

LEGITIMATE AIM, NECESSITY AND PROPORTIONALITY: TESTING PROTEST RESTRICTIONS IN INDIA AND UKRAINE UNDER THE ICCPR FRAMEWORK

The right to peaceful protest represents one of the strongest indicators of a functioning democracy. It allows citizens to question authority, express disagreement, and collectively participate in public affairs. Across constitutional democracies, protests have historically emerged as instrument of social transformation and resistance against injustice. India's anti-colonial struggle under Mahatma Gandhi and Ukraine's pro-democracy movements both demonstrate how assemblies can shape national identity and constitutional culture. (1, p.1)

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) recognizes the right to peaceful assembly and permits restrictions only where they pursue a legitimate aim such as public order, public safety, national security, public health, or the rights of others. These restrictions, however, must satisfy the principles of legality, necessity, and proportionality. The ICCPR framework establishes that restrictions on assemblies cannot be arbitrary or excessive. The Human Rights Committee has repeatedly emphasized that states should facilitate peaceful assemblies rather than suppress them through overbroad laws or unchecked executive discretion.

In *Adelaida Kim v. Uzbekistan*, the Human Rights Committee observed that even when restrictions are legally prescribed, they must remain necessary and proportionate in a democratic society. (2, p.1)

Similarly, in *Andrei Sannikov v. Belarus*, the Committee condemned arbitrary arrests and restrictions imposed on peaceful demonstrators, stressing that criminal sanctions against protestors cannot become routine state practice. (3, p.1)

International jurisprudence has also expanded these protections through regional courts. In *Bukta and Others v. Hungary*, the European Court of Human Rights held that dispersing a peaceful spontaneous assembly merely because prior notice was not given violated the principles of proportionality. (4, p.1)

Likewise, in *Ollinger v. Austria*, the Court rules that blanket prohibitions on peaceful gatherings cannot be justified on speculative concerns regarding public disorder. These cases collectively reinforce the principle that democratic states must tolerate inconvenience and disruptions to some extent in order to preserve freedom of assembly. (5, p.1)

In India, the right to protest is constitutionally protected under Article 19 (1)(a) and 19 (1)(b), which guarantee freedom of speech and peaceful

assembly. Indian Constitutional history is deeply influenced by the memory of colonial repression, particularly the Jallianwala Bagh massacre of 1919, where peaceful assembly was met with brutal state violence. Judicial interpretation in post-independence India initially expanded protections for public assemblies. In *Himat Lal Shah v. Commissioner of Police*, the Supreme Court held that public streets and open spaces cannot be entirely closed to public meetings because such restrictions would destroy the practical exercise of the right itself. The Court recognized that democracy requires public spaces for political participation and collective expression. (6, p.2)

Another important case is *Ramlila Maiden Incident v. Home Secretary, Union of India*, where the Supreme Court strongly criticized the midnight police crackdown on sleeping protestors at Ramlila Maiden in Delhi. The court held that the use of force against peaceful demonstrators violated constitutional freedoms and emphasized that state action must always satisfy the test of proportionality, necessity and legitimate aim. The judgement reaffirmed that dissent and peaceful assembly are central to democratic culture and cannot be suppressed through excessive police action. (7, p.2)

The Supreme Court further examined the relationship between protest and public inconvenience in *Mazdoor Kisan Shakti Sangathan v. Union of India*. While the court acknowledged that protest cannot paralyze public life indefinitely, it also emphasized that the state has a duty to create designated and meaningful spaces for dissent instead of mechanically prohibiting assemblies. This judgement attempted to balance competing interests between commuters and protestors while reaffirming that peaceful protest remains a constitutional right. (8, p.2)

Similarly, in *Anita Thakur v. State of Jammu & Kashmir*, the Supreme Court dealt with police brutality against protestors demanding employment benefits. The Court held that excessive force used against demonstrators violated constitutional guarantees and awarded compensation to victims. It also recognized that peaceful protest is part of India's democratic tradition inherited from the freedom struggle. This case is significant because it directly connected state accountability with the principles of necessity and proportionality under international human rights standards. (9, p.2)

Another major development emerged in *Amit Sahni v. Commissioner of Police (Shaheen Bagh Case)*, where the Supreme Court held that public roads cannot be occupied indefinitely for protests. Although the Court accepted that dissent is fundamental to democracy, it concluded that demonstrations must occur in designated places. Critics argue that this approach narrowed the democratic scope of protest by prioritizing administrative convenience over participatory constitutionalism. The judgement illustrates the continuing judicial tension in India between maintaining public order and safeguarding democratic freedoms. (10, p.2)

Recent developments in India reveal a growing trend toward restrictive regulation of dissent. The frequent use of Section 144 of the Criminal

Procedure Code, preventive detention, internet shutdowns, and police surveillance demonstrates how “public order” has become a broad justification for restraining assemblies. Reports on constitutional courts and protest regulation suggest that authorities increasingly rely upon executive discretion rather than narrowly tailored measures. Studies on India’s free speech environment further suggest that such measures create a chilling effect leading individuals to self-censor out of fear of prosecution or harassment.

The proportionality principle under the ICCPR requires that restrictions remain the least intrusive means available, yet in practice authorities often rely upon blanket prohibitions and extensive policing. This disconnect between constitutional ideals and executive practice raises serious concerns regarding democratic accountability.

Ukraine offers a contrasting perspective shaped by conflict and national security concerns. Article 39 of the Constitution of Ukraine guarantees the right to peaceful assembly and requires prior notification rather than prior authorization.

However, following the Russian invasion and the declaration of martial law, restrictions on assemblies became more common. Ukrainian authorities justified these measures on grounds of military necessity, protection of civilians, and wartime security. One of the most important judicial developments in Ukraine emerged from the *Verentsov v. Ukraine*, judgement before the European Court of Human Rights. The Court criticized Ukraine for the absence of a clear legal framework governing peaceful assemblies and held that arbitrary restrictions imposed without precise legal basis violated Article 11 of the European Convention on Human Rights. This case highlighted the importance of legality within the proportionality framework, emphasizing that vague executive powers cannot become substitutes for democratic regulation. (11, p.3)

The comparative experience of India and Ukraine demonstrates that the principle of legitimate aim, necessity, and proportionality remain essential safeguards against abuse of state power. India’s challenges largely arise in the context of domestic political dissent and expanding executive discretion, whereas Ukraine’s restrictions are shaped by extraordinary wartime circumstances. Yet both jurisdictions reveal the same constitutional dilemma: how to preserve public order without undermining democratic participation itself. The ICCPR framework does not prohibit restrictions on assemblies, but it insists that such restrictions remain narrowly tailored, transparent, and accountable. Democratic societies must recognize that peaceful protest is not merely a disruption to governance but a constitutional expression of political participation. When states treat dissent as a threat rather than a democratic necessity, they risk weakening the very constitutional values they claim to protect.

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ПРИНЦИПИ МОНІТОРИНГУ ЯКОСТІ НАДАННЯ АДМІНІСТРАТИВНИХ ПОСЛУГ: АДМІНІСТРАТИВНО-ПРАВОВА ХАРАКТЕРИСТИКА

Сучасний етап розвитку публічного управління в Україні характеризується поступовою трансформацією держави у сервісно орієнтовану модель, у центрі якої перебуває людина, її права та потреби. У цьому контексті особливого значення набуває якість надання адміністративних послуг як ключовий індикатор ефективності діяльності органів публічної влади. Підвищення стандартів обслуговування, забезпечення доступності, своєчасності та зручності отримання послуг обумовлюють необхідність впровадження дієвих механізмів оцінювання їх якості. Одним із таких механізмів виступає моніторинг якості адміністративних послуг, який дозволяє системно відстежувати результати діяльності суб'єктів надання послуг, виявляти проблемні аспекти та формувати обґрунтовані управлінські рішення. В умовах цифровізації публічного управління та впровадження електронних сервісів значення моніторингу суттєво зростає, оскільки він забезпечує не лише контроль, а й зворотний зв'язок із отримувачами послуг,