# DISSENT AT THE BARRICADE: THE CONSTITUTIONAL RIGHT TO PROTEST AND THE LEGAL LIMITS OF POLICE FORCE IN INDIA

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**ABSTRACT**

Indian constitutional doctrine treats peaceful protest as a fundamental right under Article 19(1)(a) and (b), yet the law that governs what happens when an assembly meets the police has received comparatively little systematic analysis. This paper examines that law in three stages: permission and place, the use of force, and the identification of officers. It argues that the regulation of protest in the national capital now rests substantially on executive standing orders whose status as "law" under Article 19(2) and (3) is doubtful; that the statutory power to disperse an assembly "by force" under section 148 of the Bharatiya Nagarik Suraksha Sanhita, 2023 lacks the minimum-force standard Parliament prescribed for the armed forces in section 149(3), leaving lathi charges, tear gas, pellet guns and barricading without any published rule of deployment; and that the statutory duty to bear visible identification is confined to arrest, leaving crowd control with the weakest identification rule in the law of policing. Drawing on *Himat Lal K. Shah*, *Mazdoor Kisan Shakti Sangathan*, *Amit Sahni*, *In re Ramlila Maidan Incident*, *Anita Thakur* and *D.K. Basu*, and on the Jantar Mantar litigation of 2026, the paper distinguishes settled law from judicial observation and proposes statutory reforms that would codify the standards the Supreme Court has already articulated.

**Keywords:** Right to protest; Article 19(1)(b); public order; Jantar Mantar; police use of force; Bharatiya Nagarik Suraksha Sanhita; proportionality; police accountability

## I. Introduction

The summer of 2026 placed the constitutional law of protest under unusual strain. Student demonstrations at Jantar Mantar against repeated leaks of national examination papers culminated, on 20 July 2026, in a march towards Parliament that the Delhi Police met with barricades, lathi charges and tear gas. Injured protesters later alleged before the Supreme Court that pellet guns had been fired and that many of the personnel who used force wore no name plates.[1] Within weeks, the Supreme Court had issued notice on a petition contending that Jantar Mantar is no longer a suitable site for protest, a judge of the Delhi High Court had asked from the bench why protests should be held inside the city at all, and on 9 October 2026 the Supreme Court recorded the Solicitor General's statement that the competent authority would consider designating another venue.[2]

These episodes expose a question that Indian constitutional scholarship has tended to treat in fragments: when the State confronts an assembly, what legal source authorises each coercive step it takes, and what law confines that step? The literature on the right to protest has concentrated on the scope of Article 19(1)(a) and (b) and on the "public order" ground of restriction. The literature on police accountability has concentrated on custodial violence. The space between them, which is the street where a lawful assembly meets a barricade, has received less sustained analysis.

This paper argues that Indian law recognises protest as a fundamental right at the level of constitutional doctrine but regulates it through an architecture that systematically weakens that recognition at the level of practice. Three features of that architecture are examined. First, the decision whether, where and how many may protest has migrated from published law to executive standing orders whose character as "law" within Article 19(2) and (3) is doubtful. Second, the statutory authority to use force against an assembly rests almost entirely on a single

[1]The allegations are recorded in reports of the proceedings in *Shailendra Mani Tripathi* v. *Union of India*, W.P. (Crl.) Diary No. 44078 of 2026 (SC). See "'Peaceful Protests Constitutionally Protected, Mere Agitation Can't Justify Lathi-Charge': CJI Surya Kant In Pleas Over Jantar Mantar Police Action" *LiveLaw*, July 27, 2026, *available at*: https://www.livelaw.in/top-stories/supreme-court-pleas-against-excessive-police-force-student-protestors-paper-leaks-542972 (last visited on Oct. 12, 2026); "Student Injured In NEET-UG Protest Seeks Supreme Court Directions For Mandatory Police Name Badges, Uniform Crowd-Control SOP" *LiveLaw*, Aug. 1, 2026, *available at*: https://www.livelaw.in/top-stories/student-injured-in-neet-ug-protest-seeks-supreme-court-directions-for-mandatory-police-name-badges-uniform-crowd-control-sop-543852 (last visited on Oct. 12, 2026). These are allegations; no judicial finding on the use of force had been recorded when this paper was written.

[2]Debby Jain, "Supreme Court Asks Centre To Decide On Reconsidering Jantar Mantar As Designated Protest Venue" *LiveLaw*, Oct. 9, 2026, *available at*: https://www.livelaw.in/top-stories/supreme-court-asks-centre-to-decide-on-reconsidering-jantar-mantar-as-designated-protest-venue-553932 (last visited on Oct. 12, 2026).

open-textured power to disperse "by force", without any statutory articulation of necessity, proportionality or the permissible instruments of force; the content of restraint has been supplied by courts after the event. Third, the principal device of individual accountability, the duty of a police officer to bear visible identification, is statutorily anchored to the act of arrest and not to crowd control, which leaves the most contested form of policing with the weakest identification rule. The paper treats each feature in turn, examines the leading decisions on their material facts and reasoning, and concludes with proposals for reform. Statements of established law, judicial observations, and the author's own arguments are identified as such throughout.

## II. The Constitutional Basis of the Right and Its Limits

The Constitution does not use the word "protest". The right is constructed from Article 19(1)(a), which guarantees freedom of speech and expression, and Article 19(1)(b), which guarantees the right "to assemble peaceably and without arms".[3] Two limits are internal to the text of clause (b) itself: the assembly must be peaceable, and it must be unarmed. An assembly that sheds either quality falls outside the guarantee, and the State's response to it is governed by Article 21 and the general criminal law rather than by Article 19. External limits are set by Article 19(2), which permits reasonable restrictions on expression in the interests of, among other things, the sovereignty and integrity of India, the security of the State and public order, and by Article 19(3), which permits reasonable restrictions on assembly in the interests of the sovereignty and integrity of India or public order.[4]

The earliest authoritative recognition that a demonstration is a form of protected expression came in *Kameshwar Prasad* v. *State of Bihar*.[5] Rule 4A of the Bihar Government Servants' Conduct Rules prohibited government servants from participating in any demonstration or strike in connection with their conditions of service. A Constitution Bench held that a demonstration is a visible manifestation of feeling and falls within Article 19(1)(a) and (b) where it is peaceful and orderly, and struck down the rule in so far as it prohibited every form of demonstration. It upheld the rule in so far as it prohibited strikes, holding that there is no fundamental right to strike. The decision is significant for present purposes in two respects. It

[3]The Constitution of India, arts. 19(1)(a), 19(1)(b).
[4]The Constitution of India, arts. 19(2), 19(3). The ground of "sovereignty and integrity of India" was inserted in both clauses by the Constitution (Sixteenth Amendment) Act, 1963.
[5]*Kameshwar Prasad* v. *State of Bihar*, AIR 1962 SC 1166.

locates demonstration within the core of Article 19, not at its periphery; and it shows that the question of who may protest is answered by the text of Article 19, which confers these freedoms on citizens, subject to valid restrictions that may attach to a particular status such as government service.

Whether a non-citizen may invoke a constitutional right to protest is not settled by any decision examined for this paper. Article 19 is confined to citizens. An argument can be made that peaceful protest by a non-citizen engages Article 21, but that argument is the author's and is not presented as established law.

The "public order" ground has been given a narrow meaning. In *Dr. Ram Manohar Lohia* v. *State of Bihar* the Court distinguished "law and order", "public order" and "security of the State" as three concentric circles, with public order confined to disturbances that affect the community at large rather than individuals.[6] The distinction matters for protest because inconvenience to traffic, noise, or the embarrassment of the government does not, without more, disturb public order in this sense. Since *K.S. Puttaswamy* v. *Union of India*, any restriction must also satisfy a proportionality analysis that asks whether the measure pursues a legitimate aim, is suitable to that aim, is necessary in the sense that no less restrictive alternative of equal efficacy exists, and strikes a fair balance between the right and the aim.[7] The Court applied that framework to prohibitory orders in *Anuradha Bhasin* v. *Union of India*, holding that orders under section 144 of the Code of Criminal Procedure, 1973 must state material facts, may not be used to suppress the legitimate expression of opinion or grievance, and are subject to judicial review on proportionality grounds.[8]

The right has a counterpart on the other side of the street. Residents and commuters hold the freedom of movement under Article 19(1)(d) and the protection of Article 21, and the State bears a duty to maintain order and protect property. The Supreme Court has treated the resolution of these competing claims as a matter of balancing rather than hierarchy. It has also placed duties on protesters: in *In re Destruction of Public and Private Properties* the Court laid

[6] *Dr. Ram Manohar Lohia* v. *State of Bihar*, AIR 1966 SC 740.
[7] *K.S. Puttaswamy* v. *Union of India*, (2017) 10 SCC 1; *Modern Dental College and Research Centre* v. *State of Madhya Pradesh*, (2016) 7 SCC 353.
[8] *Anuradha Bhasin* v. *Union of India*, (2020) 3 SCC 637. Section 144 of the Code of Criminal Procedure, 1973 now corresponds to s. 163 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023) (hereinafter "BNSS"). See also *Madhu Limaye* v. *Sub-Divisional Magistrate, Monghyr*, (1970) 3 SCC 746.

down guidelines fixing liability on organisers for damage caused during demonstrations.[9] A complete account of the constitutional position must therefore recognise that the State's interest in regulating assemblies is real. The argument of this paper is not that regulation is illegitimate, but that its present legal form does not meet the constitutional standard that regulation of a fundamental right must satisfy.

## III. Permission, Place and the Legal Character of Standing Orders

### A. Who regulates, and under what law

There is no single national statute governing permission for public assemblies. The power is dispersed across State police statutes and the criminal procedure code. In Delhi, section 28(1)(p) of the Delhi Police Act, 1978 empowers the Commissioner of Police to make regulations, by notification in the Official Gazette, for "regulating the conduct of or behaviour or action of persons constituting assemblies and processions on or along the streets" and for specifying the routes and times of processions.[10] Regulations under section 28 require the previous sanction of the Administrator, must ordinarily be made after previous publication, are deemed to be rules for the purposes of section 23 of the General Clauses Act, 1897, and must be published in the affected locality.[11] Section 29 separately authorises the Commissioner and officers not below the rank of Inspector to give oral or written directions to regulate the conduct of processions and assemblies, specify routes and times, and prevent obstruction, provided such directions do not contravene regulations made under section 28.[12] In most other States, the corresponding power historically derives from section 30 of the Police Act, 1861 or from the State police statutes that have replaced it, which authorise senior police officers to direct the conduct of assemblies and processions on public roads and to require a licence for them.[13] Independently of these statutes, an Executive Magistrate may prohibit assemblies in urgent cases of nuisance or apprehended danger under section 163 of the BNSS.

[9] *In re Destruction of Public and Private Properties* v. *State of Andhra Pradesh*, (2009) 5 SCC 212. See also the fundamental duty to safeguard public property and abjure violence: The Constitution of India, art. 51A(i).

[10] The Delhi Police Act, 1978 (Act 34 of 1978), s. 28(1)(p). Clause (s)(iii) of the same sub-section separately covers licensing or prohibiting the use of loudspeakers in or near public places, and clause (t) covers the temporary closing of streets.

[11] The Delhi Police Act, 1978, s. 28(2), (3).

[12] The Delhi Police Act, 1978, s. 29(a)-(c).

[13] The Police Act, 1861 (Act 5 of 1861), s. 30. The provision has been repealed or replaced in several States by State police legislation, and the applicable provision must be identified State by State.

The constitutional standard that governs a permission requirement was set in *Himat Lal K. Shah* v. *Commissioner of Police, Ahmedabad*.[14] The appellant had applied on 30 August 1969 for permission to hold a public meeting on a street in Ahmedabad on 4 September 1969. Permission was refused because the application had not been made five days in advance, as rules framed under section 33(1)(o) of the Bombay Police Act, 1951 required. The question was whether those rules, and in particular Rule 7, which required prior written permission for any public meeting on a public street, were valid. The Court accepted that the State may regulate the use of streets for meetings, since without regulation the competing uses of a crowded street could not coexist. It held, however, that Rule 7 gave no guidance to the authorised officer as to the circumstances in which permission could be refused, conferred arbitrary power on him, and was therefore void. The case establishes two propositions that remain good law: a permission regime is not unconstitutional as such, and a permission regime that leaves refusal to unguided discretion is.

**B. Jantar Mantar: from practice to standing order**

No statute designates Jantar Mantar as a protest site. Its status rests on executive practice. Secondary reports identify a Delhi Police Standing Order of 2003 that designated Jantar Mantar for smaller gatherings, the Ramlila Maidan for larger ones and the Burari grounds for the largest.[15] In October 2017, on an application by residents of Jantar Mantar Road, the National Green Tribunal directed that protests in the area cease, citing noise and environmental harm, directed the New Delhi Municipal Council to remove temporary structures and public address systems, and indicated the Ramlila Maidan as an alternative.[16]

*Mazdoor Kisan Shakti Sangathan* v. *Union of India* arose from a writ petition by the Sangathan, which sought permission to protest in the Boat Club area near India Gate, and from appeals against the Tribunal's order, including one by the Indian Ex-Servicemen Movement.[17] The issues were whether a complete prohibition on protest at Jantar Mantar and Boat Club was constitutionally permissible, and how the rights of protesters were to be reconciled with those

[14]*Himat Lal K. Shah* v. *Commissioner of Police, Ahmedabad*, (1973) 1 SCC 227.
[15]"Supreme Court has allowed protests at Delhi's Boat Club again, but police say it could be a no-go" *Scroll.in*, July 2018, *available at*: https://scroll.in/article/888326 (last visited on Oct. 12, 2026). The number of this standing order is reported in secondary sources as No. 309; the author has not been able to inspect the order itself.
[16]The order was challenged in *Mazdoor Kisan Shakti Sangathan* v. *Union of India*, (2018) 17 SCC 324, in which its operative directions are extracted.
[17]*Mazdoor Kisan Shakti Sangathan* v. *Union of India*, (2018) 17 SCC 324, decided on July 23, 2018 by A.K. Sikri and Ashok Bhushan JJ.

of residents. The Court held that the right to peaceful protest is a fundamental right but that it must be balanced against the residents' right to live peacefully, that a complete ban was disproportionate, and that the authorities should frame guidelines for regulated use of both sites. The decision thus applied the logic of *Himat Lal* to place: just as permission may be regulated but not left to unguided discretion, a site may be regulated but not closed altogether.

What followed is the critical part of the story, and the least examined. The guidelines that the Court contemplated were issued not as regulations under section 28 of the Delhi Police Act but as a Delhi Police standing order. As publicly stated by the Delhi Police in 2026, protests at Jantar Mantar require prior permission; applications must reach the Deputy Commissioner of Police, New Delhi District, at least ten days in advance; gatherings are capped at 1,000 persons; gatherings of 1,000 to 50,000 are directed to the Ramlila Maidan; and larger gatherings to Burari.[18] The practical operation of this regime in 2026 illustrates its difficulties. In August 2026 a petitioner told the Delhi High Court that its application to hold a three-hour protest of about 75 persons had been neither granted nor refused for nearly a month; the Court directed the police to decide it within a day.[19] In the same month, another organisation that had applied for Jantar Mantar was granted a no-objection certificate for the Ramlila Maidan instead, limited to 500 persons and to 4 p.m.[20] In October 2026, the Supreme Court was informed that permission to protest at Jantar Mantar against the Election Commission had been refused to the Cockroach Janta Party and the Indian Youth Congress.[21]

### C. Is a standing order "law"?

The author's argument is that this regime is vulnerable on a ground distinct from the merits of any individual refusal. Article 19(2) and (3) permit restrictions only by "law". The Supreme Court has held that executive instructions and departmental orders that lack statutory force do

[18]"Must seek protest permission 10 days before event: Delhi Police" *The Pioneer*, 2026, *available at*: https://dailypioneer.com/news/must-seek-protest-permission-10-days-before-event-delhi-police (last visited on Oct. 12, 2026). Secondary sources variously identify the governing instrument as Standing Order No. 10 of 2018 and as a standing order of 2022; the text of the order has not been inspected by the author.

[19]"'Why Hold City to Ransom?': Delhi HC Questions Jantar Mantar Protests" *Deccan Chronicle*, Aug. 7, 2026, *available at*: https://www.deccanchronicle.com/nation/why-hold-city-to-ransom-delhi-hc-questions-jantar-mantar-protests-1977434 (last visited on Oct. 12, 2026). The petitioner was the All India Dalit Christian Rights Protection Committee; the observations of Amit Mahajan J questioning protests within the city were oral and do not form part of any reasoned order.

[20]"Delhi Police clears Reservation Hatao Andolan at Ramlila Ground" *Swarajya*, Aug. 21, 2026, *available at*: https://swarajyamag.com/news-brief/delhi-police-clears-reservation-hatao-andolan-at-ramlila-ground (last visited on Oct. 12, 2026).

[21]*Supra* note 2.

not qualify. In *Kharak Singh* v. *State of U.P.*, police regulations providing for domiciliary visits were held not to be "law" because they were executive instructions without statutory backing.[22] In *Bijoe Emmanuel* v. *State of Kerala*, departmental circulars were held incapable of restricting Article 19(1)(a) for the same reason.[23] Parliament provided a route for regulating assemblies in Delhi with statutory force, namely regulations under section 28, made with previous sanction, previous publication and local publication. A standing order that fixes numerical caps, notice periods and venue allocations, and that does not follow that procedure, is at best a direction under section 29 or an internal administrative instruction. If it is the former, it may not contravene regulations under section 28 and must still be traceable to the purposes section 29 enumerates. If it is the latter, it cannot by itself restrict a fundamental right.

Two counter-arguments deserve acknowledgment. First, the standing order was issued in response to a direction of the Supreme Court, and it may be said that a measure framed pursuant to such a direction carries judicial authority. The better view is that *Mazdoor Kisan Shakti Sangathan* directed the authorities to frame guidelines; it did not exempt those guidelines from the requirement that restrictions on Article 19 be imposed by law. Secondly, the regime may be characterised as a facility rather than a restriction: it allocates a site, and protest elsewhere is governed by the general law. This characterisation is difficult to sustain where the police treat assembly at Jantar Mantar without permission as a ground for removal and detention, as the 2026 events indicate they do. No court has yet adjudicated this specific argument, and it is offered as a ground for future challenge rather than as a statement of settled law.

International standards reinforce the point without being binding on Indian courts. The Human Rights Committee, interpreting Article 21 of the International Covenant on Civil and Political Rights, to which India is a party, has stated that a requirement to obtain permission for a peaceful assembly sits uneasily with the idea of assembly as a basic right, that notification regimes are preferable, and that any regime must not function as a de facto authorisation requirement.[24] Indian law has moved in the opposite direction: an application ten days in advance, a fixed numerical ceiling, and no published time-limit for decision.

[22] *Kharak Singh* v. *State of U.P.*, AIR 1963 SC 1295.
[23] *Bijoe Emmanuel* v. *State of Kerala*, (1986) 3 SCC 615.
[24] Human Rights Committee, General Comment No. 37 (2020) on the right of peaceful assembly (article 21), CCPR/C/GC/37 (Sept. 17, 2020), paras. 70-73.

### D. The Shaheen Bagh qualification

*Amit Sahni* v. *Commissioner of Police* qualifies the right in a different respect.[25] The protest against the Citizenship (Amendment) Act, 2019 at Shaheen Bagh began on 15 December 2019 and blocked a public road. The appellant, an advocate, sought directions for clearing the road. The protesters contended that the right of peaceful protest was absolute as to place and numbers. By the time of judgment the site had been cleared in the context of the pandemic. The Court held that public ways and spaces cannot be occupied indefinitely, that demonstrations must be held in designated places, and that the administration must act to remove encroachments and cannot shelter behind the courts. A review petition was dismissed on 9 February 2021, the Court observing that the right to protest cannot be exercised at any time and everywhere, while allowing for spontaneous protests.[26]

*Amit Sahni* is often read as a broad licence to confine protest to designated sites. A narrower reading is preferable and, in the author's view, more consistent with the reasoning. The decision concerned the indefinite blocking of an arterial road; the review order expressly preserved spontaneous protest. Read with *Himat Lal* and *Mazdoor Kisan Shakti Sangathan*, it supports the regulation of duration and place, not the proposition that protest outside a designated site is per se unlawful. The difficulty in 2026 is that the designation of sites has become a tool for refusal. If designated sites are themselves closed or capped and applications go undecided, the combination of *Amit Sahni* and a standing order produces the effect that *Mazdoor Kisan Shakti Sangathan* forbade: a practical prohibition. The proposal now before the authorities to relocate the principal protest site away from Jantar Mantar must be assessed against this concern.[27] Visibility to the institution addressed is part of the expressive value of a protest. A site chosen because it is remote from Parliament may satisfy the letter of *Mazdoor Kisan Shakti Sangathan* while defeating its purpose. Amenities, access for ambulances and the interests of residents are legitimate considerations, and the Court's concern with them is well founded; but a

[25] *Amit Sahni* v. *Commissioner of Police*, (2020) 10 SCC 439, decided on Oct. 7, 2020 by S.K. Kaul, Aniruddha Bose and Krishna Murari JJ.

[26] *Kaniz Fatima* v. *Commissioner of Police*, Review Petition in Civil Appeal No. 3282 of 2020, order dated Feb. 9, 2021 (SC).

[27] The petition in which notice was issued on Aug. 3, 2026 was filed by Satish Chand Kaushik and is reported as W.P. (C) No. 930 of 2026. See "'Important': Supreme Court Seeks Centre's Response On Plea Against Allowing Protests At Delhi's Jantar Mantar" *LiveLaw*, Aug. 3, 2026, *available at*: https://www.livelaw.in/top-stories/supreme-court-seeks-centres-response-on-plea-to-end-jantar-mantar-as-delhis-protest-site-544060 (last visited on Oct. 12, 2026); *supra* note 2.

proportionality analysis must also weigh what is lost when a protest can no longer be seen by those to whom it is addressed.

## IV. The Legal Source and Limits of Police Force

### A. The statutory power to disperse

The power of the police to use force against an assembly derives principally from section 148 of the BNSS, which re-enacts section 129 of the Code of Criminal Procedure, 1973. Sub-section (1) empowers an Executive Magistrate, the officer in charge of a police station or, in his absence, any police officer not below the rank of sub-inspector, to command "any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace" to disperse. Sub-section (2) provides that if the assembly does not disperse when so commanded, or conducts itself so as to show a determination not to disperse, the officer "may proceed to disperse such assembly by force" and may arrest and confine its members.[28] An "unlawful assembly" is defined by section 189 of the Bharatiya Nyaya Sanhita, 2023 by reference to an assembly of five or more persons having one of the enumerated common objects.[29] Sections 149 and 150 provide for the use of the armed forces, and section 151 bars prosecution for acts purporting to be done under sections 148 to 150 without the sanction of the Central or State Government.[30] Force used in effecting an individual arrest is separately governed by section 43 of the BNSS.

Two textual features are decisive. First, section 148 contains no express standard of restraint. By contrast, section 149(3) requires an officer of the armed forces to "use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly". The legislature thus articulated a minimum-force rule for the military and omitted it for the police, who use force against assemblies far more often. The omission has been carried forward without change from the Code of 1973 into the BNSS. Courts have read a requirement of reasonableness into section 148, but the statutory text gives the officer on the street no guidance. Second, the power is triggered not only by an unlawful assembly but by an assembly "likely to cause a disturbance of the public peace". That second limb is predictive and permits force against an assembly that has not yet done anything unlawful, provided a command to

[28]BNSS, s. 148(1), (2).
[29]The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 189.
[30]BNSS, ss. 149, 150, 151.

disperse has been disobeyed. The breadth of this trigger, combined with the absence of a statutory restraint standard, is the central structural weakness of the present law.

**B. Judicial construction: Ramlila Maidan and Anita Thakur**

The Supreme Court has filled the gap principally through two decisions. *In re Ramlila Maidan Incident* was a suo motu proceeding arising from the eviction of a gathering assembled for a fast led by Baba Ramdev at the Ramlila Maidan on the night of 4-5 June 2011.[31] The permission granted for the gathering was withdrawn and, around midnight, the police entered to clear the ground while many participants were asleep. Tear gas and lathis were used, and one participant, Rajbala, later died of spinal injuries. The issues were whether the withdrawal of permission and the manner of eviction violated the rights of the assembled persons, and who bore responsibility. The Court held that the decision to evict a sleeping gathering at midnight was arbitrary and an abuse of power, that the right of peaceful assembly had been violated, and that the police could have avoided the outcome by exercising greater restraint. It awarded compensation of Rs. 5 lakh to the family of the deceased, Rs. 50,000 to those grievously injured and Rs. 25,000 to those with minor injuries. It also held the organising trust guilty of contributory negligence, because its leadership had not asked the gathering to disperse peacefully, and directed it to bear 25 per cent of the compensation.[32]

The case establishes that the manner and timing of force are themselves subject to constitutional scrutiny, independently of whether the order to disperse was lawful. Its finding of contributory negligence is equally important and is sometimes overlooked: it allocates to organisers a duty to facilitate peaceful dispersal. This is a principled foundation for a reciprocal model of protest policing, in which both the police and the organisers carry legally relevant duties.

*Anita Thakur* v. *Government of Jammu and Kashmir* refined the analysis by separating the lawfulness of initial force from the lawfulness of its continuation.[33] The petitioners, including the general secretary of a political party, were part of a march of migrants from Talwara

[31]*In re Ramlila Maidan Incident*, (2012) 5 SCC 1, decided on Feb. 23, 2012 by B.S. Chauhan and Swatanter Kumar JJ.
[32]"Crackdown on Baba Ramdev followers 'tyrannical', says SC" *Deccan Herald*, Feb. 23, 2012, *available at*: https://www.deccanherald.com/india/crackdown-baba-ramdev-followers-tyrannical-2314500 (last visited on Oct. 12, 2026). The paragraph numbers of the reported judgment should be consulted for each proposition.
[33]*Anita Thakur* v. *Government of Jammu and Kashmir*, (2016) 15 SCC 525, decided on Aug. 12, 2016 by A.K. Sikri and R.K. Agrawal JJ.

towards Delhi that began on 31 July 2007 to press grievances about their rehabilitation. Near Katra, on 7 August 2007, the police stopped the march and the petitioners alleged that they were brutally beaten. The issues were whether the police action violated Article 19(1)(a), (b) and (d) and Article 21, and whether compensation could be awarded. The Court held that the right to hold peaceful demonstrations is subject to reasonable restrictions in the interests of public order; that on the facts the protesters had themselves taken the law into their hands, so that some force was justified; but that the police had continued to use force beyond what was needed after the crowd had been brought under control, and to that extent had violated the petitioners' fundamental rights. Rejecting a defence of sovereign immunity in public law, it awarded Rs. 2,00,000 to the first petitioner and Rs. 1,00,000 to each of two others.[34]

Read together, these decisions yield a judicially constructed standard with three elements: force must be a last resort; its manner, timing and target must be reasonable; and force that is initially justified becomes unlawful once its object is achieved. The standard is sound. Its limitation is that it operates retrospectively, through compensation awarded years later. It does not tell an officer before the event which instrument may be used, at what stage, or against whom.

### C. The instruments of force

None of the instruments that dominate Indian crowd control is named in the BNSS or the Delhi Police Act. Each depends on the general words "by force" in section 148(2), supplemented by internal instructions that are not published as law.

The lathi is the default instrument. Its legal basis is nothing more specific than section 148(2). There is no statutory rule on which parts of the body may be struck, whether a warning must precede a charge, or whether persons who are retreating or seated may be targeted. *Anita Thakur* suggests that striking persons already under control is unlawful, but that is a judicial inference from the facts of one case.

Tear gas presents an instructive contrast between international and domestic regulation. The Chemical Weapons Convention prohibits riot control agents as a method of warfare but

[34]"Unfortunate that the use of force by Police to control hooliganism and vandalism by the protestors results in public anger against the police" *SCC Online Blog*, Aug. 13, 2016, *available at*: https://www.scconline.com/blog/post/2016/08/13/ (last visited on Oct. 12, 2026). The Court relied on *Nilabati Behera* v. *State of Orissa*, (1993) 2 SCC 746 for the availability of public law compensation.

expressly permits them for law enforcement, including domestic riot control.[35] International law therefore confirms that tear gas is not prohibited in policing. It does not supply domestic authority for its use, and Indian statute law contains no provision regulating its deployment in confined spaces, near hospitals, or by direct firing of canisters at persons.

Pellet guns are the most contested instrument. Their use for crowd control in Jammu and Kashmir led the Jammu and Kashmir High Court Bar Association to seek a prohibition in 2016. The High Court declined to prohibit their use in rare and extreme situations, noting that the Ministry of Home Affairs had constituted an expert committee by a memorandum of July 2016 to explore alternatives; it finally dismissed the petition in March 2020.[36] On appeal, the Supreme Court observed in December 2016 that pellet guns should not be used indiscriminately and should be resorted to only after proper application of mind, and in March 2017 asked the Union to consider other effective means.[37] These observations were made in interim orders and are not a binding ratio on the legality of pellet guns. The government has classified pellet guns as non-lethal, while the United Nations human rights guidance on less-lethal weapons treats multiple-projectile munitions such as shotgun pellets as inherently inaccurate and unsuitable for law enforcement.[38] That a weapon so contested is used in the national capital, as was alleged in respect of 20 July 2026, without any published rule on its deployment, is in the author's view the clearest instance of the regulatory vacuum this paper identifies.

Barricading is the least visible and most frequent measure. It rests on the directions power in section 29 of the Delhi Police Act to prevent obstruction and specify routes, and on the regulation-making power to close streets temporarily.[39] Barricading is generally less intrusive than force against the person, and its use to keep a march away from Parliament may well be justified. But it is a restriction on Article 19(1)(b) and (d), and when used to seal the routes to

[35]Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993, 1974 UNTS 45, arts. I(5), II(7), II(9)(d). India has implemented the Convention through the Chemical Weapons Convention Act, 2000 (Act 34 of 2000).

[36]*Jammu and Kashmir High Court Bar Association* v. *Union of India* (J&K HC), order dated Sept. 21, 2016 and judgment dated Mar. 11, 2020 (Ali Mohammad Magrey and Dhiraj Singh Thakur JJ.). Reports differ on the date of the Ministry's memorandum; most give July 26, 2016. See "HC rejects plea seeking ban on use of pellet guns" *Hindustan Times*, Mar. 12, 2020.

[37]*Jammu and Kashmir High Court Bar Association* v. *Union of India* (SC), orders dated Dec. 14, 2016 and Mar. 27, 2017. See "Pellet Guns Cannot Be Used Indiscriminately: SC" *LiveLaw*, Dec. 2016, *available at*: https://www.livelaw.in/pellet-guns-cannot-used-indiscriminately-sc (last visited on Oct. 12, 2026); "Consider effective means other than use of pellet guns in J&K: SC to Centre" *Business Standard*, Mar. 27, 2017.

[38]Office of the United Nations High Commissioner for Human Rights, *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (2020). The paragraph on multiple projectiles should be verified against the published text.

[39]The Delhi Police Act, 1978, ss. 28(1)(t), 29(b), (c).

a designated protest site it can convert a lawful assembly into an unlawful one by preventing participants from reaching it. The proportionality of barricading is seldom tested because it leaves no physical injury.

### D. The 2026 proceedings

The proceedings in *Shailendra Mani Tripathi* show the Supreme Court attempting to address this vacuum directly. At the hearing on 27 July 2026 the Chief Justice observed orally that peaceful protest is constitutionally protected and that the mere existence of an agitation cannot justify police excess, while emphasising that protest equally cannot justify violence against the police, and suggested the need for uniform protocols.[40] By an order of 28 July 2026 the Court found a prima facie case for an independent inquiry, directed that no coercive action be taken against protesters other than those with criminal antecedents, directed the release of detained minors, and directed the preservation of CCTV footage, drone recordings and call records. On 3 August 2026 it clarified that the protection did not extend to those facing heinous charges; the Chief Justice also floated the idea of a special investigation team and a committee to examine allegations of excess, and indicated that the Court might consider a protocol on force multipliers such as pellet guns.[41] The Delhi Police, for its part, filed an affidavit asserting that it had used only the minimum force required.[42] That assertion and the petitioners' allegations cannot both be tested without an articulated standard of what minimum force requires, which is precisely what the statute does not provide.

## V. Identification: The Name Plate Problem

The duty of police officers to be identifiable has a clear origin. In *D.K. Basu* v. *State of West Bengal*, a letter petition concerning custodial deaths was treated as a writ petition, and the Court laid down requirements to be followed in all cases of arrest or detention. The first was that police personnel carrying out the arrest and handling the interrogation of the arrestee should

[40] *Supra* note 1. These remarks were oral observations during hearing and are not part of the operative order.

[41] Samridh Chaturvedi, "India dispatch: Supreme Court clarifies student protest order exposing flawed policing of dissent" *JURIST*, Aug. 11, 2026, *available at*: https://www.jurist.org/news/2026/08/india-dispatch-supreme-court-clarifies-student-protest-order-exposing-ad-hoc-policing-of-dissent/ (last visited on Oct. 12, 2026). The order dated July 28, 2026 is available on the website of the Supreme Court; its text should be consulted for the precise terms of each direction.

[42] "Delhi Police Tells Supreme Court Jantar Mantar Protest Was Controlled With 'Minimum Required Force'" *CourtBook*, 2026, *available at*: https://courtbook.in/posts/delhi-police-tells-supreme-court-jantar-mantar-protest-was-controlled-with-minimum-required-force (last visited on Oct. 12, 2026).

bear accurate, visible and clear identification and name tags with their designations.[43] Parliament later enacted the substance of this requirement in section 41B(a) of the Code of Criminal Procedure, 1973, which is now section 36(a) of the BNSS: every police officer "while making an arrest" shall "bear an accurate, visible and clear identification of his name which will facilitate easy identification".[44]

Both the judicial direction and the statute are expressed by reference to arrest and interrogation. Neither in terms governs an officer who strikes a protester with a lathi or fires a tear gas shell without arresting anyone. The question whether there is any exception to the name plate requirement, granted by a court, the Union or any other authority, therefore has two answers depending on the activity in question.

For arrest, the research for this paper did not locate any judicial decision, Union notification or other instrument that exempts officers from section 36(a). The requirement is statutory and admits no exception on its face.

For crowd control without arrest, the obligation to display identification is not derived from section 36 but from service rules governing uniform. Those rules contain the only express exception that the research located. Rule 4.4 of the Punjab Police Rules, 1934, which historically applied in Delhi as well as in Punjab and Haryana, requires officers of all ranks to wear uniform on duties involving the exercise of police powers, "provided that this rule shall not apply to police officers specifically deputed on plain clothes duty"; it absolutely prohibits a mixture of uniform and plain clothes, and requires that for duties performed in public view officers be so turned out that there can be no possibility of mistake as to their being police officers.[45] The exception is for plain-clothes duty, which is an assignment, not a licence to remove a name plate while in uniform. A uniformed officer without a name plate falls within neither the rule nor its exception. Delhi Police Standing Order No. 51 is reported to prescribe visible name plates as part of the uniform, a point raised in October 2026 by a Member of Parliament who was among those detained at Jantar Mantar.[46] In 2023 the High Court of

[43]*D.K. Basu* v. *State of West Bengal*, (1997) 1 SCC 416, decided on Dec. 18, 1996.
[44]BNSS, s. 36(a); The Code of Criminal Procedure, 1973, s. 41B(a), inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009).
[45]Punjab Police Rules, 1934, r. 4.4(1), (3), as reproduced in a writ petition filed before the High Court of Punjab and Haryana in Sept. 2020, *available at*: https://www.livelaw.in/pdf_upload/pdf_upload-381639.pdf (last visited on Oct. 12, 2026). The current applicability of these Rules in Delhi, and any later amendment, should be verified.
[46]"Protect citizens exercising right to protest, ask cops to wear name plates: CPI MP writes to Shah" *ThePrint* (PTI), Oct. 3, 2026, *available at*: https://theprint.in/india/protect-citizens-exercising-right-to-protest-ask-cops-to-

Kerala, examining police action against protesters at Nilakkal during the 2018 Sabarimala protests, found that many officers had not worn the name plates required by existing law, characterised this as dereliction of duty, and directed the State Police Chief to ensure that it was not repeated.[47]

The author's argument is that the arrest-centred framing of the statutory duty no longer matches the realities of protest policing, and that existing law already supports a wider duty in two respects. First, the removal of protesters into buses and their detention at police stations, the routine method of clearing a site, is a deprivation of personal liberty. Whether characterised as arrest, preventive detention, or detention of persons resisting police directions under section 172 of the BNSS, it places the person in police custody, and the rationale of *D.K. Basu*, which is that a person in custody must be able to identify those exercising power over him, applies with full force.[48] Secondly, the compensation jurisprudence of *Anita Thakur* and *Ramlila Maidan* places liability on the State, but an independent inquiry into individual excess, of the kind contemplated in July 2026, is impossible if the officers cannot be identified. Anonymity in uniform therefore does more than breach a service rule. It disables the only accountability mechanism that the Supreme Court has so far constructed for protest policing. No authority examined for this paper has articulated a justification, such as officer safety, for removing name plates during crowd control; if such a justification were advanced, a proportionate response would be a visible unique number rather than anonymity.

## VI. Accountability and Its Barriers

The remedial landscape has four layers, each with a weakness. Public law compensation under Articles 32 and 226 is available after *Nilabati Behera* and has been applied to protest policing in *Ramlila Maidan* and *Anita Thakur*, but the State, not the officer, pays, and the sums awarded are modest. Criminal prosecution of officers for acts done in dispersing an assembly requires government sanction under section 151 of the BNSS, which places the decision in the hands of

wear-name-plates-cpi-mp-writes-to-shah/3061192/ (last visited on Oct. 12, 2026). The text of Standing Order No. 51 has not been inspected by the author.

[47]Petitions filed by Suresh Kumar before the High Court of Kerala, decided in Aug. 2023 by Anil K. Narendran and P.G. Ajithkumar JJ. See "Deployment Of Police Near Sabarimala Temple Without Nameplates: Kerala HC Directs Not To Repeat Such Duty Dereliction" *Verdictum*, Aug. 2023, *available at*: https://www.verdictum.in/court-updates/high-courts/kerala-high-court-police-sabarimala-temple-protest-entry-of-women-1491728 (last visited on Oct. 12, 2026). The case numbers and citation should be verified.

[48]BNSS, s. 172 (persons bound to conform to lawful directions of police; power to detain or remove persons resisting). The precise scope of this provision in protest contexts awaits judicial interpretation.

the same executive whose force is in question. Departmental proceedings depend on identification. Police Complaints Authorities, directed to be established in every State by *Prakash Singh* v. *Union of India*, remain unevenly constituted and are not designed for rapid post-incident review of mass events.[49]

The result is that accountability for protest policing in India currently depends on the Supreme Court assembling an ad hoc mechanism after each major incident, as it did after 2011 and attempted again in 2026. An ad hoc mechanism has value but binds no future government, depends on which litigants reach the Court, and cannot substitute for rules known in advance to the officer and to the citizen.

## VII. Proposals for Reform

The following proposals are the author's. They are designed to codify standards the courts have already articulated, and none requires a constitutional amendment.

First, permission should be replaced by notification for assemblies at designated sites and for peaceful assemblies below a stated size elsewhere. Where the authority wishes to impose conditions or refuse, it should be required to do so by a reasoned written order within a fixed period, failing which the assembly should be deemed permitted. Any refusal should identify an alternative of comparable visibility. These requirements would give statutory effect to *Himat Lal* and *Mazdoor Kisan Shakti Sangathan*. In Delhi, the governing rules should be made as regulations under section 28 of the Delhi Police Act with the publication it requires, not as standing orders.

Secondly, section 148 of the BNSS should be amended to include an express minimum-force standard equivalent to that already found in section 149(3), together with requirements of an audible warning, a reasonable opportunity to disperse, the provision of medical aid, and a written report of every use of force. The predictive limb of section 148(1), covering assemblies merely "likely" to disturb the public peace, should be narrowed to cases of imminent violence.

Thirdly, the instruments of force should be regulated by published rules that specify the circumstances in which each may be used and the order in which they may be escalated. Multiple-projectile pellet guns should be prohibited for crowd control, consistently with the

[49] *Prakash Singh* v. *Union of India*, (2006) 8 SCC 1.

United Nations guidance and with the Supreme Court's own concern in 2016 and 2017 about indiscriminate use.

Fourthly, the identification duty in section 36(a) of the BNSS should be extended to every officer deployed on public order duty, whether or not making an arrest, with a visible unique number on protective equipment. Plain-clothes personnel should not be permitted to use force against an assembly except in an emergency, and any such use should be reported.

Fifthly, every incident in which force causes serious injury at an assembly should trigger an automatic independent review, with mandatory preservation of video records, along the lines the Supreme Court directed in July 2026. The sanction requirement under section 151 should not apply to such a review.

Finally, any decision to relocate Delhi's principal protest site should be taken through a transparent process and tested against the proportionality standard, with express weight given to the visibility of protest to the institutions it addresses, and not only to the convenience of residents and traffic.

## VIII. Conclusion

The Indian constitutional order does not lack a right to protest. It lacks a law of protest policing that is equal to the right. The Supreme Court has said repeatedly that peaceful assembly is a fundamental right, that its regulation must be guided and proportionate, that a site may be regulated but not closed, that force must be a last resort and must stop when its object is achieved, and that excess attracts compensation. Very little of this has been translated into statute. The permission regime for the national capital rests on a standing order of doubtful legal character; the power to use force rests on two words, "by force", untouched by the minimum-force rule that Parliament thought necessary for the army; the identification duty stops at the moment of arrest; and accountability is rebuilt from the beginning after every crisis. The events of 2026 have shown both the Court's willingness to intervene and the limits of intervention by interim order. Durable protection now requires legislative and regulatory action that codifies what the Court has already held, so that the officer at the barricade and the citizen on the other side know in advance what the law permits.