

# Constitutional Freedoms and Their Limits: The Right to Assemble and Association

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## Abstract:

Articles 19(1)(b) and 19(1)(c) of the Indian Constitution protect the fundamental rights to assemble and associate, which are the basis of democratic and civic involvement. These rights, through which citizens acquire the ability to demonstrate dissent and to create collective organizations and to monitor institutional operations, are the rights of citizens. There are constitutional rights behind confines. Articles 19(3) and 19(4) of the Constitution allow restrictions on freedoms when they are in the interest of sovereignty, integrity, public order and morality. For this reason, the legal provision has become more and more frequently used to establish broad limitations on these rights, the proper constitutional limits of which are a matter of high importance. This paper analyses whether contemporary Indian legal and judicial methods of assembly and association restrictions conform to constitutional principles and international democratic standards. This paper makes use of a doctrinal approach to study constitutional articles along important court decisions as well as important legislations such as the Criminal Procedure Code (Cr PC), the Unlawful Activities (Prevention) Act (UAPA) and the Foreign Contribution Regulation Act (FCRA). The methodological analysis combines First Amendment principles of US law as well as Article 11 of the European Convention on Human Rights (ECHR) as interpreted by the European Court of Human Rights (ECHR). The research framework shows that the basic doctrinal shortcoming in the Indian jurisprudence is the absence of an organized proportionality test. Indian courts' reliance on the unstandardized "reasonableness" standard produces arbitrary executive powers with dissimilar outcomes in different cases based solely on the judge's discretion. The article shows how India's regulatory system limits the associational autonomy and protest rights through legal restrictions and administrative secrecy. And the meaningful civic space has gone because of indiscriminate internet shutdowns, licensing regimes and of civil society organizations being put under surveillance on grounds of Section 144 Cr PC. Traditional interpretations of the legal system are unable to address modern public assembly and association through digital platforms because they do not protect "virtual assemblies or on line organizing." This article creates a doctrinal model based on the principle of proportionality, judicial oversight with procedural fairness and digital public sphere recognition, which defends individual rights. Rigid textual interpretation methods should be abandoned by constitutional democracies because they should adopt an interpretative frame work that would require states to prove that their actions are justified. This research applies Indian constitutional concepts to international best practices to protect assembly and association rights in the current century.

**Keywords:** Constitutional Rights, Article 19, Freedom of Assembly, Freedom of Association, Civic Space

## 1. INTRODUCTION

The articles 19(1)(b) and 19(1)(c) of the Indian Constitution guarantees rights to assemble and associate forming the foundation of participatory democracy. Right to dissent, to organize collectively, to account governing institutions: These are central for people to exercise these rights (Bhatia (2019)). They are not simply procedural liberties but also foundational entitlements that safeguard the democratic character of the state (Rawls (1993); Dworkin (2013)) and are to be granted for pluralistic constitutional systems. Such a spirit is the subject of India's constitutional design, although the contemporary utilization of these rights is an unsettling portrait of the shrinking of civic space. Statutory regimes limit the civil society including 'Criminal Procedure Code (Cr PC)', 'Foreign Contribution Regulation Act (FCRA)' and 'Unlawful Activities (Prevention) Act (UAPA)' have increased scrutiny and control on civil society and public expressions (Jain (2021); Vyas, Natwadiya and Patni (2022)). These freedoms have been interpreted by the courts in ways that have changed substantially. A.K. Gopalan vs. State of Madras is an example of early jurisprudence. The textualist and compartmentalised understanding of rights was reflected in A.K. Gopalan vs. State of Madras, However, the Supreme Court's decision in Maneka Gandhi vs. Union of India, was a transformative turn towards integrated and purposive interpretation (Jain (2022); Kundu (2021)) for Union of India. It was the recognition that fundamental rights had to be read holistically in order to achieve constitutional justice. But in practice assembly and association rights still remain under enforced by overbroad limitations, most especially when exercised by an underprivileged or a dissenting group. Questions have been raised about the legitimacy of executive discretion on grounds of preventive measures such as Section 144 Cr PC, internet shutdowns without exigency and bureaucratic harassment of NGOs (Gabor (2024); Jain (2021)).

Indian courts have, in general, shied away from a structured proportionality test to review restrictions by resorting to vaguely defined notions of public order and morality (Krishna swamy (2010)). It leads to inconsistent adjudication and too much deference to state action short of procedural fairness and constitutional accountability. (Rao (1964)) has pointed out that even in the early years of Indian constitutional law, the judiciary was not able to define the limits of protest and association, especially when confronted with the interests of administrative order. The tension between state interests and civic freedoms has become a defining world problem of the constitutional democracy. The United States and the members of the European Union have addressed these challenges with their rigorous standards for assessing state's interference. The jurisprudence of first amendment in United States is based on principle of neutrality of view point and strict scrutiny over speech and assembly rights (Chemerinsky and Choper (1997)) whereas 'European Court of Human Rights (ECHR)' under Article 11 of European Convention for protection of 'human rights (ECHR)' gives balanced model of positive and negative obligations which requires states not only to refrain from interference of these rights but also make the assembly right effective (Cameron (2004)). The point made by these comparative systems is that we urgently need doctrines of structured judicial judgments determined in relation to proportionality and necessity.

Moreover, in the digital era, India's reluctance becomes more problematic as there seems to be no willingness to incorporate such structured mechanisms. Civil society and the most vulnerable

communities are being disproportionately hit by increasing algorithmic surveillance, opaque licensing regimes and internet shut downs. The failure to appreciate digital assemblies and online organizing as free speech finds a serious doctrinal and normative lag. These are issues that are global in their applicability, as evidenced in scholarship such as (Magaya (2022)) who examines the use of the Universal Periodic Review mechanism to promote assembly rights in Zimbabwe or (de Zayas and Martín (2012)) who reflect on the importance of General Comment No. 34 by the ‘UN Human Rights Committee’ to protect expression and opinion. These contributions thus emphasize the need to bring such international human rights principles into the domestic constitutional practice.

It is this article’s intention to query the Indian legal frame work under which individuals enjoy the right to assemble and associate and to provide recommendations for reformat this end. It Effectively aims to (i) examine Article 19(1) (b) and (c) from doctrinal and judicial perspectives, fill procedural safeguard and misuse of legal instruments to suppress civic engagement gaps, undertake a comparative analysis with US and European constitutional standards, and (iv) provide a normative structure inspired by proportionality, necessity, and digital inclusion. The article relies on both doctrinal analysis and political theory(Rawls(1993); Dworkin (2013))that stress the indivisibility and preemptive nature of rights in liberal democracies. (Jain (2021)) has already done scholarship on how even occasionally parliamentary processes have not provided checks on institutional overreach, resulting in the fracturing of democratic protections.(Amirante (2020)) also argues that South Asian constitutional systems, while being disposed to liberal models, have to be reworked to fit in with the changing face of democratic challenges. By addressing these questions, the article draws from the larger debates on the rights and democratic accountability in India. It advocates a shift from vague textualism to rights affirming framework of assembly and association that is part of constitutional identity supported by international human rights norms and robust procedural protections(Jain(2021); Vyas, Natwadiya and Patni (2022)).

## **2. Limits of The Right to Assembly & Association**

The rights to assemble and associate are guaranteed under Articles 19(1)(b) and 19(1)(c) of the Indian Constitution. These are important provisions for democratic participation and collective action and dissent (Bhatia (2019)). Nevertheless, Articles 19(3) and 19(4) restrict these freedoms to the extent that they are necessary for public order, morality, or sovereignty. It is vague language and has allowed for excessive executive discretion (Krishna swamy (2010)). The expression “public order” has also been subject to varied judicial interpretation. In *Dr. Ram Manohar Lohia vs. State of Bihar*, the Supreme Court attempted to distinguish “public order” from “law and order,” stating that not every breach of law and order affects public order. Though, in practice, it is often ignored and arbitrary restrictions on gatherings (Jain (2022)). (Kundu (2021)) notes that the judiciary’s changing stance has led to a doctrinal vacuum.(Singh and Singh (2012)) point out that the fragility of this business culminates with the absence of procedural guidance.

### **2.1 Landmark Judicial Decisions**

In *Himat Lal Shah v. Commissioner of Police (1973)*, the Supreme Court held that regulation of public places cannot be prohibition of public spaces and that the citizen has a right to use public spaces for assembly (Rao (1964)). In *Kameshwar Prasad v. State of Bihar (1962)*, this right was further extended to government employees who reiterated that peaceful demonstration is protected

irrespective of employment status (Jain (2022)). The Court condemned police brutality against peaceful protestors in the Ramlila Maidan Incident (2012) and held that the duty is to facilitate, not suppress, assembly (Bhatia (2019)). In *PUCL v. Union of India*, (Jain(2021)) illustrates that the Court recognized the importance of seeming NGO autonomy and warned against too much state outreach via the FCRA. In *People's Union for Civil Liberties (PUCL) v. Union of India* (2003), the Court allowed the use of designated zones for protests, but was criticized for diluting the visibility of dissent. (Gabor(2024)) scholars claim that such spatial marginalization limits the democratic impact of protest. Indian courts have not yet institutionalized proportionality as a standard for assessing restrictions, as (Sahgal (2024)) points out.

## 2.2 State Practice and Administrative Suppression

Usually, state practice is aberrant from constitutional norms. Section 144 of the Cr PC, which was once an emergency measure, is now routinely used to quell public gatherings on grounds of speculation (Kundu (2021)). The UAPA allows the state to declare groups as unlawful, detain people under vague definitions of terrorism, stifling legitimate activism (Baxi (2007)). The FCRA has become a tool for the regulation of civil society. The Act has been amended, which has disrupted NGO operations, especially those that are engaged in rights advocacy (Jain (2021)). According to (Vyas, Natwadiya and Patni (2022)), the bureaucratic constraints imposed through this law disproportionately affect groups that perform democratic functions. India is now one of the leading countries in ordering internet shutdowns in the digital domain. Many of them are carried out without any public accountability. While *Anuradha Bhasin vs. Union of India* affirmed internet access as essential for exercising rights, its directives are poorly enforced. Judicial deference to administrative decisions exacerbates this trend. Restrictions are upheld wantonly, without the use of rigorous scrutiny by the courts. (Sahgal (2024)) contends that the lack of structured proportionality test in fundamental rights jurisprudence is itself responsible for the cause of arbitrary limitations to continue.

## 3. Comparative Analysis:

However, other liberal democracies have opted to take an approach based on structured frameworks. The First Amendment is strict scrutiny applied to restrictions on assembly, compelling state interest and narrow tailoring. This doctrine is based on viewpoint neutrality (Sunstein (1986)). Both negative and positive obligations are enforced by the 'European Court of Human Rights (ECHR)', in the context of Article 11 of the ECHR. In fact to be good, it must not only avoid undue interference but also promote assembly, an intervention that states have taken to heart. According to (Letsas (2007)), ECHR review is based on proportionality. According to (Greer (2000)), the margin of appreciation is elaborated on, with discretion balanced against accountability.

International observers point out that India has deviated from global norms. According to the (CIVIC US Monitor (2023)), India's civic space is 'repressed' due to widespread detentions and NGO restrictions. India's failure to bring its domestic law into line with international standards has been raised by the UN Special Rapporteur on Assembly and Association (United Nations and Kiai (2013)). Theoretical contributions reinforce this critique. According to (Tully(2008)), post-colonial states tend to see civil dissent through a securitized view which tends to underpin participatory democracy. (de Zayas and Martín (2012)) claim that restrictions on assembly and association frequently hurt other freedoms, such as expression and belief. In general, the Constitution of India

provides adequate safeguards for the right to assemble and associate, yet promises act contrary to such constitutional guarantees in view of unclear legal arguments, administrative overreach, and insufficient judicial enforcement. Unlike its comparative jurisdictions that put the structured scrutiny and state facilitation at its score, India has continued to rely on discretionary tools. To realize the constitutional vision of participatory democracy, comprehensive reform, jurisprudential, legislative and administrative, is needed.

#### 4. Evaluation:

Several doctrinal deficiencies that undermine the effective enforcement of the constitutional recognition of the rights to assemble and associate under Articles 19(1)(b) and 19(1)(c) are noted. First among these is the absence of a structured proportionality test in judicial interpretations of these freedoms. Indian courts have adopted proportionality in privacy and education jurisprudence, but its use in civic rights is sporadic. As a result, the executive action in vacuum is left to evaluations which are only broad, inconsistent notions of reasonableness, affording scarce protection against state overreach. Further, in *Dr. Ram Manohar Lohia vs. State of Bihar*. In practice, it is often blurred with *State of Bihar*. It is often used with empirical weak evidence which authorities cite as potential threats to public tranquility to justify bans on gatherings preemptively suppressing peaceful protests, especially of those by the opposition groups students and marginalized communities.

These interpretive gaps have been compounded by judicial inconsistency. The freedom of civic forums is alternately affirmed and embraced in courts of wide discretion and the jurisprudence surrounding freedom of civic forums has fluctuated between unpredictability and incoherence. As a result, citizens and officials alike have been without clear legal guidance about real limits of assembly and association, while this has created uncertainty as to what are the actual limits of assembly and association that may be permitted. These doctrinal gaps are of serious democratic significance. The Constitution's rights are increasingly regarded as discretionary privileges. Developed only in a rudimentary way, procedural and substantive safeguards requisite to give rise to these rights above administrative whim. Digital suppression has become a new dimension of restriction. In addition to these more visibly damaging constraints, the Indian government's less visible use of internet shutdowns, content removal orders and surveillance tools have posed equally potent ones to freedom of assembly. For decentralized, youth led movements, organization and protest is now organized around digital platforms. However, these virtual forms of civic action have little or no regulation. Laws like the Unlawful Activities (Prevention) Act (UAPA) and the Foreign Contribution Regulation Act (FCRA) have served as legal pretexts to stifle is sent at the same time. Though presented as a tool of national security, as a matter of onshore financial regulation, these laws have been fully implemented and disproportionately directed against civil society actors involved in rights advocacy, environmental protection or support of minorities. Procedural asymmetries and the vagueness of their provisions make it possible to have preventive detentions, as well as funding restrictions that chill dissent.

This is a normative failure more broadly because the state sees these as security concerns rather than democratic guarantees. Articles 19(1) (b) and (c) should be viewed not only as individual entitlements, but as means to participatory governance, deliberative dialogue and collective advocacy. Yet, there is no positive obligation on the state under India's current legal regime to

protector facilitates these rights. On an international level, we have the ‘European Court of Human Rights’ and the ‘United Nations Human Rights Committee’ that not only thinks states should refrain from interference, but states should actually facilitate; provide safe protest zones, fair policing, etc. These dimensions have remained silent to a large extent in Indian jurisprudence. The credibility of restrictions is also undermined by the lack of procedural safeguards. Public gatherings are banned, organizations are shut down, and preventive arrests are made without notice, reason or access to remedy. The lack of a legal process renders a citizen exposed to arbitrary repression and trust in public institutions eroded. India’s commitments under international conventions such as the ICCPR are largely symbolic meanwhile. Repeated criticism to the world from the UN Special Rapporteur and global civil society monitors such as CIVICUS categorizing India’s civic space as Repressed has not yielded reforms in India. James Tully is one of the philosophers who argue that postcolonial democracies tend to understand dissent as de-stabilizing rather than foundational, and therefore respond with control rather than engagement. According to De Zayas and Martín, curtailing assembly and association is bound to affect other rights that are interrelated, such as expression and belief.

These deficiencies need to be corrected and we have to re-orient our Indian constitutional practice normatively. In the first place, courts should apply proportionality as a standard for adjudicating limitations on civic freedoms consistently. This will place Indian jurisprudence in sync with international best practices and introduce predictability on judicial review. Secondly, the legislatures must amend the laws including the UAPA and FCRA to bring them down on their over breadth and put in place procedural protections such as independent oversight, time bound reviews and fair hearing mechanisms. Third, any restriction must be made upon transparency and necessity, and administrative actors must bear the responsibility of arbitrary bans and internet shutdowns. Also, civil society engagement must be institutionalized as a permanent protected democratic space where the state does not police civil society interaction but rather enables it. Articles 19(1)(b) and (c) are not peripheral or optional rights, they are the DNA of India's democratic order. It is a crisis of constitutional fidelity and, through doctrinal ambiguity, legal overreach, technological control, their suppression reflects this. These rights need to be re imagined as constitutionally protected spaces for collective democratic action and resolutely respected, facilitated and upheld for the survival and renewal of Indian democracy.

## 5. Conclusion

Articles 19 (1)(b) and 19(1)(c) of the Indian Constitution were conceived as protective guarantees against authoritarianism as well as foundational guarantees that would make participatory democracy possible. The freedoms which underlie the functioning of a pluralistic society are freedoms to collectively express, to dissent, to participate in civic activity. Yet as this study has demonstrated an operational reality of these rights is a disconcerting divergence between what is promised by the constitution and what is lived. Doctrinal ambiguities are persistent and judicial and administrative tools have cut these freedoms down to nearly nothing. The state’s increasing reliance on amorphous legal standards and executive discretion has chipped away at civic space and though their importance is recognized in the Constitution, it is not recognized. The Indian courts have not evolved a structured and consistent framework for assessing restrictions on assembly and association. Judicial reasoning is thus disconnected and unpredictable in the absence of the

proportionality test. Often the restrictions get upheld on terms vague like 'public order' or 'national interest' without due scrutiny. As a result, these rights are now considered as administrative privileges that may be revoked at the will of the state rather than fundamental democratic entitlements. However, in order to be considered as such, assembly and association must be conceived not as abstract legal constructs but as basic expressions of democratic sovereignty. Marginalized communities are empowered, collective advocacy is facilitated, and they are tools of political transformation. This is a broader democratic backsliding, whether it is through Section 144, the FCRA or the UAPA. Moreover, state control in virtual spaces seeps further by digital restrictions like internet shutdowns and surveillance, in the same way to aggravate erosion of civic freedoms. As such, repeated calls for reform remain heedless in the face of inertia. India's legal regime has been positioned away from international human rights norms due to legislative passive and judicial deference. Theories of structured standards for civil freedoms—like proportionality and view point neutrality—draw on global jurisprudence from 'European Court of Human Rights' and 'U.S. constitutional law' to illustrate how courts can enforce civic freedoms. Boosted by her faith in Buddhism, she gave up a comfortable life in India as a teacher to become a Buddhist monk and joined the monastic order. These rights must, however, be upheld in terms that courts can support using principled legal frameworks. Outdated statutes must be revised by legislatures to achieve democratic values. Standards for administrators have to be transparent, proportionate, and accountable. Most of all, assembly and association must be reconceived as spaces of collective action protected by the Constitution, not to be tolerated only as democratic exceptions.

To sum, there is a democratic imperative to defend these rights even beyond the legal task. To give these guaranteed fragile features of democracy some robust character, India must recommit to their ideals of pluralism, participation and constitutional accountability.

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