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# **‘Palestinian Protests, Freedom of Expression and Freedom Association: When do Speeches Become a Hate Crime or Incitement to Commit Acts of Terrorism?’**

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## **Introduction**

Inspired by the growing protests over the current Israeli-Gaza conflict, this article examines the legal issues surrounding procession and protests in the UK. Commencing with an overview of the political and social context behind the protests, the article examines the rights to freedom of expression and right to peaceful assembly. This is followed by an analysis of the potential offences associated with protests ranging from hate crime to offences committed under the UK’s terrorism legislation.

## **The Political and Social Context Behind the Protests**

Since 2006 when Hamas won the only Palestinian election in Gaza there have been sporadic acts of aggression between Gaza Palestinians and Israel with Hamas firing rockets into Israeli territory followed by Israeli retribution with airstrikes. This conflict escalated on the 50<sup>th</sup> anniversary of the start of the Yom Kippur war where an Egyptian-Syrian led coalition attacked Israel, when on the 7 October 2023 a number of Hamas fighters crossed the border from Gaza into Israel attacking Israeli Defence Force positions close to the border with Gaza and Israeli civilians. The attack resulted over 1,400 Israelis killed, including children, 308 IDF soldiers, 58 police officers, with approximately 70 Arab-Israelis, many of whom are Negev Bedouin and injuring 5,132. In addition to the casualties, Hamas took a number of Israeli hostages including children and elderly Israeli citizens, where, at the time of writing, the Israeli military claim Hamas hold 242 Israeli civilians as hostage in Gaza. Following the Israeli response to the 7 October attack, that involved military air and IDF ground assaults on 6 November 2023, it is claimed that over 10,000 Palestinian civilians have been killed, with 4,100 of those deaths being children. At the time of writing these figures have to be verified.

This conflict sparked a series of protests globally, including the major cities in the UK, where the largest have been in London. Virtually all the protests have been pro-Palestinian.

Understandably this is a very emotive issue where the current situation in Israel/Gaza has polarised opinions so much that it has become extremely divisive leading towards violence.

These protests are taking place in the lead up to Remembrance Day and this is led to fears

that war memorials, including the Cenotaph in Whitehall that holds the UK's main Remembrance parade would be attacked by some of the pro-Palestinian protesters. On 4 November 2023 a 78 year-old poppy seller who is a British Army veteran was punched and kicked as he tried to pack up his stall at Waverley rail station in Edinburgh when he was caught up in a pro-Palestinian protest at the station.

The protests have not only polarised opinions among protesters, but it has also polarised political opinion regarding the UK's humanitarian response (for example, should there be calls for a ceasefire) and how the pro-Palestinian protests should be policed. Following an emergency COBRA meeting the former UK Home Secretary, Suella Braverman referred to the protests as 'hate marches', seeing the protests as a celebration of the largest massacre of Jewish lives since the holocaust. This echoes the UK government's position where in October 2023 during a visit to Israel during a joint press conference with Israeli Prime Minister, Benjamin Netanyahu, the UK Prime Minister, Rishi Sunak, said the UK was proud to support Israel in its long war with Hamas adding, 'We will stand with you in solidarity, we will stand with your people. And we also want you to win.' This official position of the UK siding with Israel has inflamed some pro-Palestinian supporters. The UK's leader of His Majesty's opposition, Sir Keir Starmer's position has resulted in polarised positions within the Labour Party. His view in not calling for a ceasefire as the correct position as Israel has the right to defend itself, resulted in 30 Labour councillors resigning from the Party. On 8 November 2023 Bradford MP, Imran Hussein, resigned from Labour's front bench due to Starmer's refusal to call for an outright ceasefire.

Following the protests on Armistice Day in London, on 13 November 2023 Sunak sacked Braverman as Home Secretary for defying Downing Street over an article she wrote in *The Times* accusing the Metropolitan Police of bias in the policing of the protests that stoked up a political storm as she claimed the Metropolitan Police were failing to arrest pro-Palestine protesters for offences while taking a harder stance on 'right-wing' counter protesters. This article may have ignited a hostile counter protest as the Metropolitan Police condemned the 'extreme violence from right-wing protesters' where on 11 November they made 145 arrests, the vast majority of whom were 'right-wing' counter protesters. This prompted Sunak to condemn the violence of the EDL (English Defence League). Disturbingly, this comment by the UK Prime Minister reveals how out of touch many prominent politicians in

senior government positions are in relation to far-right and the extreme far-right (neo-Nazi) politics as the EDL was disbanded in 2011. Yet, it is these politicians who are orchestrating not just how the protests should be policed but also public opinion on what is and is not acceptable within the rights to freedom of expression and peaceful assembly. This was seen in France on 12 November 2023 where a major demonstration was held in Paris brought about by the Israel-Gaza war by prominent far-right politicians, including Marine Le Pen, leader of National Rally and three-times presidential candidate. The protest was to show support for traditional French Republican values and the rejection of anti-Semitism. Protests like this demonstrates how the far-right are currently rebranding with a move away from the suspicion the Jewish conspiracy which undermined nationalistic values to focusing on immigration, insecurity brought about by immigrants mainly from Muslim states and Islamism. The much-derided former leader of the EDL, far-right activist and now claiming to be an independent journalist, Tommy Robinson (real name Stephen Yaxley-Lennon) is also demonstrating this move in the UK who called on his supporters to join a march against anti-Semitism on 26 November 2023 in London and, '...let British Jews know they are not alone'. Within this political, historical and social context, the article examines the law surrounding protests.

### **The Law on Freedom of Expression and Right of Association**

While the conflict continues, so will the protests in the UK, mainly from pro-Palestinian supporters. From a legal perspective the first area to consider are the applicable rights under the European Convention on Human Rights (ECHR) mainly article 10, freedom of expression and article 11 right to freedom of assembly and association. Article 10(1) ECHR provides everyone the right to freedom of expression, including freedom to hold opinions and to receive and impart information and ideas without interference by a public authority, regardless of frontiers. This is a qualified right allowing state agencies to interfere with this right only when it is in accordance with the law and necessary in a democratic society when it is in the interests of:

1. national security
2. territorial integrity or public safety
3. for the protection of the reputation or rights of others
4. for maintaining the authority and impartiality of the judiciary
5. for the prevention of disorder or crime, for the protection of health or morals; or,

6. for the protection of the rights and freedoms of others.

To put some context into what is legally acceptable in relation to freedom of expression, in the UK case *Redmond-Bate v Director of Public Prosecutions* [1999] EWHC Admin 733, Lord Justice Sedley said:

‘Freedom of speech includes not only the offensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative, provided it does not tend to provoke violence. *Freedom only to speak inoffensively is not worth having.*’ [My emphasis]

Important in this decision is that freedom of speech does not provoke violence and the European Court of Human Rights (ECtHR) adopted a similar approach in an earlier case, *Handyside v UK* (1976), Application Number 5493/72. In *Erbaken v Turkey* (2006) Application Number 59405/00, the ECtHR tempered freedom of expression saying that tolerance and respect for the equal dignity of all human beings constitutes the foundation of a democratic, pluralistic society, adding:

‘That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ...’

Two issues emanate from these decisions. One is from *Redmond-Bate* that we must tolerate speech that we disagree with even if we find it offensive. The second is that the protection this right affords speech dissipates when that speech provokes and encourages violence or incites hatred.

Article 11 ECHR is also a qualified right where everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. However, this right can be interfered with where it is prescribed by law and necessary in a democratic society in the interests of:

1. national security or
2. public safety,
3. for the prevention of disorder or crime,
4. for the protection of health or morals or
5. for the protection of the rights and freedoms of others.

This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

The right of the public to assemble or march together in peaceful protest has long been acknowledged by the common law of England and Wales. In *Hubbard v Pitt* [1976] QB 142, Lord Denning M.R. was unequivocal how this important right is, saying:

‘Here we have to consider the right to demonstrate and the right to protest on matters of public concern. These are rights which it is in the public interest that individuals should possess; and, indeed, that they should exercise without impediment so long as no wrongful act is done. It is often the only means by which grievances can be brought to the knowledge of those in authority—at any rate with such impact as to gain a remedy. *[British] history is full of warnings against suppression of these rights.*’ [My emphasis]

The current pro-Palestinian protests are in the public interest and are a means of bringing what the protesters see as a grievance in the way the innocent Palestinian citizens are suffering with Israel’s response to the Hamas attack in October 2023. It is submitted that Braverman’s wide-sweeping statement that these protests are hate protests *per se*, is incorrect and, considering she is a qualified barrister, surprising.

### **When Protests become Illegal and Offences Associated with the Protests**

Under the Public Order Act 1986 organisers of protests must give notice of their intention to hold a procession that in relation to the pro-Palestinian protests include groups like the Palestine Solidarity Campaign which in this case it is intended to demonstrate support for or opposition to the views or actions of any person or body of persons, or to publicise a cause or campaign. If the senior officer where the procession will take place reasonably believes that:

1. it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or,
2. in the case of a procession in England and Wales, the noise generated by persons taking part in the procession may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession, or
3. in the case of a procession in England and Wales
  - (i) the noise generated by persons taking part in the procession may have a relevant impact on persons in the vicinity of the procession, and
  - (ii) that impact may be significant, or
4. 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,

that officer can impose on the organisers conditions as appear to them necessary to prevent such disorder, damage, disruption, impact or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions. One can see here the conditions under a statute (this is the prescription by law point) required for interfering with the right to peaceful assembly under article 11 ECHR. If the chief officer of police where the procession will take place believes that the conditions in section 12 of the Act will be insufficient to prevent holding a procession that officer can prohibit that procession for a period not exceeding 3 months and this decision will be with the consent of the relevant Secretary of State, which here is the Home Secretary. Behaviour that has been seen so far in these protests could result in future pro-Palestinian protests being prohibited. If this occurs, the policing response to that already seen will be very different. Examining the behaviour already witnessed is worth assessing if there is sufficient evidence to prevent further protests.

### **Hate Crime and Offences Under Terrorism Legislation**

UK hate crime comes under Part III of the Public Order Act 1986, creating the offences of using threatening, abusive or insulting words or behaviour or displays written material which is threatening, abusive or insulting with the intent of stirring up racial hatred or having regards to the circumstances racial hatred is likely to be stirred up and publishing or distributing such material. Racial hatred is defined as, ‘...hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins’. Part 3A of the Act introduced offences based on the grounds of religious hatred and hatred on the ground of sexual orientation. Under the Act religious hatred means hatred by reference to religious belief or absence of religious belief, with hatred on the grounds of sexual orientation meaning hatred by reference to sexual orientation be it towards persons of the same sex, the opposite sex or both.

In these demonstrations some protesters have been arrested for offences under Part III. Most of it has been antisemitic as the UK’s Jewish population have been targeted. It is natural to associate Israel with the Jewish population, but it is Israel with a right-wing government that is carrying out the actions in Gaza. As such it is important to

differentiate between Zionism and Judaism as it appears the anger for many of the pro-Palestinian protesters is with the state of Israel and its Zionist government not Jewish citizens. Zionism is about the pursuit of an independent Jewish state whereas Judaism is a religious community that believes only in one supreme power, that is God. Sadly, there has been a significant rise in anti-Semitic hate crime in the UK since Hamas attacked Israel in October 2023. Potential evidence that the protests are against Zionism is the chant repeatedly given during the protests 'From the river to the sea, see Palestine free'. Whether this is a hate speech as the former Home Secretary would have us believe is a moot point. Braverman is correct that the context of this chant is the erasure of Israel from the map, but does it solely mean the state, or does it also mean incurring a genocide against Jewish Israeli citizens to achieve this? It is submitted that if this chant was added to with a phrase that calls for the death of Jews to achieve this then that definitely has crossed the line and is no longer protected under the freedom of expression and becomes a hate crime. The cries of calling for a jihad heard at these protests also needs to be seen in context. Acknowledging there are two forms of jihad, the greater jihad which is self-reflection to make one a better person in society and the lesser jihad, which is the call for a holy war, there is no doubt the context of the jihad called for in the protests is the lesser jihad and that is also inflammatory and a hate crime.

Offences under the UK's terrorism legislation are also potentially being committed at these protests. One is that since November 2021 Hamas is a proscribed terrorist organisation in the UK under its full name Harakat al-Muqawamah al-Islamiyyah. Any person at these demonstrations who professes to belong to Hamas, whether they are or not, as seen with some of the protesters wearing the masks and bandanas worn by Hamas, will commit an offence under section 11 Terrorism Act 2000 of membership of a proscribed organisation, an offence that carries the potential of a 14 year period of imprisonment. It also an offence under section 12 Terrorism Act 2000 to call for support for a proscribed group, which in these protests we have seen with calls to support Hamas. This offence is also a serious one that carries the potential of a 14-year period of imprisonment.



Another offence that could be committed by those giving speeches at these protests is under section 1 Terrorism Act 2006, the encouragement of terrorism. The offence is one where a statement is made that is a direct or indirect encouragement or inducement to commit acts of terrorism. Regarding the person making a statement that encourages or induces an act of terrorism they do not solely need to intend that a person will commit an act of terrorism, it also includes the lower threshold of *mens rea* where they only need to be reckless as to whether other members of the public are directly or indirectly encouraged or induced to commit acts of terrorism. This is an objective legal test where the statement is likely to be understood and what members of the public could reasonably be expected to infer from that statement. In relation to the pro-Palestinian protests this could include a person following what they heard deciding to attack Jewish worshippers at synagogues or, due to the pro-Israeli position, government buildings.

While the focus here has been on the pro-Palestinian protests what is disconcerting is these protests have ignited a far-right response in the UK. A far-right group 'Football Lads' who are in essence football hooligans linked to the far-right have stated they will join other football team's members of the group to counter pro-Palestinian protests in London. In addition to this, far-right activist Tommy Robinson has urged for a 'call to arms' to protect British culture and counter the pro-Palestinian protests. With the rise in Islamophobia, especially since the Islamist inspired terrorist attacks Britain has suffered since the attack on 7 July 2005 in London, this has the potential of increasing violence and putting the public in greater danger when both the vitriolic extremists clash.

## **Conclusion**

As stated, the Israeli-Gaza conflict is a very emotive issue, especially when so many civilians are being killed or injured on both sides, especially children and is one that has polarised not only UK citizens but the UK's political establishment both internally and with the police, in particular the Metropolitan Police Commissioner, Sir Mark Rowley. Not only is it an extremely emotive issue it has resulted in thousands of protesters taking to the streets and is one which the police have to police the protests sensitively but without fear or favour. While the majority of those protesting are doing

so legally and within the parameters of the rights to freedom of expression and right to peaceful assembly, we are seeing some on the fringe of these protests persons committing various crimes. As outlined in the coverage of the applicable legislation above, the powers are there for the police to deal with the offenders. All police forces in the UK should not have any political influence in how they operate, and they are not governed by central government. They are still local citizens in uniform that must police without fear or favour. It is important that offenders at the protests on any side be dealt with or the situation will worsen as passions increase, especially if we start to see a clash between the extremists who participate in the pro-Palestinian protests clash with the far-right. If they do and nothing is done or seen to be done by the police, as seen with the far-right's refocus, especially the opposition to Islamism, for many in the UK it is the far-right who will gain sympathy and potentially support.