

Title: "Compare and contrast the rights to protest in England & Wales with such rights in India"

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Introduction

One of the most basic and fundamental human rights is the right to protest. The ending of slavery and the extension of rights to women and minorities are some instances which portray simply how instrumental and fundamental protests have been for hundreds of years. This essay will discuss the roots and current legal standing of the rights to protest followed by an in-depth analysis of the rights to protest in England and Wales, as well as in India. Finally, this essay will also assess jurisprudence based on the Sikh spiritual and political tradition and how it would address the right to protest. The essay will then conclude that despite the limitations present in the laws on the rights to protest, we as human beings have a role to play through Sikh jurisprudence, which is primarily concerned with bringing peace into the world through equality and achieving spiritual elevation and material happiness in the world.

What is the Right to Protest?

The right to protest is the right to conduct a peaceful assembly and is the fundamental principle of any democracy. According to the Black Law's dictionary, a protest is a formal declaration made by a person interested or concerned about some act to be done, or already performed, and expresses his dissent or approval towards the act.¹ Taking on the strong and rich and powerful has been a tradition for decades now as they change that we see from the powerful is typically a consequence of the struggle and sacrifice of those below.² Protest is as strong a weapon of

¹ <https://thelawdictionary.org/protest/>

² 'The people are revolting - the history of protest', BBC UK

change as it has ever been, from affluent barons taking on a wealthy leader to the demands and injustices encountered by millions today.³ In this essay, I will further explore the importance of the rights to protest from a legal point of view.

Right to Protest in England and Wales

Protesting is a part of a long, proud history of England and Wales. The early protests in England date right back to the 1300s, where rebels marched in London to protest poll tax till this very day, with one of the most recent protests being held early this year, which was ironically to protest the new policing bill that threatened the rights of citizens to protest. Every year, the country sees thousands of its citizens demonstrating and protesting on public streets for all types of causes and usually, these protests take place peacefully and without any form of violence.⁴ England has ratified a number of binding international human rights instruments which guarantee the peaceful right to protest including the Charter of Fundamental Rights of the European Union.⁵ Under the European Convention of Human Rights, an individual has the right to hold his/her own opinion as well as to receive and impart information without any interference from public authorities.⁶ Notably, the Human Rights Act 1998 protects a citizen's right to protest by holding meetings and demonstrations with other people under Article 11. Citizens ought not to be limited from protesting in any shape or form unless it is lawful, proportionate, and necessary to do so in

³ Ibid

⁴ <https://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/MemberStates/UK.pdf>

⁵ <https://www.libertyhumanrights.org.uk/fundamental/protest-rights/>

⁶ <https://nationallegalservice.co.uk/uk-protest-rights/>

order to preserve national security, public safety, preventing crime and disorder, or protecting the health, morals and freedoms of others.⁷

However, since the introduction of the debate of the new policing bill in England and Wales, this basic human right appears to potentially have been jeopardised. Anti-protest restrictions are excessively broad, and provide the authorities and the Home Secretary with too much discretion, thereby affecting the human rights standards.⁸ Not only would police authorities be allowed to impose a wide array of strict conditions on protests under the new Police, Crime, Sentencing and Courts Bill, but it would also make it a crime for protestors carrying out those activities despite having no prior warnings or knowledge of the misconduct.⁹ This is a huge contrast with the current law which makes it compulsory for protestors to be fully informed and aware of their actions prior to having any action taken towards them for having broken the law. It is of no surprise that ministers and police authorities alike are of the opinion that this new Bill is very much necessary, especially as they were unable to control the impact of the Extinction Rebellion protest in 2019.¹⁰

In addition, the Home Office opines that the new law still very much protects the rights to protest of citizens though this matter is highly debatable as it may encompass police officers potentially abusing their powers by taking advantage of the very citizens they pledge to protect.¹¹ From the heartbreaking murder of George Floyd to the police abusing their stop and search powers in the

⁷ Article 11 Human Rights Act 1998

⁸ 'Anti-protest curbs in UK policing bill 'violate international rights standards'' The Guardian, 28 April 2021

⁹ 'What is the Police, Crime, Sentencing and Courts Bill and how will it change protests' BBC, 22 March 2021

¹⁰ Ibid

¹¹ Ibid

UK recently, there are indeed many instances that have come to light which expose the discriminatory use of police powers, and allowing for this Bill to pass would almost certainly guarantee an abuse of power at some point which is all too risky and unnecessary. A recent example includes 26-year-old Jasmine bearing noticeable bruising and injuries as a result of being hit by batons and shields, as well as being bitten by a police dog during her participation in the 'Kill the Bill' protest against the new Police, Crime, Sentencing and Courts Bill.¹² Even though it is still not an entirely common occurrence in England and Wales to see many arrested or abused under police power, a British Politics and Legislative Studies spokesperson commented that the COVID-19 regulations, as well as the Police, Crime and Sentencing Bill, have given the police *carte blanche* to act with impunity on the ground.¹³ As a result, the current proportion of arrests of lawful observers and the grounds for such arrests are fundamentally a vehicle for the police to exert power and unfettered authority.¹⁴

Thus, in my personal opinion, the introduction of this new Bill does little to respect human rights. This is primarily because in addition to the above, the proposed conditions that are triggered by noise strikes goes against the main purpose of a protest - to have voices heard. Limiting the numbers and duration of a protest would lead to a negative impact on large demonstrations as the existing law in England and Wales already addresses the issue of noise and provides a number of powers to the police to deal with.¹⁵ Although there are certainly circumstances under which

¹² Nabeela Zahir, 'UK: Tensions grow between protestors and scandal-hit police' Al Jazeera, 20 April 2021

¹³ Ibid

¹⁴ Ibid

¹⁵ <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/156037/government-plans-to-change-law-to-restrict-demonstrations-breach-human-right-to-protest-says-jchr/>

the failure to comply with police conditions ought to be justified, there are many circumstances under which peaceful protestors may be criminalised.¹⁶ A matter of concern is also the effect the Bill may have on minority ethnic groups as a high number of brown and black people have been targeted as victims of arrest at protests. However, as I will proceed to explain below, the justice system, or lack thereof in certain instances, does not necessarily put a halt to one's right to protest or to stand up for what is right.

Right to Protest in India

In India, one of the largest democratic countries in the world, protest too plays an important role as it does in most of the existing liberal democratic nations. In the case of *Ramlila Maidan Incident v Home Secretary, Union of India and Ors*, the Supreme Court had stated, "Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action." Similarly, to the rights to protest in England and Wales, it is important that these protests are non-violent and have appropriate permission.¹⁷ The right to protest peacefully is contained in the Indian Constitution Article 19(1)(a) which guarantees the right to freedom of speech and expression and Article 19(b) which assures citizens the right to protest peacefully without any arms. Again, similarly to the rights to protest in England and Wales, the right to protest in India are subject to reasonable restrictions which include protecting the interests of public order. However, unlike in England and Wales, it cannot be overlooked that

¹⁶ Ibid

¹⁷ 'Citizen Protests in India: Rights, Duties and Permissions Needed' The Better India, 18 December 2019

protests are permitted in the country, despite the fact that they have little impact due to the ruling government's increasing corruption and ineptitude.¹⁸

In India today, many protests, despite having a great objective, frequently fail to produce meaningful outcomes.¹⁹ The government of India has taken very drastic measures to put down what were fundamentally democratic and peaceful protests (with the exception of a few that weren't).²⁰ Some of the examples include Anna Hazare's campaign, where the police prescribed a list of dos and don'ts and restricted the number of protestors allowed; in Guwahati, the police were let loose on those protesting the harassment of a girl by a gang prompted by a television crew.²¹ In another instance, following the gang rape and fatal attack on Jyoti Singh, a 23-year-old woman, the Delhi police retaliated against protests by youth and women.²² The protestors had taken the India Gate-Raisina Hill area of the capital, which houses the President's official residence - Rashtrapati Bhavan, Parliament House, Prime Minister's Office and most important ministries.²³ The police did not only evacuate the protestors from the premises, but also proceeded to shut down the Metro rails.²⁴ However, this did little to dampen the energy and spirits of the protestors, who demanded justice for the victim and a safer environment for all women, which ties in to the country requiring an accountable government and a rule of law that is just.²⁵

¹⁸ Sourab Bhatar and Dr. Nidhi Tyagi, 'Role of protest in democracy' (2019)

¹⁹ Ibid

²⁰ B S Arun, 'Curbing the right to protest' Deccan Herald, 6 January 2013

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid

The issues above thus raise a couple of important questions: is it now becoming a new trend to silence peaceful and democratic protests, which is a democratic right of every citizen? Is it fair to limit the freedom of expression of those who are demonstrating while exercising their constitutional right to free speech?²⁶ However, as rightfully noted by B S Arun in his article, 'Curbing the right to protest', the government's intolerance to protests and the police repression in mass protests may have successfully contained several protests but this is just the beginning of many to come. With that being said, I would like to take this opportunity to highlight the recent farmers' protest led by the Sikhs from Punjab below. The ongoing protest, which will be discussed in further detail, isn't simply a battle to secure legal guarantee for minimum support price or to seek repeal of the newly enacted controversial legislations without taking into account the farmers' vote of confidence.²⁷ It is also to prevent the rich and elite of India from robbing farmers' labour powers without paying the costs of doing so.²⁸ And importantly, while these protests are primarily about equal rights for people of all backgrounds and do not have a religious component per se, there is a significant religious dimension²⁹ which will be highlighted after this.

Sikh Jurisprudence and its Role in the Rights to Protest

There are instances where the legal system serves as a tool for the political system, and there are times when the religious system serves as a tool for the political system, or vice versa, but the

²⁶ Ibid

²⁷ Kancha Shepherd, 'Why the farmers' protest is led by the Sikhs of Punjab' The Print, 28 December 2020

²⁸ Ibid

²⁹ <https://berkeleycenter.georgetown.edu/responses/indian-farmer-protests-are-animated-by-sikh-faith-punjabi-history-of-fighting-injustice>

matter that always remains at a constant is that there is a relationship between the legal and religious systems.³⁰ The term jurisprudence, which is derived from the latin term *juris prudentia*, means the study, knowledge and science of law.³¹ The following, extracted from Wikipedia, though by no means definitive or authoritative, provides a helpful summary of Sikhism.³²

***Sikhism** or **Sikhi** Sikkhī, from Sikh, meaning a ("disciple", or a "learner"), is a religion that originated in the Punjab region of the Indian subcontinent about the end of the 15th century. It is one of the youngest of the major world religions. The fundamental beliefs of Sikhism, articulated in the sacred scripture Guru Granth Sahib, include constant spiritual meditation of God's name, being guided by the Guru instead of yielding to capriciousness of mind or psyche, living a householder's life instead of monasticism, truthful action to dharam (righteousness, moral duty), being of selfless service to others, equality of all human beings, and believing in God's grace.*³³

Guru Nanak Dev Ji, the founder of Sikhism around 500 years ago, drew notable teachings and ideas of having just one God and that all human beings can have direct access to God without any rituals necessary. His most radical social teachings denounced the caste system and announced that everyone is equal, regardless of caste and gender.³⁴ Guru Nanak's teachings can also broadly be summarised under three pillars; *Kirat Karo*, which means to earn an honest, pure and dedicated living by exercising one's God given abilities and hard labour for the improvement of the individual; *Naam Simran*, which is meditation and contemplating the various names of

³⁰ Monica Sanders, 'The relationship between religion and the law' (2020)

³¹ <https://www.law.cornell.edu/wex/jurisprudence>

³² Legal Opinion - In the matter of Sikhism and the national census

³³ <https://en.wikipedia.org/wiki/Sikhism>

³⁴ 'Religions - Sikhism: Guru Nanak', BBC, 07 October 2011

God, especially by the chanting of the word *Waheguru*, and *Vand Chakko*, which means to appreciate and share what we have together as a community.³⁵

As a faith rooted in love, Sikhism not only stands for equality but also upholds the values of honesty, compassion, generosity, humility, integrity, service, and spirituality on a daily basis.³⁶

While there is no institutional Sikh jurisprudence because the religion has no formal code of laws or clergy, I believe that the faith's ideals and values constitute the basics of Sikh jurisprudence.

Guru Nanak's teachings have taught us to live fearlessly and stand up to injustice no matter the consequences, according to Sikh tradition. The other Gurus mirrored this sentiment as they were equally as unafraid to speak truth to power and fight injustice.³⁷ Guru Tegh Bahadur exemplified

this through the sacrifice made when the Kashmiri Brahmins sought assistance and safety from the then Mughal ruler, Aurangzeb.³⁸ This had led to Guru Tegh Bahadur's arrest and martyrdom in Delhi as the Guru could not be persuaded to abandon his faith and was thus unable to save

himself from persecution. Such sacrifices were echoed by Guru Gobind Singh's younger sons, in their refusal to submit to Wajid Khan's dictation and his older two sons in their battle against the army. This is not excluding Guru Gobind Singh's mother, Gujar Kaur's sacrifice, which today

inspires us to fight against oppression.³⁹ And today, the very Sikhs of Punjab march on today to protest against the ongoing injustice and unfairness that is taking place, spurred on by a fundamental tenet in Sikhism, '*sarbat da bhalla*' - working towards the common good for all.

³⁵ <https://reflectandrespond.com/guru-nanak-dev-ji-3-teachings-kirat-karo-naam-japo-vand-chako/>

³⁶ <https://www.mesaaz.gov/home/showpublisheddocument?id=22622>

³⁷ Ibid

³⁸ https://www.sikhiwiki.org/index.php/Kashmiri_pandits

³⁹ Jaspal Singh, 'As India protests CAA, a reminder from Sikh history of fight against oppression' The Wire, 17 December 2019

As aforementioned above, the Sikh farmers from the breadbasket of the country have ultimately picked up on the cudgel to defend the labour, which is held in high regard in Sikhism. Punjab's agricultural process is based on the social foundation of everyone working on the land with dignity.⁴⁰ The advancement of Punjab agriculture is rooted in the social base of everyone working on the farm with dignity. Disagreements between Sikhs and the Indian government have been ongoing for decades now and include violence that has ravaged the state and left thousands of civilians dead.⁴¹ The prior protest too emerging from national resistance and the demands for equal opportunities has made it evident that the Sikh faith fuels these efforts.⁴² Therefore, it should come as no surprise to anyone who is familiar with the Sikh faith that protest is nothing new to us; in fact, it permeates Sikh's past, present and future as Sikh narratives have always been filled with characters who stand up for what is just and right.

Notably, these protests have not just been limited to those from India, but they have also seen those from England supporting them by taking it to the streets and Internet to register their support.⁴³ This again boils down to the fact that protests have always been used as a method for protestors to portray themselves in a certain manner and to enact a social position.⁴⁴ In today's scenario, the context may differ from what the Gurus and our Sikh ancestors have endured, but it ultimately bears the same principles. As noted by the Patiala Sikh Students' President in 2008, "To protest meant being a *Khalsa*". Hence, tens of thousands of farmers who are protesting the

⁴⁰<https://berkeleycenter.georgetown.edu/responses/indian-farmer-protests-are-animated-by-sikh-faith-punjabi-history-of-fighting-injustice>

⁴¹ Ibid

⁴² Ibid

⁴³ Sandish Shoker, 'Why UK protestors are supporting Indian farmers' BBC, 12 December 2020

⁴⁴ Lionel Baixas and Charlene Simon, 'From protestors to martyrs: how to become a 'true' Sikh' (2008)

controversial laws passed by the Modi government are following the same route taken by the Gurus⁴⁵ and feel it their responsibility to protest to prove what a true Sikh identity is.⁴⁶ As mentioned by a 54-year-old Sikh farmer, Jagmeet Singh, the Sikhs were once fighting the Mughals and today they fight the Modi government, and will continue to rise up against any form of oppression.⁴⁷ People from various castes and backgrounds, including a large number of women, have been playing a vital role in these protests. Hence, I would argue that the right to protest is not simply a legal right but also bears the basic teachings of Sikhism and in turn, Sikh jurisprudence which contains the basis of these teachings.

Conclusion

The laws in England and Wales, and India bear many similarities and certain differences in regard to the rights to protest, with limitations present in both. However, both are democracies and the right to protests must only be read in this light. The right to protest is the burner which keeps the balloon of democracy afloat, bringing it to greater heights. It is the lifeblood and an absolute symbol of a healthy, thriving democratic polity. A democracy which prioritises the welfare of its people, will essentially protect and uphold the right to protest. However, all fundamental rights are not absolute. The thin line between protests and riots is an abyss of conflicting interpretations. The law attempts to fill this abyss with enumerated restrictions and clarifications

⁴⁵ Fateh Veer Singh, 'Protesting farmers recall the heroics of Guru Tegh Bahadur to draw inspiration' The Wire, 30 November 2020

⁴⁶ Lionel Baixas and Charlene Simon, 'From protestors to martyrs: how to become a 'true' Sikh' (2008)

⁴⁷ Fateh Veer Singh, 'Protesting farmers recall the heroics of Guru Tegh Bahadur to draw inspiration' The Wire, 30 November 2020

on what each side means; the balance must be just right, the scales must not tip in favour of one above the other, and that in itself is a gargantuan task. In Hindi there is a saying, '*saanp bhi mar jaye aur lathi bhi na tute,*' which translates to the same way, fight for your rights, stand for your nation but do not do so at the expense of another, or of public property. The right to protest, being a fundamental right in a democracy, should only be regulated by law and on the grounds mentioned in the Constitution and not by any executive instructions. To allow the latter to happen would be to demean the very tenet of democracy. The reasons for protests may be varied, it may stem too from religious thinking and an innate sense of what is just and right, such as the farmers' protests in India.

Whatever the motivation may be, it remains however that the regulation and form the protests take, must comply with only the Constitution, the grundnorm of the country. Anything lesser, would be a serious miscarriage of justice. Martin Luther King Jr stated, "One has not only a legal, but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws." Disobedience may take the form of protests. Just as citizens are regulated by the law, the government must be regulated by its citizens' resistance to unjust laws. It is this check and balance which protests provide, that keeps a democracy thriving. Very much like the *Khanda* in Sikhism, the right to protest is a double-edged sword; wield this powerful tool responsibly, unsheathe it wisely and sharpen it with temperance.

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