

An analysis: the right to protest in the UK compared with such rights in India

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Introduction

1. 'Protest' is "a strong complaint expressing disagreement, disapproval, or opposition" or "an occasion when people show that they disagree with something by standing somewhere, shouting...carrying signs."¹ The working definition of 'protest' in this paper combines the two; protest is an inherently political complaint in the public interest, and there are many creative ways in which one might complain about said political matters.
2. By extension 'the right to protest' is a combination of other freedoms, i.e. to form associations, to form political and religious opinions and of course to express oneself. Freedom of expression in public spaces has been described by the Council of Europe as "inextricably linked" and underpinned by the freedom of protest.² As such 'the right to protest' will be construed as the freedom to join others in expressing a political opinion to influence changes in public policy. When we are able to speak our minds, we have the opportunity to challenge the decisions of our leaders and hold them to account, in turn leading to a better world.
3. This paper will outline the struggles of the Sikh people against injustice in building a culture of protest in India. I will then discuss the similarities and differences between the

¹ <https://dictionary.cambridge.org/dictionary/english/protest>

² Venice Commission, Guidelines on Freedom of Peaceful Assembly, para 68 pg 23

relevant legal frameworks and conclude by exploring recent attempts by the UK³ and Indian governments to ‘manage’ the right to protest. Throughout this paper I argue that though legislation and case law are cornerstones of the right to protest, the capacity of a society to have ‘uncomfortable conversations’ ultimately determines whether individuals can *in reality* exercise this right as they wish.

Early developments in Sikhi influencing the right to protest in India

4. The right to protest in India is inextricably interlinked with the freedom to choose and to practice one’s religion. Political authorities in South Asia have attempted to interfere with religions in the region, and Sikhs, a socioreligious group whose experiences are pivotal to understanding the struggle for rights in modern India, have developed a culture of pushing back against this through protest.
5. Sikhi originates from the Punjab region of South Asia. The religion was founded by Gurū Nānak, a cross-cultural figure born to a Hindu family in (what is now) modern-day Eastern Pakistan.⁴ He believed that all of creation is connected through its divine origin, and that this principle illustrates our shared humanity and equality.
6. These beliefs manifested themselves early in the Gurū’s life. Hindu boys entering puberty don a *janeu* garment indicating their social role, position and status as a rite of passage. For Gurū Nānak this was unpalatable; he rejected the physical representation

³ This paper refers to the ‘UK’ rather than ‘England & Wales’ because the UK is the duty bearer and signatory in relation to human rights in the UK. Devolved administrations such as Scotland have little variance from the UK position in the area of protest provisions.

⁴ Dr. Sohindar Singh Sanchdev, *Story of the Sikhs*

of the divine and was highly critical of the Indian caste system that arbitrarily sorted people into castes, violating the parity of all.⁵

7. Gurū Nānak would develop these ideals through study, reflection and meditation as he built a new religion, Sikhi. In summary Sikhi is premised on 1) reflection on divinity, 2) honest living that brings one closer to God and 3) helping others.
8. This third principle of Sikhi is often interpreted as encouraging altruistic actions (*sewa*); Sikhs regularly give food to the poor (*langar*), use their professional skills to help others (*man*), donate money to charitable causes (*dhan*) and commit physical service to the community (*dan*).⁶
9. In addition to these forms of *sewa*, there is a wider Sikh political tradition that encourages protesting against injustice. The Sikh tradition of standing up for what is right, speaking truth to power and helping the oppressed became entrenched at its outset through the experiences of Sikh religious leaders.
10. Medieval India was ruled by the Mughal Empire, a military administration with two principal aims; '*Jahan Bani*', defence of the realm, and '*Jahangiri*', conquest. Relations between Sikh leaders and the Mughal authorities were initially harmonious, but the expansionist ambition of the Empire saw the Mughal attempt to influence the Gurūs, edit the contents of the *Gurū Granth Sahib* (the embodiment of Sikh knowledge) and ultimately to absorb the religion into Mughal Islam. These incursions into the Sikh

⁵ Sikh Coalition, 'Sikhism: A Reporter's Guide'

⁶ GCSE bitesize- <https://www.bbc.co.uk/bitesize/guides/zmcf3k7/revision/3>

freedom of conscience were an existential challenge that Sikh leaders protested against in order to protect the religion.

11. The Mughal Empire would oppress the Sikh people for subsequent generations. The principal leaders of the religion were killed; Bhai Taru Popat, the first Sikh, spoke against the Mughal Emperor and was executed. The fifth Gurū, Gurū Arjan, refused to censor critical sections of the Gurū Granth Sahib and became the first Gurū martyr. The ninth Gurū, Gurū Tegh Bahadur, was similarly executed for refusing to convert to Islam. His son, Gurū Gobind Singh, became the leader of Sikhi and took up arms against the Mughal Empire to fight for religious freedom.
12. These experiences of martyrdom and struggle are core to the modern-day fight for justice within Sikhi. These principles are represented by an article of faith worn by all male Sikhs called the *kirpan*, a ceremonial sword. This serves as a reminder that Sikhs have an obligation to protest injustice and protect the oppressed.
13. By contrast the UK has a different tradition, influenced by the Enlightenment and the French Revolution in 1789. This era marked the end of aristocrats with divine autonomy to dictate the lives of citizens; the demise of Louis XVI in France ushered in a new European body politic where the ruling classes would have to listen to the people.
14. Though this did not topple the British monarchy, it catalysed the modern-day consensus of democratic participation in government, accountability for national politicians and the idea that the people could voice their dissatisfaction by taking to the streets to complain about matters of public policy.

The Indian Constitution and the Right to Protest

15. It is against this backdrop that we consider the relevant legal framework. The right to protest in India is enshrined in the Constitution of India (the Constitution). Article 19 of the Constitution titled “Protection of certain rights regarding freedom of speech” states at Article 19(1) that all citizens shall have the right:

“(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions [or co-operative societies];

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

[and]

(g) to practise any profession, or to carry on any occupation, trade or business.”

16. Though the word ‘protest’ is not explicitly used anywhere in the text of the Constitution, these provisions when read together constitute the right to protest in India. The scope of Article 19(1) was restricted shortly after the commencement of the Constitution in a series of Amendments. There have been over 100 Constitutional amendments in total since 1950.

17. The amendments contained in Articles 19(2)-(6) provide a range of reasons for which existing laws might conflict with Article 19(1)(a)-(g) and also enable the creation of new laws which "impose[] reasonable restrictions on the exercise of the right." The state is able to pursue either of those measures in relation to any Article 19 right in the interests of "the sovereignty and integrity of India."

18. This notion of protecting the "integrity of India" is particularly problematic for Sikhs who have been subject to genocidal persecution by the Indian state and have sought self-determination in order to protect themselves. This provision has the potential to shut down this argument as an illegitimate and illegal kind of protest.

The UK 'constitution' and the right to protest

19. There are three layers of legal instruments protecting the right to protest in UK law.

These are the common law, domestic legislation and international treaties. At common law, protest is a fundamental right. Judges will narrowly construe any powers that restrict the right to protest, and this will be further explained in paragraphs 29-36 below.

20. The Human Rights Act 1998 (the Act) brought provisions of the European Convention on Human Rights and Fundamental Freedoms into UK domestic law (the Convention). The Act provides, at S6(1) that it is unlawful for public authorities to act otherwise than in accordance with the Convention.

21. The Convention states at Article 10 that “everyone has the right to freedom of expression” and at Article 11 that “everyone has the right to freedom of peaceful assembly and to freedom of association with others”. As above, we discern a right to protest in the UK from the combination of these provisions.
22. Protest is a ‘qualified’ right; it may be interfered with where there is a lawful justification for such an incursion that is proportionate to pursuing a legitimate aim. Where there is an alleged violation of these rights by the UK, individuals may challenge the decision in domestic courts. If this results in an unsatisfactory disposal, the claimant may bring a case to the Strasbourg-based European Court of Human Rights.
23. Supplementing these provisions are international treaties ratified by both countries. The UK and India are both signatories to the International Covenant on Civil and Political Rights (ICCPR), a treaty that seeks to provide citizens the minimum freedoms required to sustain a democratic society including the rights to assemble, hold views and express oneself which are key to the right to protest.
24. ICCPR is bolstered by an ‘individual complaints mechanism’ that enables those whose right to protest has been allegedly breached to petition the UN Human Rights Committee for remedies. This mechanism in theory “brings real meaning to the rights contained in the human rights treaties”⁷ but has been criticised for incoherency and failure to communicate outcomes to the communities affected.⁸ This means it is truly an extremely unlikely measure of last resort.⁹

⁷ UN Human Rights Bodies, ‘Complaints Procedures’

⁸ MENA Rights, ‘Strengthening and enhancing the effective functioning of the UN Human Rights Treaty Body System individual complaints mechanisms’

⁹ Eng, McNamara and Olatokun, ‘International Law and Human Rights’

Comprehensive protection in the United Kingdom, partial coverage in India?

25. The framework of protection in the UK is both a carrot and a stick. The 'stick' sees domestic courts grant quashing orders to annul or amend decisions of relevant authorities that curb protest rights where the violation is proven. Claimants granted leave to appeal may pursue their case at every level of the domestic court system before mounting a final challenge in Strasbourg.
26. The 'carrot' or incentive for public authorities to support the right to protest is their obligation in the Act to follow the ECHR and the jurisprudence of the Strasbourg court. The interpretation of the ECHR is a 'living instrument' that adapts over time and whose jurisprudence is cultivated by the water of decisions in 47 countries, inevitably increasing the level of protection offered incrementally as the years pass.
27. Both countries are subject to the UN Treaty body system but due to the distance of the UN from communities and its inefficient staffing of complaints procedures, little additional support comes from the international community. This system adds little to the accountability structures in the UK.¹⁰
28. By contrast the Indian Constitution is a culturally conservative document that is prone to a creeping *reduction* in the levels of protection, as the large number of amendments passed since the document's ratification (approximately two per year) illustrate.

¹⁰ Open Global Rights, 'UN inefficiencies undermine effective handling of individual petitions'

Judge-made law facilitating the right to inconvenience others

29. The textual, provision-by-provision analysis above suggests that the uncodified laws of the UK are better set up to facilitate the right to protest than the Indian Constitution. The legislation is bolstered by judge-made law where UK courts safeguard the right to protest enthusiastically. This was underlined recently by *Jones v Metropolitan Police*.¹¹

30. *Jones* concerned the activities of green campaign group Extinction Rebellion (XR). In October 2019 the group encouraged a series of protests around the UK criticising the UK government for failing to protect the environment. The group used a number of controversial tactics including using a fire engine to coat HM Treasury in artificial blood.¹²

31. The Metropolitan Police Force's (the Met's) response was to activate their powers under the Public Order Act (1986) to ban protests in limited circumstances. S14 of the POA states that:

(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that—

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

¹¹ [2019] EWHC 2957 (Admin)

¹² The Telegraph Youtube Channel, 'Extinction Rebellion spray 'fake blood' at the Treasury from fire engine' <https://www.youtube.com/watch?v=tHJ7Zn8Sa0E>

he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

32. In using this power the Met were required to issue instructions in the form of a 'condition' to protect public order. The official condition was that "any assembly linked to the XR 'Autumn Uprising' must now cease their protests within London by 2100 14th October 2019."¹³ In defiance of this order, a number of XR activists attended a demonstration. They were subsequently arrested and convicted for having breached the order.
33. Whilst this might seem reasonable at face value, and was indeed lauded by some corners at the time, this 'condition' was sweeping and onerous. XR had organised events across the entirety of the UK's capital, a circumference of some 150 miles.¹⁴ XR is not a traditional hierarchical organisation, but rather a loose grouping of activists with a shared concern. It would be quite extraordinary to impose a restriction on a small gathering on the outskirts of London due to non-violent disruption in the centre of the city.
34. The High Court shared this view and found that it was a disproportionate interference with the right to protest to suggest that activists on different sides of London could be taking part in the same gathering for the purposes of s14 POA, and quashed the convictions.¹⁵

¹³ Metropolitan Police, 'Freedom of Information Request'

¹⁴ Transport for London, 'London LOOP' <https://tfl.gov.uk/modes/walking/loop-walk>

¹⁵ Olatokun, The Justice Papers 'Defending Democracy'

35. The court was influenced by Lord Chief Justice Burnett's comments in *R v Roberts (Richard)* in which he spoke of "the long-established recognition in the United Kingdom of the value of peaceful protest" where "[i]n a free society all must be able to hold and articulate views, especially views with which many disagree. Free speech is a hollow concept if one is only able to express "approved" or majoritarian views."¹⁶

36. The sign of a system that prizes protest dearly is not in the existence of perfect officials that never act outside of their powers; that ideal is unrealistic. Protest rights are strong in the UK because the arms of the state hold each other accountable in instances of executive overreach such as the above.

Entering the era of managed protest

37. *Jones* is a typical decision that represents UK protest law in a nutshell; courts seek to facilitate the right to protest and will scrutinise decisions that seek to limit it. This is not entirely satisfactory from the claimant's perspective however; fixing these deficiencies after the fact is no comfort for those who face heavy-handed policing whilst holding their placards, or whose cash flow is limited because the fines they have received are only rescinded months later.

38. Indeed the coronavirus pandemic reminds us that the UK has a culture of 'managed protest' whereby police forces will do their best to facilitate protests that comply with paperwork and notice requirements. On the other hand spontaneous, unsanctioned or

¹⁶ *R v Roberts (Richard)* [2019] 1 WLR 2577

inconvenient large-scale protests are rather uncommon in the UK, and are often met with heavy police presence.

39. Sarah Everard was a young woman killed by a police officer in early March 2021. The feminist group 'Reclaim the Streets' (RTS) sought to organise a vigil to mourn her death. The Met believed that such a gathering would constitute a breach of coronavirus regulations prohibiting individuals from leaving their homes without "reasonable excuse" and stated that those attending could be liable to fines of up to £10,000. RTS made an application for interim relief by way of declaration that such a vigil would be lawful, but the court declined to award it, showing great deference to the police during the pandemic.¹⁷

40. RTS withdrew their official support for the vigil, but members of the public attended the cancelled event regardless of RTS' involvement. This worried the Met who had been working with RTS in an attempt to manage the event. The concerned Met then attempted to disband the vigil on putative public health grounds. This led to graphic images on social media of officers confronting protestors with force. This sparked outrage across the country with senior Labour MP David Lammy decrying "manhandling women at this moment of national trauma"¹⁸ and stalwart police supporter Home Secretary Priti Patel describing the footage as "upsetting."¹⁹

41. Unlike *Jones* however there was a disagreement from official corners as to whether the police had acted with propriety in this case. The All-Party Parliamentary Group on

¹⁷ Leigh v Metropolitan Police [2021] EWHC 661 (Admin)

¹⁸ David Lammy MP, Twitter, <https://twitter.com/DavidLammy/status/1370850554176487428>

¹⁹ Priti Patel MP, Twitter, <https://twitter.com/pritipatel/status/1370856092062912512>

Democracy and the Constitution conducted an inquiry into the police intervention and concluded that it had no lawful justification.²⁰

42. By contrast the independent investigation by Her Majesty's Inspectors of Constabulary and Fire & Rescue Services viewed the actions of the Met as proportionate. Their view was "that police officers at Clapham Common worked, in sometimes challenging circumstances, to maintain public safety and keep the peace. Unlike the public, who chose to be there, the police were there because they serve to keep us safe."²¹

43. This suggests that the right to protest is not so highly prized in times of emergency, and it was certainly afforded much less weight in the era of coronavirus restrictions.

What do recent protests in India tell us?

44. One could draw a clear parallel between the policing of the Sarah Everard vigil and simultaneous protests in North India. In September 2020 the Parliament of India passed three controversial laws that would fundamentally alter the rural economy in India. These agricultural reforms threatened the livelihoods of farmers who required minimum prices for their goods in order to make ends meet, as well as imperilling disconnected villagers with starvation. WION estimates that up to 70% of India's 1.3 billion population relies on cheap primary goods for survival, and so the consequences of this intervention would be profound for a significant proportion of the world's population.²²

²⁰ APPG on Democracy and the Constitution, 'Police Power and the Right to Peaceful Protest'

²¹ HMICFRS, 'The Sarah Everard vigil – An inspection of the Metropolitan Police Service's policing of a vigil held in commemoration of Sarah Everard on Clapham Common on Saturday 13 March 2021'

²² British Parliament on farmers protest: Protest is India's internal & domestic matter | World News

45. Reinvigorating the long-held tradition of standing up for the rights of the downtrodden, Sikhs in the Punjab orchestrated a campaign in opposition to the reforms that grew into the largest mass movement in history. Tens of thousands of farmers went on strike for months and they were joined by an estimated 250 million citizens.²³ Diasporic Sikh communities in the United States, Canada and UK lobbied their national governments to exert pressure on Narendra Modi and Indian diplomats to reverse the position.
46. The initial response from the authorities was to stifle the protests. Police unashamedly fired tear gas shells and water cannon at protestors, capturing the attention of international news outlets.²⁴ The ruling Bharatiya Janata Party (BJP) had attempted to detract from the legitimacy of the campaign by smearing Sikh leaders as ‘Khalistanis and Maoists’.²⁵
47. The cost of participation in these protests has been grave for many. In addition to the business disruption caused by months away from their crops, the United Farmers’ Front organisation estimated that approximately 248 agricultural workers lost their lives due to starvation, ill health, suicide or at state hands during the protests.
48. Despite these difficulties this widespread social movement was successful and the Supreme Court issued a temporary moratorium on the agricultural reforms in January 2021. Chief Justice Bobde stated, “These are matters of life and death. We are concerned with laws. We are concerned with lives and property of people affected by the agitation.” This suggests that the direct action of thousands of Sikh activists turned the

²³ Business & Human Rights Resource Centre, ‘India: Over 250 million workers joined protesting farmers in one of the biggest nationwide strikes ever’

²⁴ Aggarwal, ‘Indian police open fire with tear gas and water cannon on farmers protesting ‘death warrant’ reforms’

²⁵ Scroll.In, ‘After Haryana CM, Amit Malviya claims farmer protests have ‘Khalistani and Maoist’ links’

tide against the might of big business and political authority; a true testament to the 'saint spirit' that inspires Sikhs to fight injustice.

Conclusion

49. India has a violent and turbulent history in which the most powerful political and religious institutions have sought to abuse minority groups in order to advance their own interests. Sikhs have been at the forefront of fighting such subjugation on their own behalf and in order to protect others, and this tradition continues today.

50. The 2020-2021 agricultural movement is the biggest of its kind in human history and shows how effective protest can be in forcing governments to consult with their citizens and to pause harmful initiatives. Although Indian authorities seek to curtail these protests, the ability of Sikh community organising to push through resistance is clear.

51. In the UK the law and other accountability mechanisms ensure that individuals are able to protest, but challenges remain where the police believe that a protest has not secured sufficient approval. Current legislative proposals may confine the space for civil society organisations to protest in order to protect the economic interests of non-protesting citizens.²⁶

52. One clear parallel between the UK and India is the balancing of competing interests in democratic societies resulting in limiting the freedom of protest in order to achieve economic outcomes. We can learn much from the international collaboration of Sikhs in

²⁶ The Police, Crime, Sentencing and Courts Bill

the UK and India in relation to the 2020-2021 agricultural reforms as the *Khalsa* was ultimately victorious.

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