

Compare and contrast the rights to protest in England & Wales with such rights in India.

The right to peaceful assembly, and thereby rights to protest, is a fundamental pillar of a democratic society, whereby individuals have the platform to raise their voice against injustices. It allows citizens to assemble and voice their dissatisfaction against the government, and this spirit has been implemented in various international human rights instruments. Article 20 of the Universal Declaration of Human Rights¹, in addition to Article 21 and 22 of the International Covenant on Civil and Political Rights², have promoted the rights of assembly, of which England and Wales and India are signatories.

In England and Wales, the right to protest is protected under the Human Rights Act 1998³, which incorporates the European Convention on Human Rights⁴ (ECHR) into domestic law. This provides the right to freedom of peaceful assembly, which allows every individual the right to protest, march or demonstrate in a public space regardless of their reason. It should be noted that Article 11 ECHR is not absolute, with exceptions where the protection of public health is at risk. This was evident during the COVID-19 pandemic where legislation was passed limiting the rights to assemble, and thereby protest.

In India, citizens have been guaranteed the fundamental right to peaceful assembly and freedom of expression. Article 19 (1)(b) of the Indian Constitution protects the right to protest peacefully without arms⁵. Such injustices maybe protesting proposed legislation or ongoing tragedies of systemic racial injustice. This highlights the importance of the rights to protest to counter injustice and to thereby promote equality.

This ethos is complementary to the attributed values and teachings of equality and social justice in Sikhism. Being the fifth largest religion in the world, originating in 1500 CE⁶, it is followed by 1.87%⁷ of the Indian population and 0.8% of the population in England and Wales⁸. Despite being a minority in both states, their ethos transcends borders and statistics. The founder, Guru Nanak, emphasised that God is within all, and therefore all should be treated with equality. The tenth Guru, Guru Gobind Singh, formed the Khalsa. He recreated the Sikhs as a military group, formed equally by both women and men, intending to defend their faith from

¹ Universal Declaration of Human Rights 1948

² International Covenant on Civil and Political rights 1966

³ Human Rights Act 1998

⁴ European Convention on Human Rights 1953

⁵ The Constitution of India 1950

⁶ https://www.bbc.co.uk/religion/religions/sikhism/history/history_1.shtml

⁷ <https://www.statista.com/statistics/702008/share-of-sikhs-india/>

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<https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/religioninenglandandwales2011/2012-12-11>

religious and political persecution against the Mughal Empire. He established initiations for Sikhism, such as the five K's, which are symbolic articles worn by Sikhs. Most relevant for this paper is the Kirpan, as it is a ceremonial sword that is only allowed to be used in self-defence, to defend the weak and to protect people from injustice⁹.

Furthermore, the Mool Mantra, a main chant from the Sri Guru Granth Sahib (the Sikh religious book), illustrates the values of equality and social justice that encompasses the rights to protest. It begins with stating that there is only 'Ik Onkar', one God, and God is without fear and without hate, 'Nirbhau Nirvair'. It follows that if God is in everyone, all should conduct themselves without fair and without hate. This embodies the very ethos of the rights to protest, as seen in the ECHR and Indian Constitution for peaceful protests; there should be no fear in standing up to injustices and there should be no hate or violence to create or counteract injustices.

The right to protest hence provides a voice of dissent, which is an essential tool to ensure equality and social justice against an authoritarian regime and to also protect modern democracies. This paper will analyse two case studies, focusing on the rights to protest in India and England and Wales, respectively, and their relation to Sikh values, as its teachings rightly embody the effective rights to protest.

India

The rights to protest in India have been present and seen as a 'key weapon in the struggle for independence' from British rule in 1947¹⁰. Since then, the country has had a long relationship with protestors and the police. It followed to the 'aazadi' (freedom) movement in Kashmir, the Nirbhaya rape 2012 case protests, the Citizenship Amendment Act 2019¹¹ protests against the exclusion of many Muslims from citizenship, and now the farmers protest- mass civil action has clearly always been prevalent in India.

The most recent example has been the farmers protest, which was one the largest organised protests to date, with over 250 million Indian farmers stationed at the borders of Delhi, for several months. Most of the farmers were Sikh and from the northern states of Punjab and Haryana. With 59% of the country's workforce employed by the farming industry¹², the voice of farmers should be of high importance and essential for their concerns to be adhered to. The female farmers' protest also highlighted the gender-neutral participation, not only in farm production but spiritually in Sikhism, as Guru Gobind Singh maintained when forming the Khalsa.

The protest began in August 2020, with the motive to overturn three Farm Bills proposed by the Indian government which would deregulate the storage, prices and

⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5434732/>

¹⁰ Justice AK Sikri, *Anita Thakur & Ors. v. State of J&K & Ors.* [2016 SCC OnLine SC 814]

¹¹ Citizenship (Amendment) Act 2019

¹² <http://www.fao.org/india/fao-in-india/india-at-a-glance/en/>

selling of farm produce¹³. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act would open the doors for corporate entities into the agriculture market by allowing contract farming. The second proposal was the Essential Commodities Act, which relaxes the limit on food storage, threatening national food security, an impactful consequence particularly as 70% of the population depends on the farming sector for their minimum subsistence¹⁴. The third proposal is the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act which removed the government's role in the farming industry, leaving it open for exploitation by private market. Farmers were protesting for the repeal of the three bills and argued for a minimum selling price to secure their interests from corporate greed. Indeed, this suggests that farmers would have been left susceptible to wealthy power, leaving little space for them to negotiate their stance. However, it should be noted that the impact of these bills was not wholly new, with previous insufficient agriculture structures resulting in farmers making up 7.4% of suicides in India due to issues like land inequality, debt burdens, crop failure, and the lack of social security to protect poor farmers¹⁵.

There is no doubt that these peaceful protests were vital, and the rights to protest was the mechanism for this injustice to be voiced. However, against these peaceful protests was also use of police force, for example tear gas shells and water cannons on unarmed farmers to restrict their movement into the capital. This dispelling of farmers resulted in various injuries and violence, leading to further restrictions to the Delhi by using concrete barricades and trenches. All the Indian protests mentioned above have seen the use of such force, especially 'lathi' charges or baton charges, where police strike protesters to maintain crowd control. This method is dated back to colonial rule, declared in section 17 Police Act 1861¹⁶ which noted that police force may be used if there appears to be an 'unlawful assembly or riot or disturbance of peace'. Jinee Lokaneeta, chair of Political Science and International Relations at Drew University in New Jersey, argued this allowed the police to sustain order through suppressing citizens using violence.¹⁷ Additionally, the government's use of the criminal justice system, charging protestors with 'politically motivated' offences, restricting journalists and media representatives for reporting, alongside alleged cuts to water and internet supplies¹⁸ highlights the limitations to the rights of protest.

This overtly sets out a harmful principle of restricting democratic practices, which are in harmony with the various human rights instruments mentioned previously. Indeed, the rights of protest in India thereby highlight a futile and meaningless provision that

¹³ House of Commons Briefing Paper, Farmers' protests in India and agricultural reform <https://researchbriefings.files.parliament.uk/documents/CBP-9226/CBP-9226.pdf>

¹⁴ n(4)

¹⁵ <https://blogs.lse.ac.uk/humanrights/2021/02/26/stifling-the-voices-of-dissent-the-tale-of-the-farmers-protests-in-india/>

¹⁶ Police Act 1861

¹⁷ <https://edition.cnn.com/2020/12/02/india/police-brutality-india-dst-intl-hnk/index.html>

¹⁸ <https://www.bbc.co.uk/news/world-asia-india-55872480>

is only in name, but not in nature. This goes against the grain of the conventions that India are signatories to, as if they are the largest democracy that they claim to be, then protests should be preceded upon the notion of equality and social justice. The use of excessive force, and restriction of information says otherwise. In January 2021, Justice Bobde acknowledged that the protests were rightful, and the Indian Supreme Court also suspended the three bills, expressing their disappointment in the government's handling of the matters, especially as it involved life and death.¹⁹ This highlights the eventual sympathy and awareness of the inequality farmers were due to face, but it does not tackle the injustices faced during the protest.

It is proposed that given the values of Sikhism full embody the spirit of the international rights to protest, this should be followed by the Indian state. The right to peaceful protests should be from both parties. Indeed, rather than constraining the fundamental right, the Indian government should encourage their citizens to practice this through promoting this behaviour by the very front line of state protection, the police. There should be appropriate training to reduce unnecessary force and full liberties for media to convey information. Protesting can thus be seen as parallel to the symbol of the Kirpan, as it is the mechanism to fight injustice and oppression, but never to incite violence. This is also in harmony with Nirbahu and Nirvair, the teaching of conducting oneself without fear and without hate, as the Indian Constitution intended citizens to do, to raise their voices in the face of injustice and ensure equality.

England and Wales

There has been plethora of protests in England and Wales, such as the suffragette movement in the early 1900s, race riots in the 1970s, environmental protection from the Extinction Rebellion movement, and notably the Black Lives Matter movement (BLM).

The fight against racial injustice in England and Wales has been rife, with Black and Asian minorities fighting against racist violence in areas like Brixton and Southall since the 1970s. BLM protests were ignited from the killing of George Floyd in 2020, an African American citizen killed by a white police officer. This led to a global protest, including England and Wales's fight for racial justice. There were over 260 towns and cities between June to July 2020, across the country protesting in support of BLM. These were further reinforced by the unjust racial killings of Mark Duggan, Stephen Lawrence, and the unfair treatment of the BaME community in the Windrush scandal and victims of the Grenfell Tower fire. In Bristol, there was an estimated 10,000 people marching, which led to the removal of the statue of Edward Colston, a 17th century slave trader, by protesters. This sparked a national conversation resulting in a review of public art in London, by a diversity commission launched by London Mayor Sadiq Khan. Amongst other things, it noted the removal

¹⁹ <https://www.theguardian.com/world/2021/jan/12/indian-court-suspends-new-agriculture-laws-after-mass-protests>

of all slave trader statues²⁰. This highlights the benefits that protests can bring, harmonising it with the values of Sikhism of social justice and standing up for the rights of equality for those who have been oppressed.

However, an example of violent protests, where such a right is curtailed, was the anti-BLM riot by far-right extremist groups attacking the police in the heart of London. This was described as 'racist thuggery' according to Prime Minister Boris Johnson, who noted that an attack on the police 'will be met with full force of the law'²¹. As a result, more than 100 people were arrested for violent disorder, assault on police and possession of an offensive weapon²². Indeed, the laws of England and Wales matched that of Sikh values, as the use of force to counter violence that incites hatred and promotes inequality should be defended against, as is the Kirpan used to defend oppression.

Although, this does not neglect the fact that systemic racism in academic, public, and professional institutions is present in England and Wales. Netpol, a police monitoring charity, released a report, finding that police used excessive forces to target BLM protestors, like pepper spray, referring to a historic relationship between Black protestors and racism from the police in the UK²³. Though the in-depth discussion of racism is out of the remits of this paper, when focusing on rights of protests specifically, the laws and actions of England and Wales through the police and governmental authorities have acknowledged the ECHR's spirit through actively condemning inequality and hatred. The verbal statements and launches of commissions by senior figures thereby encompass Sikh values of equality and social justice, the very essence of the rights to protest.

Comparison

Both the focal examples used in this essay have taken place during the COVID-19 pandemic, highlighting the power and value the rights to protest have in both countries and its necessity. Despite the fear of a global virus, issues such as farmers' rights and systemic racism, is regarded as the original social diseases. Peaceful protests in both countries are required and allowed by legislation. Violence in protests is held to be unconstitutional in India and unprotected by the ECHR in England and Wales.

However, both the racial and socioeconomic issues in both countries demonstrate the imbalance of the justice system which contravenes the international human treaties that they have pledged allegiance to. It is suggested that England and Wales are, to some extent, more compatible with international human right values, and

²⁰ <https://www.telegraph.co.uk/news/2021/02/09/sadiq-khan-unveils-london-statue-review-panel-branded-unelected/>

²¹ <https://twitter.com/BorisJohnson/status/1271871738423447553>

²² <https://www.bbc.co.uk/news/uk-53031072>

²³ 'Britain is not innocent',

<https://seureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf>

thereby Sikh teachings, than India. The regulation of excessive force used to disperse protests and restrict protest rights in India is unclear and outdated. The lathi charge in India is instigated from a blurring of lines, whereby there is no formal procedure to begin the charge. This ambiguity creates more tension within situations of protest, where it is often unclear who has incited violence first. There have also been expressed concerns from the Supreme Court Bar Association, of police being unable to follow standard measures without instructions²⁴. This ongoing liberal use of power without justified governance has created many circumstances of inequality and social injustice during protests. The use of violence in protests must be avoided at all costs from either end to ensure compliance with the right values of protesting, noted in Sikh teachings of treating all with equality. If structures are created, then this reform of police force will create assurance for protesters who will be able to promote the values of social justice and equality, *without fear* of limitations to their protests and *without hate* against the police, but rather they will conduct themselves with confidence and peace.

Though it should be acknowledged that both countries and their authorities have balanced the rights of all parties, whilst acknowledging the wider scale issues. The Indian Supreme Court in August 2021 stated that roads should not be blocked, and thus a balance must be struck between the citizens and protestors, to not see one right in isolation. This emphasises that all rights need to be upheld to protect both the common man and protestors, with mutual respect.²⁵ In England and Wales, the implementation of various strategies taken by public and private authorities has reinforced the equality of all rights. Not only have commissions been launched, but private associations such as the Premier League have instilled rituals such as taking the knee in support of the BLM movement to raise awareness whilst outrightly condemning any racial hatred towards English footballers from ethnic minorities. Therefore, both countries have been aware of the various implications that protesting rights may have on different sectors of society and have ensured rights are equally maintained.

Conclusion

Thus, the ethos behind the rights to protest in all international human rights documents are part and parcel with that of the values of Sikhism. The rights to protest, in both India and England and Wales, maintain the idea of peace and harmony when raising one's voice against injustice. Although England and Wales have taken proactive steps in promoting and understanding the issue at hand, while India has been delayed and stagnant in the actions for resolution. As argued in this

²⁴ <https://www.aa.com.tr/en/asia-pacific/human-rights-lawyers-baton-charged-by-delhi-police/1746072>

²⁵ Snehal Dhote, "Right to Protest v. Convenience of the Public – The Indian Supreme Court's Decision on Shaheen Bagh Anti-CAA Protests", (OxHRH Blog, October 2020), <https://ohrh.law.ox.ac.uk/right-to-protest-v-convenience-of-the-public-the-indian-supreme-courts-decision-on-shaheen-bagh-anti-cao-protests> (12/09/2021)

paper, as Sikh values embody the very principle of the rights to protest through promoting social justice and equality, it is proposed that values such as defending from the injustice and having courage to stand up for oneself without fear and hate, should be referred to when making amendments in the way police handle protests in both countries, to avoid force and to avoid bias.