

PROTECTING CHILDREN'S RIGHT TO PROTEST

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

“Why is it acceptable for children to participate in an anti-pollution protest during peak winter in Delhi, but not in the protests at Shaheen Bagh?” A child protests against the CAA and NRC in Bengaluru in January. | Photo Credit: [AP](#)

There are many legal and social difficulties involved in the Supreme Court's move to take suo motu cognisance of children taking part in demonstrations in Shaheen Bagh in Delhi. This has a direct impact on children's right to protest as well as on their mothers' right to protest, specifically since the enforcement of the National Register of Citizens and the Citizenship (Amendment) Act could render both mother and child stateless.

It is indeed a tragedy that an infant died in the cold during the protests earlier this month. But criminalising the mother and putting the onus of the child's death on her negligence rather than questioning and examining the economic and political reasons for poverty is a travesty of justice. Why is it that Indian mothers, especially from migrant labouring families, have to carry their children where ever they go? By saying that women should not be allowed to take their children to protests, we are effectively rendering impossible their own mobility and pushing them back into their homes. How can women then voice their dissent against a law which is going to affect them directly? And if they do voice their dissent by going to a protest, where are they supposed to leave their children? What infrastructure does the state provide by way of crèches or day care centres? What kind of housing does the state provide for migrant workers? In Bengaluru, a migrant colony was recently demolished after videos claiming that illegal Bangladeshi immigrants were sheltered in the settlement went viral. A wall is being built in Ahmedabad to apparently hide slums from the U.S. President during his visit this month. In such a context, isn't the idea of a safe home also mediated by class?

There is an erroneous notion that the infant died on account of the protest rather than due to other systemic issues. And the Supreme Court is assuming causality without even examining the matter. In the suo motu action, the Court has conflated two unrelated issues. The first is a child's right to participate in or witness a protest. The second is the death of the infant. There is no obvious relationship between the first and second issue. The death of the child due to natural causes should have no bearing on children's right to be present at a protest or a mother's right to take her children to a protest.

Implicit in the freedom of speech and the freedom to assemble peaceably and without arms under Article 19 of the Constitution is the right to protest. This right is guaranteed to all citizens of India regardless of age. The United Nations Convention on the Rights of the Child (CRC), which India has ratified, expressly recognises in Article 13 that freedom of expression of the child includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.”

Both the Indian Constitution and the CRC state that no restriction may be placed on these freedoms except those that are necessary and imposed by statute for the “purposes of safeguarding the sovereignty, integrity and security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”. Even these restrictions must pass the test of reasonableness as understood by the constitutional courts. As such, neither the Constitution nor the CRC

contemplate a blanket restriction being imposed on children's right to protest by a court directive.

Even with respect to individual cases, there must first be a serious examination of the specific circumstances of the case since overarching directions regarding a child's participation are also a restriction on the mother's mobility and on parenting rights generally.

Further, the CRC, in Article 5, recognises the "evolving capacities" of children. This means that as children acquire enhanced competencies, there is a diminishing need for them to be protected. They have a greater capacity to take responsibility for decisions affecting their lives. The law recognises that children do not magically acquire agency when they turn 18 years, but are capable of exercising their rights and that the law must facilitate the same.

Article 12 of the CRC provides that member states should assure to the child who is capable of forming his or her own views the right to express those views freely. For this purpose, the child should be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative. Therefore, there can be no restriction on a child's right to protest without hearing the child.

While many schools encourage children to read newspapers and watch news channels, attending a protest is also a way for children to receive information and ideas. At a protest they get to witness expressions of discontent against acts or omissions of the government that have prejudicial and even violent impacts on people's lives. A protest is also a space where children get to experience and assert citizenship. It's a space for them to comprehend what 'We The People of India' encompasses; it is where they get to see people from all walks of life. It could also be a space for children to celebrate their unity as Indians.

As far as the CAA-NRC are concerned, women, especially poor women, will find it hardest to prove ancestry due to lack of documentation. Further the CAA and NRC directly affect children as well: if one parent is held to be an illegal migrant, it means the child will also be considered an illegal migrant. A child has as much right to be present as a stakeholder at such a protest as any adult.

While news reports say that the infant who died was exposed to the chilly Delhi air, they don't mention the circumstances of the parents who are daily wage migrant workers living in an adjoining *jhuggi* in a plastic tent home.

Also, why is it perfectly acceptable for children to participate in an anti-pollution protest in peak winter, but not in the protests at Shaheen Bagh? Why don't those protests constitute parental negligence worthy of court intervention? The petitioner in this case is herself a child. What is the basis on which it is decided that one is a valid exercise of the child's agency and the other is not? When we debate the participation of children in protests, these are questions we must ask ourselves.

Seema Misra is a lawyer practising in the trial courts in Delhi

You have reached your limit for free articles this month.

Register to The Hindu for free and get unlimited access for 30 days.

Already have an account ? [Sign in](#)

Sign up for a 30-day free trial. [Sign Up](#)

Find mobile-friendly version of articles from the day's newspaper in one easy-to-read list.

Enjoy reading as many articles as you wish without any limitations.

A select list of articles that match your interests and tastes.

Move smoothly between articles as our pages load instantly.

A one-stop-shop for seeing the latest updates, and managing your preferences.

We brief you on the latest and most important developments, three times a day.

*Our Digital Subscription plans do not currently include the e-paper ,crossword, iPhone, iPad mobile applications and print. Our plans enhance your reading experience.

Why you should pay for quality journalism - [Click to know more](#)

Please enter a valid email address.

To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

Subscribe to The Hindu now and get unlimited access.

Already have an account? [Sign In](#)

Sign up for a 30-day free trial. [Sign Up](#)

To continue enjoying The Hindu, You can turn off your ad blocker or Subscribe to The Hindu.

[Sign up for a 30 day free trial.](#)

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com