

Israel's 'Reasonableness Doctrine'

What it is and why it matters



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Image credit: Jonatan Sindel/Flash90

What is the 'reasonableness doctrine'?

Israel does not have a written constitution.

Therefore, the Supreme Court applies a set of standards grounded in 'common law' to decide whether decisions made by the government are permitted.

The Supreme Court assesses these decisions according to three criteria:

(1) Did the Knesset or the cabinet have the authority to make such a decision?

(2) Was a proper procedure for decision-making adhered to?

(3) Were appropriate considerations applied?

The third question is what is known as the 'reasonableness doctrine'.

According to the Israel Institute of Democracy, the Supreme Court must consider "whether decisions were made in good faith, in an egalitarian and proportionate manner, void of improper considerations, and while respecting human rights".

In most cases, this doctrine is applied to decisions made by unelected bureaucrats, not decisions made by elected Members of the Knesset.

When is the doctrine used?

Mostly, the Supreme Court uses the 'reasonableness doctrine' to rectify decisions made by bureaucrats.

On average, it is **used less than once a year** for decisions made by ministers or the government. The court only intervenes in cases where the executive has acted in a manner which can be considered "extremely unreasonable".

In these instances, the court acts to ensure that the Knesset and the executive **uphold ethical behaviour**, and to provide a check against corruption.

For instance, the Supreme Court has used the 'reasonableness doctrine' in the following cases:

1) The government refused to provide Israeli schools surrounding the Gaza strip with effective protection against rocket fire.

The Supreme Court Justice stated that this decision was unreasonable and that protection had to be installed in all classrooms in Sderot.

2) The court intervened and decided it was not reasonable that the leader of Shas, Aryeh Deri, would serve as a Minister having been convicted of bribery and tax offences.

3) The court forced a change in the decision not to construct a ritual bath (mikve) for Orthodox women in the secular town of Kfar Vradim in 2014.

Why is the doctrine being contested?

Opponents of the doctrine claim that the Supreme Court is using its powers to promote the political biases of its judges.

Because the judges are not elected, opponents of the court claim that they do not have the democratic right to alter decisions taken by elected MKs, or ministers approved by the Knesset.

Currently, a bill is heading for its final reading on the week commencing 24th July which would abolish the 'reasonableness doctrine'.

The bill would ban the court from scrutinising the decisions made by the cabinet, ministers, or other elected officials, according to the standard of 'reasonableness'.

The bill is seen by its opponents as a gateway to gutting the Supreme Court's ability to scrutinise the actions of ministers and the government.

Far from advancing democracy in Israel, the abolition of the 'reasonableness doctrine' would pave the way to granting impunity to any Israeli government.

Ministers would effectively have limitless power, they could appoint corrupt officials, or withhold funds without good reason - and there would be nothing to stop them.

Is this what the protests are about?

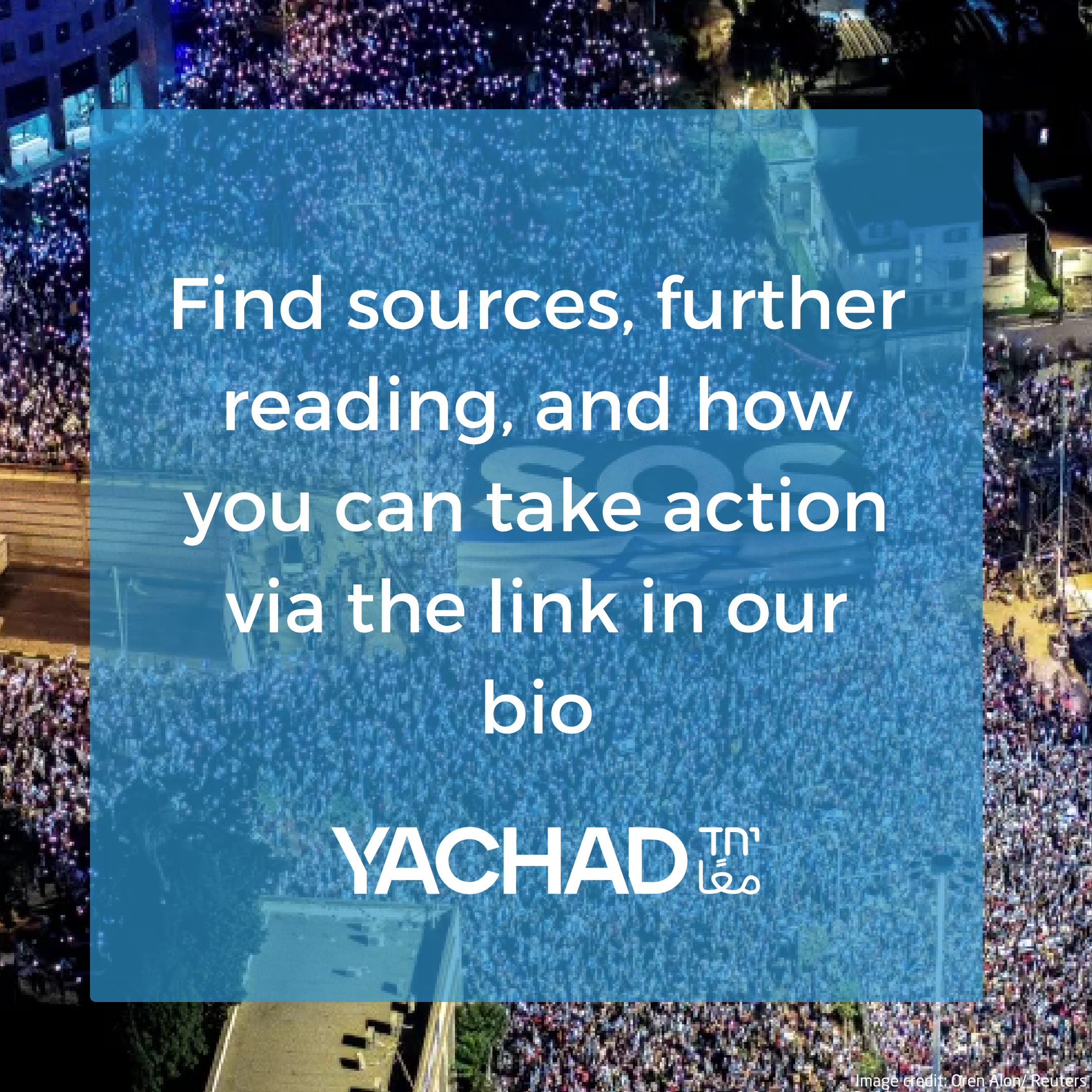
Yes. The protests currently taking place daily in Israel, and around the world, are related to a variety of concerns about the direction in which the Israeli government is taking the country.

Chief amongst these concerns are the changes being made to the power of the courts.

Israelis, in their hundreds of thousands, realise that the Supreme Court is an essential guardrail against corruption in public life, and holding elected officials accountable for their decisions.

If the law abolishing the 'reasonableness doctrine' is finalised next week, it will set in motion an erosion of a wide range of checks and balances which are essential for any democracy.

In the words of MK Benny Gantz, “This snowball that is starting to roll here today will grow, gain momentum and crush the entire country, if we do not stop it now.”



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