



KAMARAJ IAS ACADEMY
Only IAS Academy by Grandson of "Perunthalaivar Kamarajar"

Right to Protest in India Reignites Constitutional Debate on Democratic Dissent, Public Order and Reasonable Restrictions

Published On: 23-07-2026

Recent Developments:

- Police action against the **Cockroach Janta Party (CJP)** march towards Parliament and the imposition of **Section 163 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** have renewed the constitutional debate on the scope and limits of the **Right to Protest** in India.
- The protesters submitted a written memorandum of demands to the Government after authorities restricted the march citing public order and security concerns during the Parliament session.
- The incident has once again highlighted the constitutional balance between **democratic dissent, public order, fundamental freedoms** and the State's responsibility to protect the rights of all citizens.

Right to Protest in India:

Meaning:

- The **Right to Protest** is not expressly mentioned in the Constitution but flows from the combined interpretation of the **Fundamental Rights** guaranteeing **freedom of speech, peaceful assembly and association**.
- Peaceful protest represents an essential democratic mechanism through which citizens express dissent, seek accountability and influence public policy without resorting to violence.
- The Constitution protects peaceful protests while simultaneously permitting the State to regulate them through **reasonable restrictions** in the larger public interest.

Constitutional Basis:

- **Article 19(1)(a)** guarantees the **Freedom of Speech and Expression**, enabling individuals to express opinions, criticism and dissent.
- **Article 19(1)(b)** guarantees the right to **assemble peaceably and without arms**, providing the constitutional basis for public demonstrations and marches.
- **Article 19(1)(c)** guarantees the right to form **associations and unions**, facilitating organised public movements and civil society campaigns.
- These freedoms are integral to India's democratic framework and strengthen participatory governance.

Reasonable Restrictions on the Right to Protest:

Constitutional Limitations:

- The rights guaranteed under **Article 19** are not absolute and may be restricted through laws that satisfy the test of **reasonableness**.

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477** / Whatsapp : **09710729833**

- Restrictions may be imposed in the interests of **India's sovereignty and integrity, security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement to an offence.**
- Any restriction must satisfy the principles of **legality, necessity, proportionality** and **non-arbitrariness**, ensuring that regulation does not become complete prohibition.

Why Restrictions Are Necessary:

- The State has a constitutional obligation to balance the **Right to Protest** with the **Right to Life under Article 21**, freedom of movement and public safety.
- Democratic governance requires protection of both **protesters' rights** and the rights of citizens who may be affected by prolonged disruption of public spaces.

Regulation of Public Protests in India:

Administrative Framework:

- Public authorities generally designate specific locations for demonstrations to balance democratic participation with public convenience.
- Organisers are ordinarily required to obtain prior permission from the police before conducting rallies, marches or public meetings.
- Authorities may regulate the **time, location, route, number of participants, traffic arrangements** and security measures for public assemblies.

Section 163 of the Bharatiya Nagarik Suraksha Sanhita, 2023:

- **Section 163 of the BNSS** replaces the former **Section 144 of the Code of Criminal Procedure (CrPC)** and empowers an Executive Magistrate to issue temporary preventive orders in situations involving imminent threats to public order, safety or tranquillity.
- Orders issued under this provision are preventive rather than punitive and are intended to prevent riots, unlawful assemblies or imminent disturbances.
- Courts have consistently held that this extraordinary power should be exercised only in genuine emergencies and must not become a routine administrative tool.

India's Position at the United Nations:

International Commitment:

- During the **47th Session of the United Nations Human Rights Council (2021)**, India affirmed that peaceful assemblies and public marches constitute an important part of its democratic tradition dating back to the freedom movement.
- India reiterated that **Article 19** guarantees peaceful assembly without arms and recognises the importance of associations and unions in a constitutional democracy.
- India also emphasised that governments must balance the right to peaceful protest with their obligation to maintain public order and safeguard the **Right to Life** of all citizens.

Important Supreme Court Judgments:

Himat Lal K. Shah v. Commissioner of Police (1973):

- The Supreme Court recognised that **Freedom of Assembly** is indispensable to democracy because it enables citizens to discuss political, social, economic and religious issues collectively.

- The Court held that although the State may regulate the use of public property, it cannot impose arbitrary or blanket prohibitions on peaceful public meetings.
- The judgment established that **reasonable regulation differs fundamentally from arbitrary exclusion**, thereby strengthening democratic freedoms.

Mazdoor Kisan Shakti Sangathan v. Union of India (2018):

- The case challenged repeated prohibitory orders restricting protests around Parliament, Central Vista and nearby government institutions.
- The Supreme Court held that authorities should regulate demonstrations instead of imposing blanket bans and directed the development of an effective permission mechanism.
- The Court permitted regulation regarding **number of participants, security arrangements, prohibited articles** and **minimum distance** from sensitive government establishments.
- The judgment reaffirmed **Jantar Mantar** as a designated protest site while clarifying that regulation should never become prohibition.

Amit Sahni v. Commissioner of Police (2020) – Shaheen Bagh Case:

- The Supreme Court ruled that democratic dissent remains constitutionally protected but cannot result in indefinite occupation of public roads or public spaces.
- The Court held that protests should ordinarily be conducted only at **identified and designated locations**, observing that constitutional rights cannot be exercised in a manner that disproportionately infringes the rights of others.

Importance of the Right to Protest:

Democratic Accountability:

- Peaceful protest strengthens democratic accountability by enabling citizens to question public authorities and influence governance.
- It promotes transparency, responsiveness and participatory decision-making within constitutional institutions.

Protection of Fundamental Rights:

- Public demonstrations provide an effective platform for protecting civil liberties, minority rights and socio-economic justice.
- Peaceful collective action enables marginalised communities to voice concerns within the constitutional framework.

Safety Valve of Democracy:

- Peaceful dissent reduces the likelihood of violent conflict by providing institutional channels for expressing grievances.
- A democratic society becomes stronger when citizens can express disagreement without fear while respecting constitutional limitations.

Challenges in Balancing Protest and Public Order:

Administrative Challenges:

- Authorities often face difficulties in balancing public safety, traffic management, security requirements and constitutional freedoms during large demonstrations.
- Repeated or mechanical invocation of prohibitory orders may undermine public confidence in constitutional governance.

Public Convenience:

- Prolonged occupation of roads, public infrastructure and essential services may adversely affect commuters, businesses, emergency services and residents.
- Courts have consistently emphasised that one group's constitutional rights cannot completely override the rights of other citizens.

Digital Mobilisation:

- Social media enables rapid mobilisation of protests but also increases the risk of misinformation, hate speech and coordinated violence.
- Authorities must distinguish between peaceful democratic mobilisation and unlawful activities while respecting constitutional freedoms.

Way Forward:

Balanced Regulatory Framework:

- Authorities should develop transparent, technology-enabled permission systems that facilitate peaceful protests while ensuring public safety.
- Restrictions should remain proportionate, evidence-based and limited to genuine security concerns.

Institutional Dialogue:

- Governments should encourage structured dialogue, grievance redressal mechanisms and consultations before disputes escalate into prolonged protests.
- Constructive engagement between authorities and civil society strengthens democratic legitimacy.

Constitutional Governance:

- Police authorities should receive regular training on constitutional rights, proportional use of force and democratic policing.
- Judicial oversight should continue to ensure that emergency powers are exercised only when legally justified and proportionate.

Value Addition for UPSC:

Important Constitutional and International Provisions:

- **Article 19(1)(a), Article 19(1)(b) and Article 19(1)(c)** collectively constitute the constitutional foundation of the **Right to Protest**.
- **Article 21** requires the State to balance the rights of protesters with the rights of other citizens to life, liberty and peaceful enjoyment of public spaces.
- **Article 20 of the Universal Declaration of Human Rights (UDHR)** and **Article 21 of the International Covenant on Civil and Political Rights (ICCPR)** recognise the right to peaceful assembly, subject to lawful restrictions necessary in a democratic society.
- A useful UPSC principle is "**Democracy protects dissent, but constitutional democracy regulates dissent through reasonable restrictions rather than blanket prohibitions.**"