

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

By Petr Slvak

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Introduction

The following essay will be comparing the rights to protest in England and Wales (UK) with such rights in India. The right to protest legal developments in India can be primarily attributed to Mahatma Gandhi, who was an advocate for the freedom of speech and right to protest; however, Gandhi was a revolutionist since his approach was unorthodox, instead of using violence and fear to pressure the government, Gandhi organised peaceful and nonviolent protests. Gandhi believed the most potent "weapon" was fasting¹. An example would be 'September 1932 where Gandhi began a hunger strike in Yerwada Jail in Pune'² the decision was fuelled by the 'government's decision to separate India's electoral system by caste'³. Another famous example would be September 1924, the 'First Hindu-Muslim unity fast', which lasted roughly 15 days. There are several examples of Gandhi's protests (ranging from 1913 to 1948). The reason why Gandhi is the crux of this essay is due to his significant influence on the Sikh Jurisprudence and rights to protest and freedom of speech.

Contrary to India, the UK's rights to protest can be attributed to several different sources that have shaped the current legal system (Right to Protest Act). The most infamous legislation that governs the right to protest in the UK is the European Convention on Human Rights. More specifically, article 10, which covers 'Freedom of Expression' and Article 11, which is concerned with 'Freedom of Assembly and Association', protects people's rights, not only protests but also participating in trade union groups. There are no limitations on the freedom of expression; however, the

¹ Whitney Sandford, 'What Gandhi can teach today's protesters' (2017) < <https://theconversation.com/what-gandhi-can-teach-todays-protesters-83404>> Accessed 12th Sep 2021

² History, 'Gandhi begins fast in protest of caste separation' < <https://www.history.com/this-day-in-history/gandhi-begins-fast-in-protest-of-caste-separation#:~:text=On%20September%201932%2C%20in,India's%20electoral%20system%20by%20caste.&text=Gandhi%20believed%20this%20would%20permanently%20and%20unfairly%20divide%20India's%20social%20classes.>> Accessed 12th Sep 2021

³ *ibid*

right to protest in the UK can not infringe on another person's rights and freedoms. In recent years an attribution can be made to Covid-19, which had unveiled that restrictions can be placed on these rights in specific circumstances in the interest of the public.

Initial Comparison

The Indian Constitution 1949 shows that the right to protest is fundamentally similar to the United Kingdom. It directly protects certain rights to the freedom of expression and, most notably, section 19(b) 'to assemble peaceably and without arms⁴ which clearly states that there is a right to protest. However, the rights to freedom of speech and the right to protest in the Indian Constitution 1949 are not absolute according to clauses 16(b)(2) and 16(b)(6) this right can be subjected to 'reasonable restrictions⁵. Therefore, this raises an important question as to what can be deemed a 'reasonable restriction?' Srivastava⁶ argues that the "phrase 'reasonable restriction' connotes that the limitations imposed upon a person in the enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. This argument highlights a deep concern about the wording used in the constitution; the phrase 'reasonable restrictions' is inherently flawed since it is subjective to the eye of the beholder, the bar for reasonableness is defined nowhere in the constitution and can therefore continually be moulded, justifying any restriction as reasonable, it is indeed a slippery slope conundrum.

ECHR Article 11(2) 'Right to Assembly' allows citizens to protest (only in circumstances of peaceful protests this right, therefore, does not extend to riots and physically violent parts or assemblies), the Right to Assembly in ECHR is, therefore, more absolute than the one in the India Constitution since there are no ambiguities

⁴ Indian Kanoon, 'Article 19 in The Constitution of India 1949' < <https://indiankanoon.org/doc/1218090/>> Accessed 12th Sep 2021

⁵ Romit Srivastava, 'Test to Determine Reasonable Restrictions Under Article 19 of the Constitution of India' (2012) p.3

⁶ ibid

as to 'reasonableness' because the law that governs the British islands places 'no restrictions on the right of assembly that can be left subject to interpretation'⁷.

India and the impact of Corona Virus on the right to protest

However, restrictions have been demonstrated, and it has been shown that the rights can be revoked or limited. For example, during the Covid-19 'additional legislation has been passed which puts restrictions on the right to assembly. This legislation makes it an offence for groups to assemble, which would include a protest or march.⁸ During Covid-19 there had been several protests that had taken place, for example, the Black Lives Matter Movement. Although the Right to Assembly and the Freedom of Expression are rights that should not be restricted, measures have been implemented to limit these rights due to the extenuating circumstances such as the virus being more deadly than ever before. An example of the measures that have been put in place to limit this right is the Health Protection (Coronavirus Restrictions) (Steps) (England) Regulations 2021, where the 'qualified rights' have been restricted in order to protect the public from the virus, such as the limitation of having to undergo a risk assessment when there is a gathering of more than 30 people. However, all restrictions have been lifted as of 19th July 2021. The pandemic has demonstrated that these rights are not as absolute as they may come across initially.

There are several similarities, as seen from the Indian Constitution and the European Commission on Human Rights. For example, in the Indian Constitution section 19(b), the government grants the people the 'right to peacefully assemble' as does Article 11 of the ECHR within the United Kingdom. However, the critical distinction between the two nations response to 'the right of protest' is the fine lines of the law. For example, As mentioned previously, the Indian Constitution where the 'reasonable restrictions' is a subjective term that allows the government to mould and bend the law, as will later be highlighted through the 'Farmers Protests'.

⁷ Neil Jarman and Geraldine Scullion, 'Protecting Rights or Limiting Disorder? Freedom of Assembly and the Right to Protest' p.7 < <https://www.community-relations.org.uk/sites/crc/files/media-files/Protecting%20Rights%20or%20Limiting%20Disorder.pdf>> Accessed 12th Sep 2021

⁸ National Legal Service Solicitors, 'UK Protest Rights: Legalities & Charges' < <https://nationallegalservice.co.uk/uk-protest-rights/>> Accessed 12th Sep 2021

Highlighting the 'reasonable restrictions'

Snehal Dhote had closely examined this phrase 'reasonable restrictions'⁹ that is used as a caveat in the India Constitution, explicitly pertaining to Article 19(1)(a) and Article 19 (1)(b). The main highlight of her article was that the wording of the legislation is so vague that it can be interpreted in several different ways. For example, balancing the rights of commuters to go to work and protesters and their right to assemble. Sikh Jurisprudence on several occasions has not favoured the latter. For example, *Mazdoor Kisan Shakti Sangathan v. Union of India*¹⁰ in this case, the court had balanced the rights of the commuters, and the protesters, Arvind Bhanu, in his article discussed this point and demonstrated that there is a standing issue since a 'public place is a subject matter of shared rights by all'¹¹ what is fundamentally demonstrated by this case is the fragile nature of the right to protest in India since the protest itself cannot infringe on the rights of others. This is a fundamentally flawed mentality, a protest without an adverse effect on people outside of the protest suit no purpose at all.

Protests can only occur in designated areas chosen by the administration and cannot infringe on the fundamental rights of others. Therefore, the question that arises is 'how does one exercise the right to assembly?' with all these restrictions, such as gaining permission from the authorities for the protest, which points towards an authoritarian system and not one of democracy. Since the right to assembly should be an inherent right and not be directed, policed and granted by the local authorities. This authoritarian attitude from the government has been exemplified in

⁹ 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-kaa-protests>> Accessed 12th Sep 2021

¹⁰ [2017] (Civil) No. 1153

¹¹ Arvind P. Bhanu, 'Protest Needs to be Addressed by Setting up a New Machinery' (2021), Amity Law Review, Vol. 16

the recent 'farmers protest' in New Delhi – in this protest, farmers are protesting new agricultural bills (Bill on Agri Market, Bill on Contract Farming and Bill Relating to Commodities), one of the more significant issues at hand with this protest is the fact that it takes away negotiating power away from the farmers¹². The 'Farmers Protest' had shown that the government used to force such as tear gas as a tool to control the nature of the protest. However, there have also been mentions that the local authorities have cut-off power and food supply to the protesters' locations. This shows that the government is not using 'reasonable restrictions' to control the protest; instead, they use violence and scaremongering tactics against unarmed farmers.

Compared to UK right to protest in public/attitude of the governments

In the UK, protests and the freedom of speak/expression has been deeply embedded into the culture of our modern society. In the last decade, protests have become a regular occurrence for the British nation. They ranged from the pre-covid era where UK residence campaigned on the street of London against Brexit and during covid where several politically and socially essential protests have taken places, such as the Black Lives Matter Movement or the Palestine marches. This section of the essay focuses on the government's attitude and how it has changed since before Covid. Before Covid, the attitude of the government was lucid, and the right to protest appeared to be undisturbed (exemplified through Brexit protests outside of the house of Parliament); however, once Covid struck, and residents of the UK still decided to protest, the government introduced new drastic measures (with the aim to protect the virus from spreading) this was mainly through the Corona Virus Act 2020, where the limitations pertained to the maximum of 30 people¹³. Although these measures have been implemented during a world crisis, they were revoked on the 29th of July.

¹² Ravinder Kaur, 'How a Farmer's Protest in India evolved into a mass movement that refuses to fade' (2021) < <https://www.newstatesman.com/ideas/2021/02/how-farmers-protest-india-evolved-mass-movement-refuses-fade>> Accessed 12th Sep 2021

¹³ Parliament.UK, 'The Law Governing Protest during the Pandemic' < <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1328/132807.htm>> Accessed 12th Sep 2021

When a public march is organised in the UK, similarly to the Indian system, the organisers must 'inform the police six days before the march'¹⁴. However, unlike the Indian system, in the UK, this is only applicable to marches, although the police do have the power to 'limit or change the route of the march' and 'set conditions for the march'¹⁵. India and the Sikh jurisprudence seem to have adopted a *laissez-faire* attitude towards the right to protest, despite the deeply rooted history the Indian people such as Gandhi have with protesting the government.

The *Himat Lal K. Shah*¹⁶ case was one of the first cases to address the rights to protest in a public place. The principle that had emerged from this case was the fact that 'the police do not have discretionary powers in granting permission to protesters'¹⁷, however, the court has not laid down any guidelines for the authorities to adhere to and therefore allowing the police to operate in a grey area of law and allowing authorities to clear public places of protesters at their discretion¹⁸.

Chapter VIII of the Indian Penal Code 1860 (Offences Against Public Tranquillity) Section 141, there are several issues with this specific piece of legislation as it gives the government an unbalanced amount of power in the restriction of a public protest¹⁹. For example, subsection four says explicitly that an assembly should be deemed unlawful if 'criminal force or show of criminal force is used to... deprive any person of the enjoyment of a right of way' this specific section of the legislation is problematic as it directly undermines the purpose of a protest, the fundamental nature of a protest is to cause disruption, as Tim Hughes would put it 'to cause annoyance as well as inconvenience to the passage of everyday daily

¹⁴ GOV.UK, 'Protest and Marches: Letting the Police Know' < <https://www.gov.uk/protests-and-marches-letting-the-police-know>> Accessed 12th Sep 2021

¹⁵ *ibid*

¹⁶ *Himat Lal K. Shah v Commissioner of Police* [1973] Air 87, 1973 SCR (2) 266

¹⁷ *Ibid*, 9

¹⁸ *ibid*

¹⁹ LEXIFORTI LEGAL NEWS NETWORK, 'Meaning of 'Reasonable Restrictions' under Article 19 of Indian Constitution' (2020) < <https://lexforti.com/legal-news/reasonable-restrictions-article-19/>> Accessed 12th Sep 2021

life²⁰ and deeming it an unlawful act when the act itself infringes a person's enjoyment of a right of way goes against the fundamental principles of a protest but also the interpretation of the use of criminal force in the context of deprivation of another from their enjoyment of the right of way is subjective and open to the interpretation of the government. Similarly to the Indian Penal Code, The Police Sentencing and Court (PCSC) Bill has recently been changed. Amendment 6 widens the interpretation of 'Intentionally or recklessly causing a public nuisance' to include "serious distress, serious annoyance, serious inconvenience or serious loss of amenity", and the maximum custodial sentence is ten years²¹. Here we can see a contrast of similarities between the Indian and the United Kingdom legislation; there is an overlap between the 'unbalanced amount of power in the restrictions of a public protest' in both countries. However, there are several distinctions to be made, such as the vague nature of the Indian Constitution when it comes to the definitions of terms.

Recent legal development due to BLM and other trendy protests / Reform (250)

There is an urgent need for reform (in the UK, legislation on the redefinition of what constitutes a public nuisance in the context of a protest, since it allows the authorities to use unbalanced and, in most cases, unfair power to arrest members of a protest). At the minimum, a guideline criterion from the Indian government for the right to protest, since some of the specifics of the Indian legislation are questionable in the best of lights (i.e. Article 19(1)(a) and 19(1)(b) of the Indian Constitution as mentioned before). When both judicial systems are closely examined, it is evident that they both share several flaws, whether that is to do with the vague wording of specific legislation, out of context guidelines or unbalanced allocation of power; however, in the Indian legal system, there have been attempts to rectify the balance

²⁰ Tim Hughes, 'The Right to Protest is Fundamental to a Healthy and Vibrant Democracy – The Government Must not undermine it' (2021) <<https://www.involve.org.uk/resources/blog/opinion/right-protest-fundamental-healthy-and-vibrant-democracy-government-must-not>> Accessed 12th Sep 2021

²¹ Liberty Human Rights, 'Liberty's Briefing on the Police, Crime, Sentencing and Courts Bill for report stage in the House of Commons (2021) <<https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/04/Libertys-briefing-on-the-Police-Crime-Sentencing-and-Courts-Bill-Report-Stage-HoC-July-2021.pdf>> Accessed 12th Sep 2021

of power and the right to protest as demonstrated in the *Himat Lal K. Shah*²², an attempt at rectifying this situation in the UK has not yet surfaced.

Impact of Covid-19 on the right to protest (250 Words)

As mentioned throughout this essay, Covid-19 has had a significant impact on the functioning of the world and the fundamental rights of the people. The right to protest in the UK is not absolute and can be restricted if there is a good cause. However, Covid-19 has demonstrated the meaning of 'not absolute' since there have been several restrictions to limit human contact and the spread of the virus, which came at the cost of giving up certain fundamental rights such as the restricted right to protest. Similarly, this was the case in the Indian legislation where restrictions have been implemented to limit the spread of the virus in exchange for restricted fundamental rights such as. However, the Indian citizens have accused the government of using the 'Covid-19 emergency as an excuse to arrest protesters'²³ for example, during the anti-Citizenship Amendment Act protests (a piece of legislation that 'can be considered discriminatory against Muslims since it provides a fast-track to Indian citizenship to non-Muslim refugees'²⁴) where the police force used the Unlawful Activities Prevention Act (which mainly focuses on acts of terrorism) to make several arrests during protests throughout the pandemic, which is a clear example of how the Indian authorities have moulded the law according to their agenda in the name of Covid.

Conclusion

As an overall judgement of this essay, the 'right to assembly' is not as absolute as it may appear, and events during and since Covid-19 have somewhat confirmed that where excessive use of police force was used in India to arrest protesters in the

²² Ibid, 16

²³ DW – Made for Minds – 'Citizenship Law: Is India using Covid-19 emergency to arrest Protesters?' (2020) < <https://www.dw.com/en/citizenship-law-is-india-using-covid-19-emergency-to-arrest-protesters/a-53603260> > Accessed 12th Sep 2021

²⁴ Ibid

name of Covid. As this essay has shown throughout both legal systems, have their flaws in the specific definitions of their terms, such as the Indian Constitution Article 16, where protests can be 'reasonably restricted' or in The Police Sentencing and Court (PCSC) Bill, where Amendment 6 widened the interpretation of 'Intentionally or recklessly causing a public nuisance' to include "serious distress, serious annoyance, serious inconvenience or serious loss of amenity". However, the PCSC has placed these definitions of intentional or reckless causing of a public nuisance outside of the context of a public protest.

However, the right to protest in India is far more problematic than meets the eye and therefore deserves a significant amount of attention since the government operates in an authoritarian structure when handling peaceful protests. With such rich history of protests, there is still a long way to go in order to reach a fair balance of the right to protest and the government use of force.

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