democratic dissent.

The Delhi High Court reaffirmed that peaceful protest and nonviolent dissent are integral to a democratic academic environment. It held that expelling a student for participating in a peaceful sit-in protest was highly disproportionate. The Court emphasised that universities should encourage critical thought rather than suppressing peaceful expression protected under Articles 19(1)(a) and 19(1)(b) of the Constitution.[27]

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[27] *Nadia v. Dr. B.R. Ambedkar University Delhi*, Judgment of 13.03.2026, W.P. (C) 12636/2025, para 13.

IV. Comparative Analysis of Right to Assembly in India From the Lense of Article 21 of ICCPR

After examining the statutory framework along with the precedents, it is necessary to evaluate them on the touchstone of Article 21 of the ICCPR. This will help us to understand the shortcomings in the existing laws in India. The analysis also examines whether India's commitment is only towards recognising right to peaceful assembly (formal compliance) or in practice also the authorities at ground level facilitates right to peaceful assembly for the protesters (structural compliance). Formal compliance means where there are statutory recognition and constitutional protection of right to peaceful protest. Whereas, structural compliance means authorities on the ground also implement right to peaceful assembly in its true spirit and form. Here is structured table to analyse and examine the effectiveness of laws relating to the right to peaceful assembly in India in consonance with Article 21 of the ICCPR. This table is prepared on the basis of chapter I, II, III of this paper.

Criteria (ICCPR)	**Structural Compliance (Yes/No) (India)**	**Formal Compliance (Yes/No) (India)**
Right to Peaceful Assembly	Yes	No
Legitimacy, Necessity and Proportionality	No	Yes
Prior Restriction on Assemblies and Use of Public Spaces	No	Yes
Right to Assembly for Citizens and Non-Citizens	No	Yes
Duty of State to Facilitate and Protect Freedom of Assembly	No	Yes
Restrictions on the Right to Peaceful Assembly	No	Yes
Test of Proportionality and Burden of Proof	Yes	No

Criteria (ICCPR)	**Structural Compliance (Yes/No) (India)**	**Formal Compliance (Yes/No) (India)**
Proportionality of Force to Disperse Assembly	Yes	No
Detaining members of Assemblies	No	Yes
Punitive Sanctions against Members of Assemblies	No	Yes

The areas in which authorities in India (law enforcement for example police) structurally complies with Article 21 of the ICCPR areas as follows:

Authorities in India structurally complies with reasonable restrictions mentioned in Article 21 of the ICCPR. Restrictions in India on right to peaceful assembly are sovereignty and integrity or public order under Article 19 (3) which aligns with ICCPR.

Authorities in India structurally complies with test of proportionality and burden of proof. The Courts in India had laid down standards to determine the test of proportionality in cases of dispersing the protest by the authorities. These test act as safeguards against the power of authorities and ensures that power of authorities doesn't become arbitrary. The burden of proof also is vested on authorities to ensure that excessive force is not used.

Authorities in India structurally complies with proportionality of force used in dispersing protest. The same standards laid down for proportionality are also used here. The authorities have to choose least restrictive measure in dispersing the assembly.

The areas in which authorities in India formally comply with ICCPR are as follow:

Authorities in India formally complies with legitimacy, necessity and proportionality. As we have seen in case of Section 144 of Cr.P.C. or 163 of BNSS, most of the time authorities have abused their discretionary powers under these provisions. But because of the intervention of Courts in India, we can say that there is formal compliance with ICCPR.

Prior restrictions on assemblies and use of public spaces have also been formally complied by authorities in India. This formal compliance

is also because of intervention by Courts. Where authorities have put blanket ban on right to protest, Courts have declared such orders as disproportionate and excessive.

Right to assembly for citizens and non-citizens have also been formally complied. As Constitution of India only recognises right to assemble peacefully for citizens.

Duty of State to facilitate and protect freedom of assembly have also been formally complied. Most of the cases, the authorities have abused their discretion but due to intervention by Courts the rights of protesters were protected.

Restriction on right to peaceful assembly have been formally complied. Where the restrictions were excessive the Courts have struck it down.

Detaining members of assembly have also formally complied. Where the detention was illegal, Courts have intervened and protected the rights of protesters.

Punitive sanctions against member of assembly have also been formally complied. Where the disproportionate sanctions were put by the authorities on members of assemblies, the Courts have struck down those sanctions and protected the rights of protesters.

The analysis demonstrates that judicial review often compensates for legislative and executive deficiencies by safeguarding assembly rights and ensuring India's formal compliance with ICCPR standards. However, executive discretion under the BNSS largely follows a preventive "risk assessment" approach rather than the ICCPR's "substantial interference" approach. As a result, India's present framework appears more order-centric and regulatory in nature than right-protective or facilitative towards peaceful assemblies.

V. Reform Recommendations

To comply with Article 21 of the ICCPR, India should facilitate right to peaceful protest rather than regulating it. The primary duty of the authorities should be to enable peaceful assemblies and impose restrictions only when there is real, immediate, and demonstrable threat to public order. Following are key recommendations which India can adopt:

The use of discretion under Section 163 BNSS should be fairer, transparent and reasonable. Blanket prohibition on peaceful assemblies should be avoided. Denial of permission of peaceful assemblies by the authorities should be supported by reasons in writing and such denial should have a provision of appeal to the Courts.

Denial of permission for peaceful protest should be done only in exceptional circumstances and it should not be a routine administrative process.

Internet shutdowns during protest should be used only as a last resort and be subject to judicial review.

Use of force to disperse peaceful assemblies by police must always be least restrictive method.

Punitive measures against peaceful protesters must be discouraged unless there is clear evidence of use of violence and force.

Conclusions

Right to assemble peacefully is one of the most important rights for the survival of democracy. Efforts should be made by the authorities in the State to facilitate such right rather than arbitrary excluding it. Public order, security of the state and sovereignty are paramount for any State. In case of clash between public order, security and sovereignty and right to protest, authorities in the State should maintain a balance. The use of force by authorities should be just, fair and reasonable. The use of force should be proportionate, which means it should be the least restrictive measure. The action by authorities against the assembly must be vested on the principles of legitimacy, proportionality and necessity.

If the safeguards built in the constitution and other statutory laws are followed in its spirit, we will see no violation of right to peaceful assembly. The judiciary in India has played a vital role in protecting peaceful assemblies against arbitrary State action and disproportionate use of force. Through judicial review, the Courts have often acted as a constitutional balance against executive overreach while reinforcing right to peaceful assembly.