

UK government introduces legislation to curb right to protest

By Charles Jenkins, AEJ UK Secretary

As part of a larger bill, the UK government has introduced legislation to authorise police to curb the right of protest that looks more like the rule book of an authoritarian regime than a democracy. While it is opposed by opposition parties the bill has, other than from a few individuals and organisations, not aroused the outrage that might have been expected. Although the bill is not a direct attack on media freedom, it should be of major concern to all journalists since it sets a precedent as an attack on the wider category of freedom of expression, of which media freedom is a part.

On March 15th the UK government introduced to the House of Commons the Police, Sentencing and Courts Bill which contains under a section amending the Public Order Act of 1986 dealing with the regulation of protest marches a severe challenge to peaceful freedom of protest long regarded as one of the fundamental rights of British citizens and indeed of those of all properly democratic countries. On the following day, the Second Reading (effectively the first stage) of the bill was passed by a large majority, reflecting that of the Conservative government, although the main opposition parties voted against. It still has to go through committee stage at which amendments may be made.

The bill can be found on the following link:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0268/200268.pdf>

The relevant section is Part 3 Public Order, of which Para 54. Imposing Conditions on Public Processions and Para 55 Imposing Conditions on Public Assemblies and Para 59 Intentionally or Recklessly Causing Public Nuisance, which provides for prison sentences of up to 10 years for someone who acts or omits to act in a way which causes serious harm to the public or section of the public. Subsequently serious harm is defined in a number of ways, one of which is “serious annoyance”. The latter has perhaps attracted the most attention, being interpreted as up to 10 years for causing no more than “serious annoyance”. Probably this is not intended and may therefore be revised but other severe measures are repeated in different ways enough to be sure that they are meant, for example authorising the police to intervene if “the noise generated by persons taking part in the procession may have a relevant impact on persons in the vicinity of the procession” .

Since the main purpose of a protest march is to have an impact it is difficult to see how this can be interpreted other than as an attempt to undermine the right to protest. Such language would be well suited for example to the desires of someone like President Lukashenko of Belarus to empower police to disperse protests against his rule.

Coincidentally, the introduction of the bill came two days after a highly publicised and controversial police intervention in the latter part of a vigil on South London’s Clapham Common in remembrance of Sarah Everard who had ten days earlier been abducted when walking home nearby, and then raped and murdered. (The suspect who has been arrested was an off-duty police officer.) In the intervention, police officers (men and women) forcibly arrested several women and were photographed with one young woman pulled to the ground. It’s important to say that the intervention had nothing to do with the Public Order Act but rather Covid regulations.

Virtually all those present and most commentators felt that the police intervention was misjudged. Amid the headlines and criticism, the government questioned the police action and tried to distance itself from the intervention. But a memo sent to all police chiefs in England before the vigil and leaked to The Guardian newspaper said the government supported police action to stop people gathering at such vigils and that Home Secretary Priti Patel was to issue a public message to discourage public participation. She does not appear to have issued such a message.

All this could reasonably be seen as a foretaste of what might happen, after Covid regulations are lifted, if the new Bill as it stands becomes law.

The attempt to curb demonstrations reflects the government’s reaction to two sets of protests over the last year or so: Black Lives Matter in the months following the police killing of George Floyd in the U.S. in May, and Extinction Rebellion. The BLM protests in the UK were almost entirely peaceful and were in fact mostly well handled by the police. The main concern was that they risked the spread of Covid but their contribution to the return of Covid from low levels at the time to high levels would have been minuscule compared to activities that were encouraged by the government such as going to

pubs and restaurants. Nevertheless Home Secretary Priti Patel, responsible for introducing the bill, described the BLM protests as “dreadful”.

In the UK the BLM protests became associated with a demand to rethink British colonial history. The most noted event during one protest was the toppling of a statue ~~an~~ of 18th century slave trader Edward Colston from his prominent position in the centre of Bristol into the harbour. (The statue remained intact and will be in future displayed in a museum.) The demand to rethink British history found some resonance with institutions and museums but the consequent debate has raised issues about freedom of expression and possibly exposed a government attitude that appears less than happy with publicising the less positive sides of British history.

A report in September 2020 by the National Trust for Places of Historic Interest and Natural Beauty was sharply criticised in a number of newspapers and one of the lead authors, Corinne Fowler, of Leicester University, has said she received hundreds of threats, which she attributed to misreporting of her work. The interim report examined the connections between 93 of its properties, many of them grand country houses, and slavery and colonialism. (Work on the report would have started well before last year’s BLM protests.)

Similarly, the Museums Association has stated that it “unreservedly supports initiatives to decolonise museums”. On February 16th this year, it published on its website an article entitled “Fears over Editorial Freedom as Heritage Bodies Summoned to Discuss Contested History” in advance of a meeting called by the Department for Culture, Media and Sports on February 23rd. Little has been said by either side about the meeting which implies a truce but it does raise questions about the government’s position.

Unlike the BLM protests (apart from toppling the statue) several of the Extinction Rebellion protests deliberately aimed to cause disruption, for example to transport, in order to bring their concerns to public attention. However, these actions were already against the law and provide no good reason to undermine the right to protest.

The Public Order section of the bill is primarily a concern about the rights of the British people to free expression and to protest against injustice, but it can also be noted that it could be an ideal template for authoritarian governments anywhere, for example in Hong Kong strongly criticized by the British government for suppressing democracy, to clampdown on protests.

It is notable that at least so far there has been very little opposition to the part of the bill dealing with protests and public order from within the Conservative Party, including those who have championed themselves as defenders of human rights, one notable exception being the former prime minister, Teresa May (not previously a notable champion of human rights). However, a joint letter ~~has~~ against the provisions has been signed by leading organisers of both pro and anti Brexit demonstrations between the referendum and the UK’s formal departure from the EU, including Richard Tice, now leader of the Reform UK (former Brexit) Party. The bill has been strongly condemned by human rights organisations and lawyers but given the way in which political debate has evolved in recent years, these are relatively easy for the government to dismiss as representative of a liberal elite out of touch with popular feeling. The leader of the main opposition party, the Labour Party, Keir Starmer, was at first intending to instruct his party to abstain on the bill. Although persuaded to change partly as a result of the police intervention against the vigil on Clapham Common, he has so far been mild in his criticisms, perhaps afraid of alienating voters in the so called Red Wall of mainly white working class seats in the north of England, whose swing to the Conservatives was decisive in giving them a clear victory in the December 2019 election. The Liberal Democrats and Greens have been a little more forthright but arguably still insufficiently so and in any case they have difficulty in making themselves noticed beyond their core supporters. On recent performance, it is more likely that the bill will receive the vigorous scrutiny and amendments it needs in the House of Lords than the House of Commons but of course the latter can override any changes voted on by the House of Lords.