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Right to protest versus public order: constitutional limits on state action

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The careful balance between peaceful dissent and general peace is a basic element of any strong democracy. In India the right to express disagreement by means of public meetings often comes into conflict with the state's duty to maintain social equilibrium. Although public demonstrations act as an important safety valve for addressing grievances, public order forms the foundation upon which all civil liberties are built. Looking at this situation from the point of view of constitutional limits and the legal principle of proportionality shows how rights and state powers remain carefully balanced.

The Right to Protest under the Indian Constitution

The Constitution of India does not state outright that the right to protest is a separate and distinct fundamental right; rather, this right can be deduced from a combined interpretation of the freedoms provided under Article 19(1):

- In Article 19(1)(a),¹ the freedom of speech and expression is included, which means that people have the right to express their dissent, state their complaints, and publicly express their opinions.
- In Article 19(1)(b),² there is the right to assemble in a peaceful manner and without arms, a right which directly allows for collective physical gatherings, processions, and peaceful demonstrations.

The history of the constitutional law relating to public assemblies can be traced to the nationalist struggle for freedom, during which public agitation served as a basic means of opposing colonial rule. When drafting the Indian Constitution, the framers understood that a

¹ India Const. art. 19, cl. 1, sub-cl. a.

² India Const. art. 19, cl. 1, sub-cl. b.

working democracy needs open opportunities for citizens to challenge those in authority. Throughout many decades of legal development, the Supreme Court of India has clearly stated that peaceful assembly and the right to express oneself are essential elements of democracy and are directly connected with both individual autonomy and collective accountability.

Understanding "Public Order" in Constitutional Law

Although the right to demonstrate is protected by the constitution, this right is not absolute. According to Article 19(2)³ and Article 19(3)⁴, the state has the power to impose reasonable limitations on these freedoms for the sake of "public order."

In the field of constitutional law, the term "public order" has a specific and subtle meaning which is different from what is usually meant by law and order or by the security of the state; it refers to the state of peace and safety amongst the general public that is required for ordinary life to proceed in an orderly manner.

The Supreme Court has drawn clear distinctions between three concentric circles:

1. Cases involving minor offences against individuals or small disputes in a particular area.
2. Public order involves disturbances of a serious nature which disturb the peace, safety, and routine of the wider community.
3. The security of the state refers to threats which are extreme and aimed at the core of the nation's survival or stability.

In order for a restriction to be considered valid under the constitution on the basis of public order, the threat to peace must be clear, immediate, and serious enough to impact the general community, not merely cause some minor inconvenience or a temporary disturbance to traffic.

Rights of the Public During a Protest

Citizens participating in a demonstration retain key constitutional protections designed to safeguard peaceful assembly:

³ India Const. art. 19, cl. 2.

⁴ India Const. art. 19, cl. 3.

- The right to gather in peace: demonstrators have the right to assemble, carry placards, sing songs, and make their views known without having to fear being arbitrarily dispersed, as long as the gathering remains non-violent and unarmed.
- In regard to protection against arbitrary detention, Article 22⁵ provides that whenever a person is detained during a protest they must be told the reasons for their arrest and be brought before a magistrate within 24 hours.
- The article states that Article 21 protects citizens from enforcement authorities using excessive, disproportionate, or lethal force.
- Detained protesters have the right to consult and have themselves defended by a legal practitioner of their choice.

Permissible State Actions During Demonstrations

When a public gathering threatens to cross the line from peaceful assembly into disorder, state authorities are empowered by statutory legal frameworks to maintain order:

- The authorities have the power to pass regulatory orders pursuant to Section 144 of the Code of Criminal Procedure (CrPC) or Section 187 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) in order to ban unlawful assemblies in certain areas.
- The law allows police forces to require an assembly to disperse if it becomes violent or violates lawful orders.
- The authorities of the state have the power to carry out preventive arrests of people who are reasonably suspected of inciting violence or of about to cause a breach of the peace.
- The use of graduated force: law enforcement can use reasonable physical force—this including the use of water cannons and tear gas as well as baton charges—only in the case where non-coercive measures have failed to stop the unrest.

Constitutional Limits on State Action: The Principle of Proportionality

The state's use of power in the course of public agitations is subject to strict constitutional limitations, and it cannot reduce basic freedoms to no more than mere procedural technicalities. In order to avoid excessive state intervention, the judiciary applies the principle of Proportionality, which requires that any limitation of fundamental rights should meet four main tests.

⁵ India Const. art. 22

- The goal must be a legitimate legal purpose, for example one that is concerned with preserving real public order.
- Principle of rationality: There should be a direct and logical connection between the measures adopted (such as suspending internet access or imposing physical blockades) and the aim of preventing disorder.
- The principle of necessity (i.e. the use of the least restrictive means): The government must adopt the least intrusive method possible in order to achieve its aim; it is a violation of this principle to immediately implement severe bans, complete internet blackouts, or use brute force when less intrusive alternatives are available.
- In the strict sense of proportionality, the effect on fundamental rights must not be excessively severe when compared with the public benefit aimed at.

Moreover, courts have declared unconstitutional any general or indefinite prohibitions on peaceful assemblies—for example, regular or permanent references to Section 144—since state action must be temporary, specific, and open to judicial review in order that public order may act as a safeguard for rights and not as a means of suppressing genuine dissent.