
Right to Protest Vs. Public Order: A Constitutional Dilemma in India

Prateek Kumar^{*}

Abstract: *India's most enduring constitutional tension is between the right to protest and the State's duty to preserve public order. Drawing on Article 19's interlinked freedoms, which are speech, peaceful assembly, and association, it argues that protest is a democratic imperative even though it is not expressly named in the Constitution. Yet Article 19(2) permits 'reasonable restrictions', with public order the ground most often invoked. Through leading Supreme Court decisions such as Ram Manohar Lohia, Ramlila Maidan, Shaheen Bagh, and other cases, the study traces how Indian courts differentiate 'law and order' from 'public order', apply proximity and clear-and-present-danger tests, and demand proportionality in State action. Contemporary movements such as the protest against the Citizenship (Amendment) Act, 2019, or the farmers' protest, etc., reveal both the power of sustained peaceful dissent and the frequent overuse of Section 163 Bhartiya Nagrik Suraksha Sanhita, 2023 (formerly CrPC 144), internet shutdowns, and sedition-style charges. This paper examines comparative insights from European, American, and British jurisprudence to highlight global best practices. At the same time, innovative protest forms like symbolic art, economic boycotts, digital mobilizations, etc., show how citizens adapt to legal constraints. The paper contends that India needs clearer statutory safeguards: designated protest zones, a transparent online permit portal, and ultimately a comprehensive 'Right to Protest Act' that imposes positive duties on authorities, codifies police engagement rules, and embeds independent oversight. The analysis concludes that maintaining both dissent and public order is not about choosing one over the other, but about showing the maturity of a democracy. Robust facilitation of peaceful protest, paired with evidence-based restrictions, can simultaneously protect civil liberties and social stability, ensuring that the streets remain a legitimate forum for accountability while everyday life continues unhindered.*

Keywords: *Right to protest, Public Order, Article 19, Law and Order, Democracy.*

I. INTRODUCTION

The tension between the fundamental right to protest and the state's obligation to maintain public order represents one of the most enduring constitutional dilemmas in democratic societies. This dichotomy becomes particularly pronounced in India, where the Constitution simultaneously guarantees citizens the freedom of speech, expression, and peaceful assembly while empowering the state to impose reasonable restrictions to preserve public order. The challenge lies not merely in balancing these competing interests but in ensuring that the essence of democratic governance—the ability of citizens to dissent and hold their government accountable—remains intact while preventing chaos and maintaining social stability. The right to protest, though not explicitly enumerated as a distinct fundamental right, emerges as a composite right derived from various provisions of Article 19 of the Constitution of India.¹ This right embodies the democratic principle that governance must remain responsive to the will of the people, providing citizens with peaceful means to express dissatisfaction with governmental policies and actions. However, the state's responsibility to maintain public order, as enshrined in Article 19(2), creates an inherent tension that requires careful constitutional navigation.

^{*} 3rd Year BA.LLB. Student at School of Law and Governance, Central University of South Bihar.

¹ SEERVAI H.V., CONSTITUTIONAL LAW OF INDIA, 2, (Universal Law Publishing, New Delhi, 4th ed., 2020).

This constitutional dilemma has gained renewed significance in contemporary India, where protests have become increasingly frequent and sometimes contentious. From the anti-CAA demonstrations (i.e., protest against the Citizenship (Amendment) Act, 2019) to farmers' protest against the three farm laws, the delicate balance between protecting democratic rights and maintaining social harmony has been repeatedly tested. The challenge for constitutional democracy lies in ensuring that restrictions on protest rights are not arbitrary or excessive while preventing the misuse of protest rights to disrupt social order or infringe upon the rights of others.

II. CONSTITUTIONAL FRAMEWORK OF RIGHT TO PROTEST IN INDIA

A. Article 19 and the Foundation of Protest Rights

The Constitution of India, while not explicitly mentioning a 'right to protest', provides a robust framework for this right through Article 19, which guarantees several fundamental freedoms. Article 19(1)(a) ensures the right to freedom of speech and expression, which forms the ideological foundation for protest activities by allowing citizens to publicly express their opinions on governmental actions and policies.² This freedom encompasses not only the right to speak but also the right to remain silent, to criticize government policies, and to express dissenting views through various forms of communication. Article 19(1)(b) guarantees the right to assemble peaceably and without arms, which is crucial for collective protest activities.³ This provision enables citizens to gather in public spaces, organize demonstrations, and participate in collective expressions of dissent. The phrase 'peaceably and without arms' establishes the constitutional expectation that assemblies must remain non-violent and should not involve the carrying of weapons, thereby distinguishing legitimate protest from potential threats to public order. Article 19(1)(c) provides the right to form associations or unions, which supports the organizational aspect of protest movements.⁴ This right allows citizens to create formal and informal groups, organizations, and movements that can sustain long-term advocacy and protest activities. Together, these three sub-articles of Article 19 create a comprehensive framework that supports various forms of protest, from individual expressions of dissent to large-scale organized movements.

B. The Doctrine of Reasonable Restrictions

The constitutional framework for protest rights is not absolute but is subject to the doctrine of reasonable restrictions outlined in Article 19(2). These restrictions can be imposed in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation, and incitement to an offence. Among these grounds, "public order" represents the most frequently invoked justification for restricting protest activities.⁵ The Supreme Court has consistently held that the test of reasonableness is not fixed but varies according to the nature of the right infringed and the

² Express Newspapers (P) Ltd. v. Union of India, AIR 1958 SC 578, at 69.

³ CONSTITUTION OF INDIA 1950, § art. 19(1)(b).

⁴ All India Bank Employees' Association v. National Industrial Tribunal, (1962) 3 SCR 269.

⁵ Disha Mohanty, Article 19(2) and 'Public Order': Revisiting Reasonable Restrictions to Guarantee Freedoms, Vidhi Centre for Legal Policy (March 17, 2023), <https://vidhilegalpolicy.in/blog/article-192-and-public-order/>.

underlying circumstances.⁶ The restrictions must be narrowly tailored to serve legitimate state interests and must not be broader than necessary to achieve those interests. This principle ensures that the state cannot use the pretext of maintaining public order to suppress legitimate democratic dissent.⁷ The constitutional balance requires that any restriction on protest rights must satisfy several criteria: it must be prescribed by law, pursue a legitimate aim, be necessary in a democratic society, and be proportionate to the legitimate aim pursued.⁸ These criteria, while drawing from international human rights law, have been incorporated into Indian constitutional jurisprudence to ensure that restrictions on fundamental rights are not arbitrary or excessive.⁹

III. PUBLIC ORDER: DEFINITION AND CONSTITUTIONAL LIMITATIONS

A. Distinguishing Public Order from Law and Order

One of the most significant contributions of Indian constitutional jurisprudence has been the distinction between “law and order” and “public order,” a differentiation that has profound implications for regulating protest activities. The Supreme Court, in landmark cases such as *Ram Manohar Lohia v. State of Bihar & Ors.*, established that public order refers to the absence of disorder involving breaches of public peace and public tranquility, while law and order encompasses a broader spectrum of public safety concerns.¹⁰ The Court conceptualized this distinction using the metaphor of concentric circles, with public order forming a smaller circle within the larger circle of law and order.¹¹ Not every disturbance of law and order constitutes a threat to public order; there must be a degree of disturbance that affects the community at large and disturbs the current of life of the community.¹² This distinction is crucial because it prevents the state from using minor disturbances as justification for restricting fundamental rights of protest.¹³ In *Madhu Limaye v. Ved Murti*, the Supreme Court further clarified that for an act to qualify as a disturbance to public order, it must have an impact on the broader community and evoke feelings of fear, panic, or insecurity among the general public.¹⁴ However, this does not mean that the Court or law ignores individual emergencies like medical emergencies,¹⁵ or any other kind of emergencies during protests. This standard ensures that only genuinely disruptive activities that threaten community peace can justify restrictions on protest rights, preventing the misuse of public order provisions to suppress legitimate dissent.

B. The Proximity Test and Clear and Present Danger

The Indian judiciary has developed sophisticated tests to determine when protest activities cross the threshold from legitimate expression to threats to public order. The proximity test,

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 28.

⁷ Human Rights Watch, *Stifling Dissent: The Criminalization of Peaceful Expression in India* 24–25, 59 (2016).

⁸ Nyaaya, ‘Everything You Need to Know About Your Right to Protest’ (February 26, 2022) <https://nyaaya.org/nyaaya-weekly/everything-you-need-to-know-about-your-right-to-protest/>

⁹ Article 19, *The Right to Protest: Principles on the Protection of Human Rights in Protests* (ARTICLE 19 2016) https://www.article19.org/data/files/medialibrary/38581/Right_to_protest_principles_final.pdf

¹⁰ *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740, 740–741, 745, 751.

¹¹ *Ibid.*, 711.

¹² *Ameena Begum v. The State of Telangana* 2023 INSC 788, 32–33, 38.

¹³ *Ibid.*

¹⁴ *Madhu Limaye v. Ved Murti*, AIR 1971 SC 2608.

¹⁵ *Paschim Banga Khet Mazoor Samity v. State of West Bengal*, (1996) 4 SCC 37; *Parmanand Katara v. Union of India*, AIR 1989 SC 2039 (right to emergency medical care as part of Article 21).



established in the *Ram Manohar Lohia case*, requires a very proximate link between the speech or protest activity and the alleged public disorder.¹⁶ This test prevents the state from restricting protest rights based on speculative or remote possibilities of disorder. Building upon this foundation, the Supreme Court in *Shreya Singhal v. Union of India (2015)* emphasized that mere annoyance or inconvenience does not constitute a disturbance of public order.¹⁷ There must be a clear and present danger or tendency to create public disorder for restrictions to be justified. This standard draws inspiration from American constitutional jurisprudence, particularly the test established in *Brandenburg v. Ohio (1969)*,¹⁸ while adapting to Indian constitutional requirements, ensuring that restrictions on protest rights are based on imminent and substantial threats rather than hypothetical concerns. The clear and present danger test requires courts to examine the nature of the protest, the context in which it occurs, the likelihood of actual disorder, and the severity of potential consequences. This multi-factor analysis ensures that restrictions on protest rights are carefully scrutinized and that the fundamental principle of proportionality is maintained in balancing democratic rights with public order concerns.

IV. THE INHERENT TENSION: BALANCING RIGHTS AND ORDER

A. Democratic Imperative vs. Social Stability

The fundamental tension between the right to protest and public order reflects a deeper philosophical conflict between democratic governance and social stability. Democracy inherently requires spaces for dissent, criticism, and opposition to governmental policies, as these mechanisms ensure governmental accountability and responsiveness to citizen concerns. However, unlimited protest activities can potentially disrupt social harmony, interfere with the rights of others, and undermine the effective functioning of governmental institutions. This tension becomes particularly acute in diverse societies like India, where protests often intersect with complex social, religious, and economic dynamics. The state must navigate between protecting minority voices and preventing majoritarian dominance while ensuring that protest activities do not escalate into violence or communal discord. The challenge is compounded by the fact that what constitutes “reasonable” restrictions may vary significantly based on cultural, historical, and contextual factors. The constitutional framework recognizes this inherent tension by providing for both the protection of protest rights and the authority to impose reasonable restrictions. However, the practical application of this balance requires careful judicial oversight and administrative discretion that respects democratic principles while maintaining social order. The success of this balance depends on the maturity of democratic institutions and the commitment of state actors to constitutional values.

B. Individual Liberty vs. Collective Rights

Another dimension of this constitutional dilemma involves balancing individual liberty with collective rights and social welfare. While individuals have the right to express their views through protests, such activities must not infringe upon the rights of others to enjoy their lives without undue interference. The Supreme Court in *Mazdoor Kisan Shakti Sangathan v. Union of India* recognized this conflict, emphasizing that the right to protest must be balanced with every

¹⁶ *Supra note 7.*

¹⁷ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

¹⁸ *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

person's right to life guaranteed under Article 21.¹⁹ This balancing act becomes particularly challenging in densely populated urban areas where protest activities can significantly impact traffic, commerce, and daily life. The Court's decision in the Shaheen Bagh case exemplified this challenge, as it had to balance the protesters' right to express dissent against the Citizenship (Amendment) Act, 2019 (hereinafter 'CAA') with the rights of commuters to access public roads and pathways.²⁰ The Court's ruling that protests should be confined to designated areas represents an attempt to reconcile these competing rights. The principle of proportionality becomes crucial in resolving such conflicts, requiring that restrictions on protest rights be commensurate with the potential harm to other citizens' rights. This approach ensures that neither protest rights nor other fundamental rights are given absolute priority, but rather that a reasonable accommodation is reached that respects the legitimate interests of all parties involved.

V. JUDICIAL ELUCIDATION

A. The Ramlila Maidan Incident Case

The Supreme Court's decision in *Re: Ramlila Maidan Incident v. Home Secretary, Union of India*, established important precedents for regulating protest activities while protecting democratic rights.²¹ The Court held that while citizens have the fundamental right to peaceful protest, such activities require police permission, which serves as a reasonable restriction to ensure social order. This ruling recognized the legitimate role of state authorities in regulating the time, place, and manner of protests while preventing arbitrary suppression of protest rights. The Court emphasized that police authorities must be objective and consider citizens' rights to freedom of speech and expression when granting or denying permission for protest activities.²² The refusal or withdrawal of permission should only occur for valid and exceptional reasons, and authorities should not use their power to suppress legitimate democratic dissent. This standard ensures that administrative discretion in regulating protests is exercised within constitutional bounds. The principle established in *Re: Ramlila Maidan Incident* case affirmed that protesters cannot claim an absolute right to protest at any location without regard to the rights of others or public safety concerns. The Court's approach balanced the democratic importance of protest rights with practical considerations of urban management and public safety, creating a framework that protects both individual liberty and collective welfare.

B. The Shaheen Bagh Case

The Supreme Court's judgment in the *Amit Sahni v. Commissioner of Police*, (Shaheen Bagh case) represents a significant development in the jurisprudence of protest rights, particularly regarding the temporal and spatial dimensions of protest activities.²³ The Court ruled that while citizens have the right to peaceful protest, demonstrations cannot permanently occupy public ways and public spaces. This decision addressed the practical challenges posed by indefinite occupation of public spaces while acknowledging the legitimacy of protest rights. The Court's emphasis on designated areas for protests reflects an attempt to create structured spaces for

¹⁹ *Mazdoor Kisan Shakti Sangathan v. Union of India*, AIR 2018 SC 3476.

²⁰ *Amit Sahni v. Commissioner of Police*, AIR 2020 SC 4704.

²¹ *Re: Ramlila Maidan Incident v. Home Secretary, Union of India*, (2012) 5 SCC 1.

²² *Ibid.*

²³ *Supra* note 14.



democratic dissent while minimizing disruption to public life. This approach recognizes that effective protest often requires visibility and public attention, but such activities must be balanced against the rights of other citizens to access public facilities and services. The judgment established that the right to protest is not absolute and must be exercised within reasonable temporal and spatial constraints. However, the *Shaheen Bagh* decision has also been criticized for potentially restricting the effectiveness of protest activities by confining them to designated areas that may lack the visibility and impact necessary for meaningful democratic expression. Critics argue that such restrictions may favor governmental interests over democratic accountability, particularly when designated areas are located away from centers of power or public attention.

C. Constitutional Interpretation in Emergency Context

The Indian experience during the Emergency period (1975-1977) provides crucial insights into the fragility of protest rights and the importance of constitutional safeguards. During this period, fundamental rights, including the right to protest, were suspended, leading to widespread suppression of democratic dissent and political opposition.²⁴ This experience highlighted the vulnerability of democratic rights during periods of political crisis and the need for robust constitutional protections. The post-Emergency constitutional discourse has emphasized the importance of maintaining democratic spaces even during periods of national crisis. The Supreme Court's role as the guardian of constitutional rights has been reinforced through various judgments that have strengthened protection for protest rights while establishing clear boundaries for state interference.²⁵ These developments have contributed to a more mature understanding of the balance between security concerns and democratic rights. The Emergency experience also demonstrated the importance of civil society organizations and independent judiciary in protecting democratic rights. The National Human Rights Commission, established in the post-Emergency period, has played a crucial role in monitoring and addressing violations of protest rights, contributing to a more robust framework for protecting democratic dissent.²⁶

VI. WHEN PROTEST BECOMES NECESSARY: A DEMOCRATIC IMPERATIVE

A. The Moral and Political Justification for Protest

The question of when protest becomes necessary touches upon fundamental principles of democratic theory and political legitimacy. Protest serves as a mechanism for political participation when normal democratic channels prove inadequate or unresponsive to citizen concerns. In representative democracies, electoral processes provide periodic opportunities for citizens to express their preferences, but the complex nature of governance often requires more immediate and specific forms of political engagement. Protest becomes particularly necessary when governmental actions threaten fundamental rights, violate constitutional principles, or fail to address urgent social problems despite repeated attempts through formal channels. The moral justification for protest rests on the principle that governmental legitimacy depends on popular consent, and citizens retain the right to withdraw or condition that consent when governments act

²⁴ Additional District Magistrate, Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207.

²⁵ *Ibid.*

²⁶ National Human Rights Commission, Annual Report 2021–22, 59 (2022).

contrary to the public interest.²⁷ This principle is deeply embedded in democratic theory and finds expression in various constitutional traditions worldwide. The practical necessity of protest also emerges from the limitations of formal democratic processes in addressing complex social and economic issues. Electoral cycles may not align with the urgency of particular problems, and elected representatives may be influenced by interests that diverge from broader public welfare. In such circumstances, protest provides an alternative mechanism for citizen voice and political accountability that complements rather than replaces formal democratic institutions.

B. Graduated Response and Exhaustion of Alternatives

The question of whether protest should be a last resort or a regular feature of democratic participation reflects different philosophical approaches to democratic governance. Some argue that protest should only be employed after exhausting all formal channels of political participation, including petitions, lobbying, electoral participation, and judicial remedies. This perspective emphasizes the importance of institutional stability and the rule of law in democratic societies. However, an alternative view suggests that protest should be understood as a normal and healthy component of democratic discourse rather than an exceptional response to governmental failure.²⁸ This perspective recognizes that formal democratic institutions may be systematically biased toward certain interests or may be structurally incapable of addressing particular types of problems.²⁹ From this viewpoint, protest serves as a continuous mechanism for democratic accountability rather than merely a crisis response. The Indian constitutional framework supports both perspectives by protecting the right to protest while encouraging the use of formal democratic institutions. The Supreme Court has recognized that protest rights are essential for maintaining democratic accountability while also emphasizing the importance of peaceful and lawful means of political expression.³⁰ This balanced approach allows for both institutional stability and democratic dynamism, ensuring that protest rights can be exercised without undermining constitutional governance.

C. Retaliation and the Costs of Dissent

Citizens who choose to exercise their right to protest must often confront the possibility of various forms of retaliation, ranging from legal prosecution to social ostracism and economic consequences. The Indian experience includes numerous instances where protesters have faced police action, criminal charges, and social persecution for their participation in protest activities. Understanding these potential costs is crucial for citizens making informed decisions about political participation. Legal retaliation can include criminal charges under various provisions of Indian law, including sedition laws, unlawful assembly provisions, and anti-terrorism legislation.³¹ The misuse of such laws to suppress legitimate protest has been a recurring concern in Indian democracy, with critics arguing that vague and broadly worded

²⁷ RAWLS JOHN, *A THEORY OF JUSTICE* 319-342 (Harvard University Press, Cambridge, 1971).

²⁸ Kathryn Dunn Tenpas (Host) & Vanessa Williamson (Guest), *Can Democracy Exist Without Protest?*, Democracy in Question (Brookings Podcast Network, June 5, 2025), <https://www.brookings.edu/wp-content/uploads/2025/06/Ep-08-Williamson-20250605.pdf>

²⁹ Paradigm Hq, Press Release: *The Right to Peaceful Protest: A Pillar of Democratic Governance as Constitutionally Guaranteed* (July 31, 2024), <https://paradigmhq.org/press-release-the-right-to-peaceful-protest-a-pillar-of-democratic-governance-as-constitutionally-guaranteed/>

³⁰ *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301.

³¹ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

statutes are often employed to intimidate protesters and discourage political dissent. The Delhi High Court's observation that the state sometimes blurs the line between constitutionally guaranteed protest rights and terrorist activity reflects these concerns.³² Social and economic retaliation can include employment discrimination, social boycotts, and various forms of harassment that can significantly impact protesters' lives and livelihoods. These informal mechanisms of suppression can be particularly effective in discouraging protest participation, especially among economically vulnerable populations. The challenge for democratic societies lies in creating legal and social protections that enable citizens to exercise their protest rights without fear of disproportionate consequences.

VII. FORMS OF PROTEST: PEACEFUL VS. VIOLENT DISCOURSE

A. The Constitutional Preference for Peaceful Protest

The Indian Constitution's emphasis on "peaceful" assembly in Article 19(1)(b)³³ reflects a clear preference for non-violent forms of protest. This constitutional mandate is based on the principle that democratic societies should provide adequate channels for the peaceful expression of dissent, making violent protest unnecessary and counterproductive. The requirement of peaceful assembly also serves to distinguish legitimate protest from criminal activity, providing clear boundaries for both state regulation and citizen action. Peaceful protest encompasses a wide range of activities, including demonstrations, rallies, sit-ins, strikes, marches, and various forms of symbolic expression. The diversity of peaceful protest methods ensures that citizens can choose forms of expression that are appropriate to their particular circumstances and objectives. This flexibility is crucial for maintaining the vitality of democratic discourse and ensuring that different groups and communities can participate effectively in political processes. The constitutional preference for peaceful protest is also based on practical considerations of effectiveness and legitimacy. Peaceful protests are more likely to gain public sympathy and support, can sustain longer-term participation, and are less likely to provoke counterproductive state repression. Moreover, peaceful protest methods are more consistent with democratic values of deliberation, persuasion, and rational discourse that are essential for legitimate political change.

B. The Problem of Ignored Peaceful Protest

One of the most challenging aspects of the peaceful protest paradigm is the question of what citizens should do when peaceful protest activities are ignored or dismissed by governmental authorities. This dilemma becomes particularly acute when urgent problems require immediate attention but peaceful protests fail to generate adequate governmental response. The risk is that ignored peaceful protests may lead some participants to conclude that more disruptive or violent methods are necessary to achieve their objectives. Several strategies can be employed to enhance the effectiveness of peaceful protests without resorting to violence. These include expanding the scope and scale of protest activities, building broader coalitions and alliances, employing creative and innovative protest methods that capture public attention, and utilizing media and communication technologies to amplify protest messages. The goal is to create sufficient political pressure to compel governmental response while maintaining the moral authority and

³² *Natasha Narwal v. Union of India*, 2021 SCC OnLine Del 3262, 36.

³³ The Constitution of India, 1950, § art.19 (1)

legal legitimacy of peaceful methods. International experience suggests that sustained and well-organized peaceful protest movements can achieve significant political change even when initial protests are ignored.³⁴ The key factors for success include strategic planning, broad-based participation, clear and achievable objectives, effective leadership, and the ability to maintain non-violent discipline over extended periods. These elements require significant organizational capacity and popular commitment, but they offer the most promising path for democratic change.

C. Creative and Innovative Protest Methods

The evolution of protest methods reflects the creativity and adaptability of democratic movements in responding to changing political and technological circumstances. Traditional forms of protest such as marches and rallies remain important, but contemporary movements have developed numerous innovative approaches that can be more effective in capturing public attention and achieving specific objectives. These creative methods often reflect the particular context and culture of specific protest movements. Consider, for instance, a hypothetical scenario involving workers in a shoe manufacturing company who wish to protest against their working conditions or management policies. Rather than engaging in a traditional strike that would halt production entirely, these workers could employ a creative form of protest by doubling their production, but with a strategic twist. Instead of producing complete pairs of shoes, which would benefit the company, the workers could choose to manufacture only shoes for the left foot, creating a surplus of single shoes that are commercially useless. This approach would demonstrate the workers' capabilities while simultaneously creating economic pressure on management to address their concerns. Such creative resistance methods can be more effective than traditional strikes because they maintain worker income while still imposing costs on the employer and drawing attention to the workers' cause.

Similar innovative approaches have been employed in various contexts around the world, including 'work-to-rule' campaigns where employees strictly follow all regulations to slow down operations, 'pink slips' protests where participants wear specific colors or symbols to demonstrate solidarity, and 'virtual protests' that utilize digital technologies to organize and coordinate resistance activities. These methods demonstrate the potential for creative adaptation in protest tactics while maintaining peaceful and lawful approaches. The effectiveness of creative protest methods often depends on their ability to generate media attention, public sympathy, and political pressure while avoiding the negative consequences associated with violent or illegal activities. Successful innovative protests typically combine elements of surprise, symbolism, and strategic calculation to maximize their impact while minimizing risks to participants. The development of such methods requires careful planning and coordination but can offer significant advantages over traditional approaches.

VIII. REGULATORY FRAMEWORK AND STATE RESPONSE

A. Section 163 and Preventive Restrictions

Section 163 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') (earlier The Code of Criminal Procedure's Section 144) represents one of the most frequently employed tools

³⁴ CHENOWETH ERICA AND STEPHAN MARIA J., WHY CIVIL RESISTANCE WORKS: THE STRATEGIC LOGIC OF NONVIOLENT CONFLICT (Columbia University Press, 2011), 167-189.

for regulating protest activities in India. This provision empowers District Magistrates and Sub-Divisional Magistrates to prohibit the assembly of more than four people in public spaces when there is a likelihood of danger to human life, health, safety, or disturbance of public tranquility. While this provision serves legitimate public safety purposes, its frequent use to preemptively restrict protest activities has raised concerns about its impact on democratic rights.

The legal framework surrounding Section 163 requires that restrictions be temporary, specific to particular areas, and based on reasonable apprehension of disorder. However, the practical application of these requirements often falls short of constitutional standards, with authorities sometimes imposing blanket restrictions without adequate justification or maintaining such restrictions for extended periods.³⁵ The challenge lies in ensuring that preventive measures do not become tools for suppressing legitimate democratic dissent. Recent judicial decisions have attempted to establish clearer guidelines for the use of Section 163 in relation to protest activities. Courts have emphasized that the mere possibility of protest should not automatically justify restrictions and that authorities must demonstrate specific and credible threats to public order.³⁶ These developments reflect an ongoing effort to balance legitimate security concerns with constitutional protection for protest rights.

B. Police Discretion and Operational Guidelines

The role of police in managing protest activities involves complex decisions about when and how to intervene in protest situations. Police authorities must balance their responsibility to maintain public order with their constitutional obligation to protect citizen rights, including the right to peaceful protest. This balance requires careful judgment about the appropriate level and timing of intervention, as well as the methods employed to manage protest activities. Effective police response to protests requires clear operational guidelines that respect constitutional rights while maintaining public safety. These guidelines should address issues such as the use of force, crowd control techniques, arrest procedures, and communication strategies.³⁷ The goal is to create predictable and lawful police responses that minimize the potential for escalation while protecting both protesters and the general public. International best practices in protest policing emphasize importance of communication, de-escalation, and proportionate response.³⁸ Police training should include education about constitutional rights, crowd psychology, and conflict resolution techniques. Moreover, oversight mechanisms should be established to ensure that police actions during protests comply with legal and constitutional standards and that violations are appropriately addressed.

C. Administrative Challenges and Coordination

The regulation of protest activities often involves multiple levels of government and various administrative agencies, creating coordination challenges that can impact the effectiveness of both protection for protest rights and maintenance of public order. Central, state, and local authorities may have different perspectives on the appropriate response to protest activities,

³⁵ CJP Team, *How Free Are All Indians to Exercise Their Right to Peacefully Protest under Article 19? A Fundamental Right Overshadowed by Government Retaliation* (03 September, 2024), <https://cjp.org.in/how-free-are-all-indians-to-exercise-their-right-to-peacefully-protest-under-article-19/>

³⁶ Anuradha Bhasin v. Union of India, AIR 2020 3 SC 1308.

³⁷ *Supra* note 27.

³⁸ Julia Kozma and Asbjorn Rachlew, *Combating Torture During Police Custody and Pre-Trial Detention: Discussion Paper* (22–23 March 2018).

leading to conflicts and inconsistencies in policy implementation. These challenges require clear frameworks for inter-governmental coordination and communication. The constitutional division of responsibilities between central and state governments regarding law and order creates additional complexities in protest regulation. While 'Police' and 'Public Order' are state subjects under the Seventh Schedule to the Constitution,³⁹ central authorities may become involved when protests involve national issues or cross state boundaries. This division of authority requires careful coordination to ensure effective and consistent responses to protest activities.

Effective administrative responses to protest require adequate resources, training, and institutional capacity. Many local authorities lack the expertise and resources necessary to manage large-scale protest activities effectively, leading to either excessive restrictions or inadequate responses that may escalate into violence. Building administrative capacity for protest management is essential for maintaining the balance between democratic rights and public order.

IX. INTERNATIONAL PERSPECTIVES AND COMPARATIVE ANALYSIS

A. European Convention on Human Rights Framework

The European approach to balancing protest rights with public order provides valuable insights for understanding international standards and best practices. The European Convention on Human Rights, particularly through Articles 9-11, establishes a comprehensive framework for protecting the rights to freedom of thought, expression, and assembly while allowing for restrictions necessary in a democratic society.⁴⁰ This framework has been developed through extensive jurisprudence from the European Court of Human Rights, creating detailed guidance for national authorities. The European approach emphasizes the principle of proportionality in restricting protest rights, requiring that any limitations be strictly necessary and proportionate to the legitimate aim pursued. The Court has established that restrictions must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society.⁴¹ This three-part test provides a rigorous framework for evaluating the legitimacy of restrictions on protest activities and has influenced human rights law globally. European jurisprudence also recognizes the special importance of political expression and assembly rights in democratic societies, requiring particularly strong justification for restrictions on political protest. The Court has emphasized that democracy thrives on the exchange of ideas and that even offensive or disturbing ideas deserve protection unless they directly incite violence or hatred.⁴² This approach reflects a strong commitment to democratic values while acknowledging legitimate security concerns.

B. American Constitutional Approach

The American constitutional tradition offers another important comparative perspective on balancing protest rights with public order concerns. The First Amendment's protection of free speech and assembly rights has been interpreted broadly by the Supreme Court, with particular emphasis on the marketplace of ideas concept and the clear and present danger test.⁴³ The American approach generally provides strong protection for political expression while allowing

³⁹ CONSTITUTION OF INDIA 1950, Seventh Schedule, List II, Entries 1 and 2.

⁴⁰ EUROPEAN CONVENTION ON HUMAN RIGHTS 1950, § arts. 9-11, Council of Europe.

⁴¹ *Sunday Times v. United Kingdom*, (1979) 2 EHRR 245.

⁴² *Handyside v. United Kingdom*, (1976) 1 EHRR 737.

⁴³ U.S. CONSTITUTION amend. I (1791).

for content-neutral time, place, and manner restrictions. The development of the clear and present danger test in American jurisprudence has influenced legal thinking globally, including in India. This test requires that restrictions on expression be based on imminent and substantial threats rather than speculative concerns.⁴⁴ The American experience demonstrates both the possibilities and challenges of maintaining robust protection for protest rights while addressing legitimate public safety concerns. However, the American approach has also faced criticism for its sometimes-permissive attitude toward hate speech and extremist expression. The tension between broad protection for expression and the need to address harmful speech remains an ongoing challenge in American constitutional law. This experience suggests that different societies may reach different balances based on their particular historical, cultural, and political contexts.

C. United Kingdom's Public Order Framework

The United Kingdom's approach to protest regulation reflects the country's particular constitutional traditions and the absence of a written bill of rights. The Public Order Act and related legislation provide extensive powers for authorities to regulate protest activities, with particular emphasis on preventing disorder and protecting public safety.⁴⁵ This approach places greater emphasis on legislative discretion and administrative judgment compared to constitutional systems with stronger judicial review. The UK experience demonstrates the importance of legislative frameworks in defining the boundaries of protest rights and public order concerns. The evolution of British public order law reflects changing social and political circumstances, including responses to terrorism, civil unrest, and large-scale protest movements. This evolutionary approach allows for adaptation to new challenges but also raises concerns about the consistency and predictability of legal standards. Recent developments in UK law, including the Police, Crime, Sentencing and Courts Act 2022, have expanded police powers to restrict protest activities, generating significant controversy about the appropriate balance between security and democratic rights.⁴⁶ These debates reflect ongoing tensions between public safety concerns and civil liberties that are common to many democratic societies.

X. CONTEMPORARY CHALLENGES AND CASE STUDIES

A. The Anti-CAA Protests: Democracy in Action

The nationwide protests against the Citizenship (Amendment) Act, 2019, during 2019-2020 represented one of the most significant test cases for the balance between protest rights and public order in contemporary India. These protests involved millions of participants across the country and raised fundamental questions about citizenship, secularism, and democratic rights. The government's response to these protests, including the use of Section 144,⁴⁷ internet shutdowns and police action highlighted the ongoing tensions in Indian democracy. The Shaheen Bagh protest, in particular, became a symbol of sustained civil resistance and women's political participation. Led primarily by Muslim women, the protest demonstrated the power of peaceful resistance while also raising questions about the occupation of public spaces and the rights of

⁴⁴ *Supra* note 12.

⁴⁵ Public Order Act 1986, United Kingdom.

⁴⁶ Police, Crime, Sentencing and Courts Act 2022, United Kingdom.

⁴⁷ The Code of Criminal Procedure, 1973 (Act 2 of 1974).

other citizens. The Supreme Court's eventual intervention reflected the judicial system's attempt to balance competing rights and interests while maintaining constitutional principles. The government's response to the anti-CAA protests included allegations that protesters were "anti-national" and threats to national security. The use of the Unlawful Activities Prevention Act (UAPA) against student activists and protest leaders generated significant controversy about the appropriate boundaries of anti-terrorism legislation.⁴⁸ The Delhi High Court's observation that the state was blurring the line between constitutional protest rights and terrorist activity reflected broader concerns about the expansion of security legislation.

B. Farmers' Protests: Economic Rights and Democratic Expression

The 2020-2021 farmers' protests against agricultural reform legislation represented another major test of India's capacity to manage large-scale protest movements. The protests involved hundreds of thousands of farmers camping at Delhi's borders for over a year, creating unprecedented challenges for both protesters and authorities. The scale and duration of these protests raised complex questions about the sustainability of prolonged protest activities and their impact on public life. The farmers' protests demonstrated the intersection between economic grievances and democratic rights, as farmers sought to use constitutional mechanisms to challenge policy decisions they viewed as harmful to their livelihoods.⁴⁹ The protests employed various innovative tactics, including tractor rallies, sit-ins, and cultural programs that maintained participant morale and public attention.⁵⁰ The eventual repeal of the farm laws represented a significant victory for protest movements and demonstrated the potential effectiveness of sustained peaceful resistance.⁵¹

However, the protests also involved incidents of violence and confrontation with security forces, highlighting the challenges of maintaining peaceful discipline in large-scale movements. The events of January 26, 2021, at the Red Fort particularly tested the protesters' commitment to non-violence and provided opportunities for critics to question the legitimacy of the movement. These incidents demonstrate the complex dynamics involved in managing large-scale protest activities and the importance of effective leadership and organization. The government's response to the farmers' protests involved a combination of negotiation, legal challenges, and security measures. The use of physical barriers, internet restrictions, and allegations of foreign involvement reflected the authorities' concerns about the protests' impact on public order and national security. The eventual resolution through legislative repeal demonstrated the possibility of addressing protest demands through democratic processes, though critics argued that earlier engagement might have prevented the prolonged confrontation.

C. Digital Age Protests and New Challenges

The emergence of digital technologies has fundamentally transformed the nature of protest activities, creating new opportunities for organization and participation while also generating

⁴⁸ Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967).

⁴⁹ Natasha Behl, 'India's Farmers' Protest: An Inclusive Vision of Indian Democracy', *American Political Science Review*, 116(3), pp. 1141–1146.

⁵⁰ *Ibid.*

⁵¹ The Farm Laws Repeal Act, 2021 (Act 40 of 2021).

novel challenges for regulation and public order. Social media platforms enable rapid mobilization of protest participants, facilitate coordination across geographic boundaries, and provide alternative channels for political expression that can bypass traditional media gatekeepers. These developments have democratized access to protest organizations while also creating new forms of political participation. However, digital technologies also create new vulnerabilities for protest movements, including surveillance, misinformation campaigns, and digital harassment of participants. The Indian government's use of internet shutdowns during protest periods has raised concerns about the proportionality of such measures and their impact on fundamental rights.⁵² The challenge for democratic societies lies in harnessing the positive potential of digital technologies while addressing their risks and vulnerabilities.

XI. EXAMPLES OF POWERFUL PEACEFUL PROTEST IN THE POST-INDEPENDENCE ERA

- A. Chipko Movement, 1973:** The Chipko Movement was started on Gandhian non-violent ideas. People, particularly women, protested against deforestation by embracing trees. Thousands of people came out in support of the green movement across India.
- B. Jayaprakash Narayan's "Total Revolution" Movement (1974–77):** It's led to the fall of Indira Gandhi's government, culminating in her defeat in the 1977 elections. The movement relied on mass mobilization using Gandhian principles of nonviolent civil disobedience.
- C. Narmada Bachao Andolan (1985):** This Andolan altered people's perceptions about development schemes. This demonstration was held to show opposition to a high number of dams being built along the Narmada River. It brought together a big group of Adivasis, farmers, environmentalists, and human rights advocates. The court ordered that development at the dam be halted immediately.
- D. Anna Hazare's Anti-Corruption Movement (2011):** This mass movement called for the implementation of the Jan Lokpal Bill. When anti-corruption campaigner Anna Hazare went on hunger strike at Jantar Mantar, Delhi, it inspired nationwide peaceful demonstrations and led to significant policy discussions and anti-corruption legislation. This effort was a once-in-a-decade occurrence.
- E. Nirbhaya Movement, 2012:** Following the 2012 Delhi Gang Rape, hundreds of people took to the streets to protest in various areas of the country. Finally, new legislation was enacted. The government also launched the Nirbhaya Fund to ensure the girls' protection.
- F. Farmers' Protest, 2020:** The year-long protest by farmers all over the country against the three farm acts was successful, as the government withdrew the bills and formed a committee to review the MSP.

XII. INNOVATIVE APPROACHES TO PROTEST: CREATIVE RESISTANCE

A. Symbolic and Cultural Expressions

The development of symbolic and cultural forms of protest has expanded the repertoire of democratic expression while often avoiding direct confrontation with public order concerns. These approaches utilize art, music, literature, and other cultural forms to convey political messages and mobilize public sentiment. The advantage of symbolic protest lies in its

⁵² *Supra* note 28.

ability to communicate complex ideas and emotions while maintaining peaceful and legal forms of expression. Cultural protests can be particularly effective in societies with rich artistic traditions and diverse cultural expressions. In the Indian context, the use of traditional songs, dances, and theatrical performances in protest activities connects contemporary political movements with historical and cultural narratives. This approach can broaden participation by making protest activities more accessible and meaningful to diverse communities. The “Shoe Satyagraha” employed by IIM-Bangalore students during the anti-CAA protests exemplifies creative adaptation to restrictive circumstances. When Section 144⁵³ prevented traditional forms of assembly, students used symbolic placement of shoes and placards to express their dissent. This innovative approach demonstrated how protesters can adapt their methods to legal constraints while maintaining the essential communicative function of protest activities.

B. Economic and Consumer-Based Resistance

Economic forms of protest, including boycotts, strikes, consumer activism, over production, etc., represent important alternatives to traditional assembly-based demonstrations. These approaches leverage economic relationships and market mechanisms to create pressure for political change while often avoiding direct confrontation with public order restrictions. The effectiveness of economic protest depends on the economic vulnerability of targeted institutions and the ability to coordinate collective action. The example of the shoe manufacturing workers mentioned earlier illustrates the potential for creative economic resistance that maintains productivity while imposing costs on employers. By producing only left-foot shoes, workers could demonstrate their capabilities while creating economic pressure for addressing their concerns. This approach avoids the economic costs of traditional strikes for workers while still imposing consequences on management for failing to address legitimate grievances. Consumer boycotts represent another form of economic protest that can be highly effective when coordinated across large populations. The Indian independence movement’s use of Swadeshi campaigns demonstrated the potential for consumer activism to achieve political objectives.⁵⁴ Contemporary digital technologies enable more sophisticated coordination of economic protest activities, including targeted boycotts and positive purchasing campaigns that support preferred businesses or causes.

XIII. RECOMMENDATIONS AND THE WAY FORWARD

A. Designated Protest Zones: Balancing Rights and Responsibilities

Peaceful protest is a fundamental democratic right that allows citizens to voice their concerns and seek redress for grievances. However, the exercise of this right should not infringe upon the basic liberties and daily functioning of other individuals. The concept of designated protest zones emerges as a balanced solution that respects both the protesters’ constitutional right to free expression and the general public’s right to uninterrupted access to essential services, transportation, and livelihood opportunities. These dedicated spaces would serve as legitimate platforms where concerned groups can organize demonstrations, hold rallies, and express dissent without blocking roads, disrupting public transport, or hindering access to hospitals, schools, and commercial establishments. Such zones could be strategically located in areas with adequate space and infrastructure, ensuring that protesters have visibility and media attention while

⁵³ The Code of Criminal Procedure, 1973.

⁵⁴ Bipan Chandra, *India’s Struggle for Independence* 156-178 (Penguin Books, London 1989).

minimizing inconvenience to the broader community. This approach has been successfully implemented in several democracies where “Speaker’s Corner” type arrangements allow for organized dissent within defined parameters.

The establishment of designated protest areas would also enable better coordination between protesters and law enforcement agencies, reducing the likelihood of conflicts and ensuring the safety of all parties involved. By channelising protests into these specified zones, authorities can provide necessary security arrangements, medical facilities, and crowd management services while maintaining public order elsewhere. This system would ultimately strengthen democratic participation by legitimizing peaceful protest while preserving the rights and freedoms of all citizens in a diverse society. For example, the United States has established “Free Speech Zones” particularly on college campuses and during government events, where people can exercise their right to free expression.⁵⁵ The Philippines has created “Freedom Parks” - public spaces specifically reserved for free speech and demonstrations. These international examples demonstrate that the concept of balancing protest rights with public order through designated spaces is not only feasible but has been successfully implemented across different political systems and cultural contexts.

B. Strengthening Institutional Frameworks

The improvement of India’s approach to balancing protest rights with public order requires strengthening institutional frameworks at multiple levels of government. This includes developing clearer guidelines for police and administrative authorities regarding the management of protest activities, creating better coordination mechanisms between different levels of government, and establishing more effective oversight and accountability systems. These institutional improvements should be based on constitutional principles and international best practices while reflecting India’s particular circumstances. Training and capacity building for law enforcement personnel should emphasize constitutional rights, de-escalation techniques, and community policing approaches that build trust between police and citizens. Regular training programs should include education about the importance of protest rights in democratic societies and practical guidance for managing protest situations without unnecessary restrictions or violence. Professional development should also address the complex legal and constitutional issues involved in protest regulation. Judicial training and continuing education should similarly emphasize the constitutional principles underlying protest rights and the standards for evaluating restrictions on those rights. Judges should receive regular updates on evolving jurisprudence and best practices for balancing competing rights and interests. The development of specialized courts or judicial procedures for handling protest-related cases could improve the consistency and quality of legal decisions in this area.

C. Legal and Policy Reforms

Section 163 of BNSS (earlier Section 144 of the CrPC) must be reformed because this provision is frequently used to issue pre-emptive bans on assembly. The Supreme Court itself has flagged this issue, that there is a tendency that, because there is a protest, 144 (CrPC) order is issued...

⁵⁵ Thomas J. Davis, *Assessing Constitutional Challenges to University Free Speech Zones Under Public Forum Doctrine*, 79 Indiana Law Journal 267(2004), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/indana79&div=13&id=&page/>

This happens because 144 is being misused.⁵⁶ The law should require any order under this section to be accompanied by a written justification demonstrating that it is a necessary and least restrictive measure, thereby preventing its use as a tool to curb legitimate expression. Also, a Digital “Protest Permission and Management Portal” must be introduced because the current process for granting protest permits is often criticized as opaque and arbitrary, with a report by the Part III Action Research and Resource Centre noting that courts have frequently found that the discretion granted to the executive has been improperly exercised.⁵⁷ There must be a mandatory creation of a state-level online portal for managing protest applications. This portal should feature:

- (i) A standardized application form with clear, pre-defined criteria based on judicial precedent.
- (ii) A statutory 72-hour deadline for a decision, after which permission is deemed granted by default.
- (iii) A public dashboard showing the status of all applications to enhance transparency.
- (iv) A fast-track digital appeal mechanism to a judicial magistrate against any denial.

D. Right to Protest Act

The legislature must work towards the creation of a comprehensive “Right to Protest Act”, a legislation that should consolidate the various principles developed across multiple judicial precedents and affirmatively codify the rights and duties of all stakeholders. Key components of such an Act should include:

1. **Positive Obligations on the State:** The law must impose a duty on the state to *facilitate* peaceful protest. This would include:
 - (i) Mandating every city to designate permanent, visible “Protest Sites” (as suggested by the Supreme Court).
 - (ii) Requiring authorities to provide basic amenities like water, mobile toilets, and emergency medical aid for large, pre-notified assemblies.
 - (iii) Ensuring the protection of protesters from counter-protests or hostile actors.
2. **Clear Rules of Engagement for Police:** The Act should codify clear protocols for law enforcement, emphasizing their role as protectors of constitutional rights. This would involve:
 - (i) Mandating de-escalation as the primary strategy.
 - (ii) Strictly defining and limiting the use of force, prohibiting practices like “kettling” (corralling protesters) and indiscriminate use of tear gas/water cannons against peaceful gatherings.

⁵⁶ Amisha Shrivastava, *Whenever There's a Protest, S.144 CrPC Order Is Issued; This Sends Wrong Signal*: Supreme Court, *Live Law* (Jan. 27, 2025), <https://www.livelaw.in/top-stories/whenever-theres-a-protest-s144-crpc-order-is-issued-this-sends-wrong-signal-supreme-court-282102/>

⁵⁷ Ashlin Mathew, *Have Our Courts Upheld Our Right to Protest?*, *Nat'l Herald India* (Oct. 20, 2024), <https://www.nationalheraldindia.com/opinion/have-our-courts-upheld-our-right-to-protest/>



- (iii) Establishing an independent oversight body to review police conduct after major protests and ensure accountability for excesses.

3. Framework for Balancing Rights: The legislation should provide a clear framework for balancing the right to protest with other public rights, such as the right to free movement. It could define “essential services” (like ambulances) that must have guaranteed passage and create a formal mediation process to resolve disputes over protest routes or duration before they escalate.

XIV. CONCLUSION

The constitutional dilemma between the right to protest and public order represents one of the defining challenges of contemporary democratic governance in India. This tension reflects deeper questions about the nature of democratic legitimacy, the role of dissent in political systems, and the appropriate boundaries of state power in diverse societies. The resolution of this dilemma requires not merely legal or constitutional solutions but a broader commitment to democratic values and practices that respect both individual liberty and collective welfare. The Indian constitutional framework provides a solid foundation for addressing this dilemma through its protection of fundamental rights subject to reasonable restrictions. However, the practical implementation of this framework requires constant vigilance, institutional improvement, and social dialogue to ensure that neither protest rights nor public order concerns are given absolute priority. The success of Indian democracy depends on maintaining this delicate balance while adapting to changing social, political, and technological circumstances.

The experience of recent protest movements in India demonstrates both the vitality of democratic expression and the challenges of managing large-scale political mobilization. These experiences provide valuable lessons about the importance of peaceful protest methods, the need for effective institutional responses, and the dangers of excessive restrictions on democratic rights. They also highlight the creativity and resilience of civil society in adapting to restrictive circumstances while maintaining commitment to constitutional principles. Looking forward, the balance between protest rights and public order will continue to evolve as Indian society confronts new challenges and opportunities. The digital revolution, changing economic circumstances, and evolving social relationships will all influence the nature and forms of protest activities. The constitutional framework must remain flexible enough to accommodate these changes while maintaining its core commitment to democratic governance and individual liberty. The ultimate resolution of the constitutional dilemma between protest rights and public order lies not in perfect legal formulations but in the maturation of democratic culture and institutions. This requires ongoing commitment from all sectors of society—government officials, civil society leaders, judicial authorities, and ordinary citizens—to the values of democratic dialogue, mutual respect, and constitutional governance. Only through such collective commitment can India maintain its democratic character while managing the inevitable tensions between individual freedom and collective order.