

PUBLIC ORDER VS PUBLIC VOICE: JUDICIAL TRENDS ON PROTEST AND ASSEMBLY IN INDIA

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ABSTRACT

The right to protest and assemble peacefully forms an essential pillar of constitutional democracy and democratic participation in India. Guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution, these rights enable citizens to express dissent, influence governance, and hold authorities accountable. However, the exercise of these freedoms is subject to reasonable restrictions in the interest of public order under Articles 19(2) and 19(3). This article critically examines the evolving judicial trends concerning the balance between public order and public voice in India. It analyses landmark decisions of the Supreme Court that have shaped protest jurisprudence, including cases related to peaceful demonstrations, preventive restrictions, proportionality, sedition, internet shutdowns, and constitutional morality. The study highlights how earlier judicial approaches strongly protected democratic dissent and participatory governance, whereas contemporary trends increasingly reflect regulatory control through preventive governance, spatial restrictions, and executive discretion. The article further evaluates whether the doctrine of proportionality and constitutional morality are being effectively applied to safeguard civil liberties. It argues that excessive reliance on public order concerns risks shrinking civic space and weakening democratic engagement. The paper concludes that a constitutional democracy must preserve spaces for disagreement and dissent, and that public order should function not as an instrument of suppression but as a framework that enables and protects democratic expression and participation.

Keywords: Public Order; Public Voice; Right to Protest; Freedom of Assembly; Freedom of Speech; Judicial Trends; Constitutional Democracy; Proportionality; Dissent; Constitutional Morality.

1. INTRODUCTION

Constitutional democracies derive their legitimacy not only from elections but, more fundamentally, from the active participation of citizens in civic life. One of the most powerful forms of this engagement is protest. Protests enable individuals to challenge authority, influence public policy, and express collective grievances, serving as a vital conduit for democratic dialogue.

In India, the right to protest is protected by the Constitution, specifically under Article 19(1)(a), which guarantees freedom of speech and expression, and Article 19(1)(b), which upholds the right to assemble peacefully. However, these rights come with limitations; Articles 19(2) and 19(3) permit reasonable restrictions designed to maintain public order. This raises a critical constitutional dilemma: at what point do these regulations infringe upon rights and become repressive?

Recently, India has experienced significant mass mobilisations, including widespread anti-corruption protests, demonstrations against citizenship laws, and farmers' movements. These events have led the judiciary to intervene repeatedly, grappling with the complex balance between protecting civil liberties and ensuring public order. The judiciary's role as a guardian

of constitutional rights is particularly important during these turbulent times. This article explores whether the current judicial interpretations effectively safeguard public expression or if recent trends are encroaching upon and undermining the civic space essential for participatory democracy.

2. CONCEPTUAL CLARIFICATION: PUBLIC ORDER AND PUBLIC VOICE

Public order refers to a state of societal peace, stability, and orderly functioning, where individuals can exercise their rights without causing disruption to the community. It serves as a legitimate basis for restricting fundamental rights under Article 19. The Supreme Court, in the case of *Dr Ram Manohar Lohia v. State of Bihar*, clarified that public order is distinct from mere “law and order” and requires a direct and proximate impact on society.

On the other hand, public voice represents the collective expression of citizens through speech, protest, and assembly. It embodies democratic participation and accountability. While public order emphasises stability, public voice highlights freedom and participation. The constitutional challenge lies in finding a balance between these competing yet complementary values.

3. CONSTITUTIONAL FRAMEWORK AND JUDICIAL FOUNDATIONS

In the early development of jurisprudence, a progressive stance was taken regarding the protection of civil liberties. In the landmark case of *Kameshwar Prasad v. State of Bihar*, the court affirmed that peaceful demonstrations are a form of expression deserving of legal protection. This decision underscored the importance of allowing individuals to voice their opinions freely in public forums. Similarly, in *Himat Lal K. Shah v. Commissioner of Police*, the court ruled that public spaces cannot be arbitrarily restricted or denied to citizens, underlining the notion that such areas are fundamental to democratic engagement. Collectively, these judicial outcomes demonstrate a strong commitment to the principles of participatory democracy, emphasising the right of citizens to actively engage in the political process.

4. ISSUES RELATED TO PUBLIC ORDER AND PUBLIC VOICE

4.1 Is “Public Order” Being Used to Justify Excessive Restrictions on Protest?

In the case of *Dr Ram Manohar Lohia v. State of Bihar*, the Supreme Court ruled that any restrictions on speech must have a direct and immediate connection to public disorder. The Court made a clear distinction between “public order” and mere “law and order,” stating that only disturbances that affect the community as a whole can justify such restrictions.

In a similar case, *Superintendent, Central Prison v. Ram Manohar Lohia*, the Court struck down restrictions based on remote or hypothetical connections. This reinforced the principle that speculative threats cannot be used to justify the limitation of fundamental rights.

Despite these protections, authorities often invoke public order on anticipatory grounds, which expands executive discretion and undermines democratic dissent.

4.2 Have Preventive and Regulatory Measures Become Tools of Routine Governance?

In the case of *Madhu Limaye v. Sub-Divisional Magistrate*, the Court upheld Section 144 of the Code of Criminal Procedure (CrPC) but clarified that this power is extraordinary and temporary, meant to be used only in urgent situations to prevent imminent danger. In an earlier ruling, *Babulal Parate v. State of Maharashtra*, the Court permitted the preventive use of Section 144 but stressed that it must be exercised with caution and urgency, rather than as a routine measure. However, the frequent and prolonged imposition of such orders in recent

times indicates a shift toward preventive governance. Additionally, in *Amit Sahni v. Commissioner of Police*, the Court determined that public roads cannot be occupied indefinitely for protests, highlighting the need to balance individual rights with public convenience. This decision contrasts with the ruling in *Himat Lal K. Shah v. Commissioner of Police*, where the Court stated that the State cannot arbitrarily deny access to public spaces, affirming that streets serve as traditional forums for expression. Overall, these developments point to a trend toward increased regulation and spatial restriction of protests.

4.3 Is the Doctrine of Proportionality Being Effectively Applied?

The application of the Doctrine of Proportionality in legal contexts is often inconsistent. This doctrine was formally articulated in the landmark case of *Modern Dental College v. State of Madhya Pradesh*, where the Court established a comprehensive four-part test to evaluate whether government actions are justified. This test involves assessing whether there is a legitimate aim pursued by the action, whether the means employed are suitable for achieving that aim, whether the measures are necessary, and whether a balanced consideration of interests has been achieved.

The significance of this doctrine was further reinforced in the case of *K.S. Puttaswamy v. Union of India*, in which the Supreme Court recognised proportionality as a critical constitutional standard. This standard plays a vital role in reviewing state actions that may infringe upon fundamental rights, ensuring that such actions are subjected to rigorous scrutiny.

Despite these important foundations, the effective application of the doctrine can be questionable, particularly in cases involving protests. In these instances, courts often fail to conduct a thorough examination of the least restrictive alternatives available or the genuine necessity of imposing specific restrictions. These shortcomings lead to a weakened implementation of the doctrine, resulting in judicial decisions that seem to prioritise executive discretion over careful consideration of individual rights and freedoms.

4.4 Do Legal and Administrative Actions Create a Chilling Effect on Dissent?

In the case of *Kedar Nath Singh v. State of Bihar*, the Supreme Court upheld the sedition law but limited its application strictly to acts that incite violence or public disorder, thereby protecting legitimate political criticism. This protection was further reinforced in *Balwant Singh v. State of Punjab*, where the Court ruled that casual or isolated slogans without any incitement do not constitute sedition, emphasising the importance of tolerance in a democracy.

In the digital context, the case of *Anuradha Bhasin v. Union of India* established that internet access is essential to the freedom of speech, and any restrictions must be temporary, necessary, and proportionate. Similarly, in *Shreya Singhal v. Union of India*, the Court struck down Section 66A of the IT Act for being vague and overly broad, as it created a chilling effect on online speech. Despite these rulings, the ongoing fear of arrest, surveillance, and shutdowns continues to discourage participation in dissent.

4.5 Is There a Lack of Transparency, Accountability, and Constitutional Morality?

In the case of *Maneka Gandhi v. Union of India*, the Court established that any restrictions on personal liberty must be just, fair, and reasonable, thereby expanding the scope of due process under Article 21. Additionally, in *Anuradha Bhasin v. Union of India*, the Court mandated that all restrictive orders must be published. This requirement ensures transparency and enables judicial review.

However, many administrative decisions continue to lack detailed reasoning, which weakens accountability. Furthermore, in *Navtej Singh Johar v. Union of India*, the Court highlighted constitutional morality as a guiding principle, prioritising dignity, equality, and minority rights over majoritarian views. This emphasis was further reinforced in *Indian Young Lawyers Association v. State of Kerala*, where the Court asserted that constitutional values must take precedence over social or traditional norms. Despite these advancements, the concept of constitutional morality remains underutilised in protest jurisprudence, contributing to the gradual erosion of civic space.

5. BALANCING PUBLIC ORDER AND PUBLIC VOICE

Achieving balance requires a rights-oriented and proportional approach. The Supreme Court cases of *Modern Dental College v. State of Madhya Pradesh* and *K.S. Puttaswamy v. Union of India* emphasised the principle of proportionality, while the case of *Dr Ram Manohar Lohia v. State of Bihar* highlighted the need for a proximate nexus.

A balanced framework includes the following elements:

- Narrow, evidence-based restrictions
- Time-bound and reviewable measures
- Recognition of protest as a legitimate democratic activity
- Strong judicial oversight

Public order should serve as a facilitator of rights rather than as a tool for suppression.

6. CONCLUSION

The relationship between public order and public voice represents a delicate tension within constitutional governance. The Indian Supreme Court has consistently recognised protest as a fundamental democratic right; however, its jurisprudence shows a gradual shift from expansive protection of rights to more regulated control.

In earlier decisions, the court emphasised participatory democracy and protected dissent against arbitrary state action. In contrast, contemporary trends often rely on preventive measures, spatial restrictions, and administrative discretion, indicating an increasing normalisation of control-oriented governance. This shift does not occur through an overt denial of rights but through incremental constraints that subtly diminish the scope of civic participation.

The doctrine of proportionality, although firmly embedded in constitutional jurisprudence, has not consistently been applied with the rigour necessary to protect fundamental freedoms effectively. Additionally, the underutilization of constitutional morality limits the judiciary's ability to uphold dissent, especially for marginalised voices.

Moving forward, the judiciary must shift from a balancing approach that accommodates executive convenience to one that actively protects democratic engagement. This entails rigorous scrutiny of restrictions, a commitment to transparency and accountability, and the recognition of protest as an essential aspect of constitutional citizenship.

Ultimately, a democracy cannot be sustained solely through institutional order; it must also preserve spaces for disagreement. Therefore, public order should not be used as a tool to silence dissent, but rather as a framework that enables and protects public voice.

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