

Research Article

Political Participation of Minors in India: A Critical Perspective from the Prism of the UNCRC

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ABSTRACT: The participation of children in a political demonstration has proven to be an enduring issue in India owing to the public agitations against the Citizenship Amendment Act and the farm laws, with the latter being withdrawn recently. Under the hegemonic liberal paradigm, the underlying risk is that civil and political rights may be envisaged as the exclusive domain of adults. Children are merely viewed as apprentice citizens who do not have the capacity to exercise rational choice. The operative presumption is located in a binary wherein children are pliant beneficiaries, and the state is a benign caretaker in charge of determining their best interests. It thereby negates children's autonomy and reduces them to disenfranchised spectators in an adult-centric social fabric. Moreover, the protectionist approach enables the state to evade its obligation of preserving democratic spaces wherein minors can protest safely and make their voices heard. State functionaries and judicial authorities in India have also been complicit in adopting an infantilising stance. In this paper, the author makes a case for recognising the agency of children such that they can exercise their 'autonomy' right to political participation. This paper incorporates diverse perspectives in existing child rights literature, including those emanating from the Global South, to argue in favour of an epistemic reorientation in child rights law discourse. Moreover, the author relies upon key interpretations of UNCRC provisions made by the Committee on the Rights of the Child and argues for facilitating a participative environment where children can exercise their civil and political rights. The 'best interests' test should not be wielded as a sword from an adult standpoint to curtail children's rights in the political domain.

KEYWORDS: Children's Rights; Citizenship Act; Political Participation.

I. INTRODUCTION

Historically, minors as those below 18 years of age have been active stakeholders in political movements around the world.¹ In 1911, the United Kingdom witnessed a wave of school strikes led by children against corporal

¹ Aoife Daly, "Demonstrating Positive Obligations: Children's Rights and Peaceful Protest in International Law" (2013) 42:1 *George Washington International Law Review* 763–813 at 764.

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punishment.² Children also spearheaded the 1976 Soweto uprising against discriminatory racial policies in the South African education system. It marked an epochal moment in South Africa's anti-apartheid struggle.³ When children from a public school in the United States of America wore black armbands to protest against the devastating war in Vietnam, the Supreme Court upheld their free speech rights in the landmark judgement of *Tinker v. Des Moines School District*.⁴ Children's right to express their political stance against the war in school was upheld as long as the protest did not disrupt their education. Furthermore, children were involved in the Palestinian liberation movement,⁵ and they also engaged in the more recent Black Lives Matter protests.

The vociferous spate of protests in the Indian capital concerning the divisive NRC-CAA regime or the equally controversial farm laws, which have since been repealed,⁶ has also brought the issue of minors' political participation to the forefront of legal discourse. Minors are challenging the paternalistic notion that adults have hegemony over-exercising civil and political rights in the public sphere. By making their voices heard, children claim to be recognised as robust agents of political change alongside adults and assert their self-determination. However, it has evoked mixed responses from judicial authorities and child rights institutions in India.

² E Kay M Tisdall, "Children and young people's participation: A critical consideration of Article 12" in Wouter Vandenhoele et al., eds, *Routledge International Handbook of Children's Rights Studies* (Routledge, 2015) 185 at 185.

³ Michael Wyness, "Children, Childhood and Political Participation: Case Studies of Young People's Councils" (2001) 9 *International Journal of Children's Rights* 193 at 196.

⁴ *Tinker v Des Moines School Dist*, [1969] 393 US 503; Peter N Stearns, "History of Children's Rights" in Martin D Ruck (editor), Michele Peterson-Badali (editor) & Michael Freeman (editor), eds, *Handbook of Children's Rights: Global and Multidisciplinary Perspectives* (Routledge, 2017) 3 at 17; John Tobin & Aisling Parkes, "Art.13 The Right to Freedom of Expression" in John Tobin, ed, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019) 435 at 436.

⁵ Wyness, *supra* note 3 at 196.

⁶ The Hindu, "It's official. Three farm laws scrapped" (2 December 2021), online: <<https://www.thehindu.com/news/national/president-gives-assent-to-farm-laws-repeal-bill/article37802828.ece>>.

A notable research gap exists in the existing literature on recognising children's civil and political rights. The participation–protection paradox,⁷ at the heart of the United Nations Convention on the Rights of the Child (UNCRC)'s prism of rights, is yet to be explored in the Indian context. The dilemma at the heart of this paradox is as follows: do minors' participation in demonstrations or protests only reflect their calculated utilisation as props in political movements, or should children have a right to be recognised as equivalent stakeholders in manifesting popular discontent? As outlined in the paper, child rights approaches in India appear to lean towards a protectionist model where an adultist state dispensation supervises children's freedom of expression.⁸ Supervision implies the retention of authority by a superior owing to the inferior object's perceivable dependency, thereby limiting the ambit of expression and eroding the right itself. It carries the potential risk of stigmatising children and curbing their autonomous space.

The research questions identified for evaluation are as follows: should the state reserve an untrammelled discretion to impose a blanket ban on children's right to protest? Alternatively, is there a positive obligation for the state to cultivate a conducive atmosphere wherein children can exercise their political agency? The scope of the paper is limited to a critical enquiry of recent developments in India on children's participation in political movements—the author problematises the protectionist approach undertaken in India by deploying the lens of rights available under the UNCRC. Part II of the paper delineates the methodological tools utilised for undertaking the research. In Part III, the author assesses the rights-based approach in child rights law that was ushered in by the UNCRC. Part IV argues that the 'best interests' principle in the UNCRC does not necessarily trump participation rights, while Part V offers insight into recent events in India wherein the political participation of children has proved to be a contested question. Part

⁷ Kei Nishiyama, “Between protection and participation: Rethinking children’s rights to participate in protests on streets, online spaces, and schools” (2020) 19:4 *Journal of Human Rights* 501–517 at 502.

⁸ *The Hindu*, “Ensure children are not involved in protests, rights body tells DGPs” (14 December 2019), online: <<https://www.thehindu.com/news/national/ensure-children-not-involved-in-protests-rights-body-tells-dgps/article30307516.ece>>.

VI of the paper highlights how children's right to protest can be enforced in light of the observations of the Committee on the Rights of the Child (the Committee). Finally, in Part VII, the author incorporates his concluding remarks and outlines the roadmap for children's freedom of expression in political spaces.

II. METHODOLOGY

The author used doctrinal research tools for pursuing this critical intervention in children's civil and political rights in India. As seen in the paper, the interpretive prism of the author rests upon an analytical approach. By shedding light on the UNCRC's overarching premise, the author scrutinised recent developments in India, including the role of the state and court rulings, in response to the activist role played by children at recent protests and social movements.

III. AN APPRAISAL OF THE EMANCIPATORY PARADIGM OF THE UNCRC

The UNCRC was a pioneering instrument that heralded a new era. India acceded to the UNCRC in 1992.⁹ A legal manifesto of rights was incorporated for children in the international arena. Nevertheless, children were relegated to the periphery. Their views about the instrument were not ascertained in the drafting process.¹⁰

With near-universal ratification,¹¹ the UNCRC marked a deviation from the welfare-oriented approach visible in the case of the 1959 Declaration on the Rights of the Child or its 1924 predecessor.¹² Under the welfare model, a

⁹ Asha Bajpai, *Child Rights in India* (Oxford University Press, 2017) at 34.

¹⁰ Mark Henaghan, "Article 12 of the UN Convention on the Rights of Children" (2017) 25 *International Journal of Children's Rights* 537 at 538; Nicola Fairhall & Kevin Woods, "Children's Views on Children's Rights: A Systematic Literature Review" (2021) 29:4 *International Journal of Children's Rights* 835–871 at 837.

¹¹ Frédéric Mégret & Philip Alston, *The United Nations And Human Rights: A Critical Appraisal*, 2nd ed (Oxford University Press, 2020) at 519.

¹² Laura Lundy, John Tobin, & Aisling Parkes, "Art. 12: The Right to Respect for the Views of the Child" in John Tobin, ed, *The UN Convention on the Rights of the Child:*

discretionary role is entrusted to an adult-centric state dispensation to ensure the well-being of children and address their concerns. As a sovereign entity, the state resorts to the adultist worldview for determining what is best for children without offering any space for their freedom of expression. Consequently, children are reduced to passive beneficiaries of the state's goodwill, and there is no scope for children to enforce their rights. Since their agency is not recognised,¹³ there is also no corresponding duty for state institutions to ensure that children's views are heard.

The power dynamics of an adult-centric society underline the marginal position of children. It also indicates that minors are not considered serious participants who can influence legal policy-making.¹⁴ Interestingly, even before the UNCRC, the Moscow Declaration on Child Rights¹⁵ represents the first notable attempt to institute a rights-based catalogue for elevating the status of children as rights bearers. As explained above, the 'adultist'¹⁶ the hierarchy inherent in the welfare model was sought to be dismantled. The Declaration emerged in the backdrop of the Bolshevik Revolution in Russia and incorporated the right of the child to express his opinion freely¹⁷ under Article 14 and organise with other children or adults by setting up associations as recognised in Article 15.¹⁸ Children had been visualised as political actors in the document, owing to its firm theoretical underpinning in anarchist Soviet literature that idealised children's liberation.¹⁹

A Commentary Oxford Commentaries on International Law (Oxford University Press, 2019) 397 at 398.

¹³ Lucinda Ferguson, "Not merely rights for children but children's rights: The theory gap and the assumption of the importance of children's rights" (2013) 21:2 *International Journal of Children's Rights* 177–208 at 185.

¹⁴ Matías Cordero Arce, "Towards an Emancipatory Discourse of Children's Rights*" (2012) 20:3 *International Journal of Children's Rights* 365–421 at 368.

¹⁵ Manfred Liebel, "The Moscow Declaration on the Rights of the Child (1918)" (2016) 24:1 *International Journal of Children's Rights* 3–28.

¹⁶ Mehmoona Moosa-Mitha, "A Difference-Centred Alternative to Theorization of Children's Citizenship Rights" (2005) 9:4 *Citizenship Studies* 369–388 at 371.

¹⁷ Liebel, *supra* note 15 at 5.

¹⁸ *Ibid.*

¹⁹ *Ibid* at 8.

The Committee on the Rights of the Child has been constituted under²⁰ Article 43 of the UNCRC.²¹ While its primary obligation is to monitor the progress made by states in adhering to UNCRC provisions,²² it also adopts General Comments, which offer “policy-oriented”²³ guidance on the rights enshrined in the instrument. In December 2019, the United Nations Children’s Fund (UNICEF) released an unprecedented statement urging states to provide adequate protection to children who exercise their participation rights by engaging in street protests.²⁴ The immediate backdrop to the UNICEF statement was the children-led climate protests worldwide.²⁵ Interestingly, the ‘unique’ nature of each context was also acknowledged as localised factors shaping minors’ protests. More recently, the crackdown on minor protestors in Iran following the custodial death of Mahsa Amini has also drawn the condemnation of UNICEF—Iranian authorities have been urged to facilitate children’s expression rights in a “safe and peaceful manner.”²⁶

Participation rights²⁷ constitute the fulcrum of the Convention—a wide gamut of autonomy rights for children, including the freedom of expression and peaceful assembly, in Articles 13 and 15, respectively, have been

²⁰ Mégret & Alston, *supra* note 11 at 520.

²¹ Article 43, *Convention on the Rights of the Child*, 1989.

²² Mégret & Alston, *supra* note 11 at 520.

²³ *Ibid* at 536–537.

²⁴ UNICEF, “Waves of protests around the world are a reminder that voices of children and adolescents must be heard and their rights protected”, online: <<https://www.unicef.org/press-releases/waves-protests-around-world-are-reminder-voices-children-and-adolescents-must-be>>.

²⁵ The New York Times, “Protesting Climate Change, Young People Take to Streets in a Global Strike” (20 September 2019), online: <<https://www.nytimes.com/2019/09/20/climate/global-climate-strike.html>>.

²⁶ The Guardian, “At least 58 Iranian children reportedly killed since anti-regime protests began” (20 November 2022), online: <<https://www.theguardian.com/global-development/2022/nov/20/iran-protests-children-killed-reports-mahsa-amini>>. See also “UNICEF calls for the protection of children and adolescents amid public unrest in Iran”, online: <<https://www.unicef.org/press-releases/unicef-calls-protection-children-and-adolescents-amid-public-unrest-iran>>.

²⁷ Articles 12, 13, 14 and 15 of the *Convention on the Rights of the Child*.

incorporated in UNCRC. However, the child who claims to be a political actor is stigmatised as immature. Labelled as "apprentice citizens,"²⁸ children participating in agitations on the streets go against preconceived notions of childhood innocence emanating from the West.²⁹ Civil and political rights are exercised in the public sphere, which remains inaccessible to children. It outlines the inherent problem with the symbolism plaguing child rights. The adultist gaze of the liberal citizenship framework is premised upon the differential status of children being at the cusp of adulthood but not yet being full adults.³⁰ The social construct of 'dependency'³¹ underscores the basis for protection.

Despite the enactment of the UNCRC, it has failed to infiltrate the mainstream human rights law prism³² designed by the adult mind.³³ Matias Cordero Arce has observed that the human rights system bears the legacy of Enlightenment, as a result of which the rights-holder is presumed to be a 'rational' individual.'³⁴ Since children are considered irrational, on the contrary, their autonomy as rights-bearers is often called into question.

For the adult-centric state, addressing the apparent incompetence of minors becomes one of the primary motivations in the prevailing child rights discourse. Consequently, children's rights are not visualised as entitlements to be safeguarded from state encroachment.³⁵ As an inevitable outcome, the civil and political rights of children are encroached upon by state paternalism since these 'other' rights are considered to be something lesser than the freedom of expression rights parallelly reserved for adults.

²⁸ Wyness, *supra* note 3 at 194.

²⁹ Svetlana Erpyleva, "Active citizens under Eighteen: minors in political protests" (2021) 24:9 *Journal of Youth Studies* 1215–1233 at 1216.

³⁰ Moosa-Mitha, *supra* note 16 at 378.

³¹ *Ibid* at 380.

³² Brian Milne, *Rights of the Child: 25 Years After the Adoption of the UN Convention* (Springer, 2015) at 10.

³³ Arce, *supra* note 14 at 365.

³⁴ *Ibid* at 370.

³⁵ *Ibid* at 372.

The affirmation of the “unequal treatment thesis”,³⁶ as highlighted above, suggests that recognising children's rights remains a work in progress in light of the structural process of 'othering'. Moreover, the UNCRC's universalism has been critiqued by scholars such as Anita Rampal, Elizabeth A. Faulkner and Conrad Nyamutata as the instrument advances an individual centric notion of child rights.³⁷ For instance, the integrative 'socialisation' of children that ties them to their family unit in non-Western cultures may be considered undesirable.³⁸ The faux universalist outlook also fails to recognise the diversity of subaltern childhoods prevailing in different social settings worldwide - the insistence on 'universality' under the dominant liberal prism of rights has Western epistemic roots and may suffer from the lack of cross-cultural legitimacy.³⁹

For instance, in cultures where children's expression is not encouraged, and conformism is the norm, would it be tenable to deny participation rights merely because a vulnerable minor has internalised the lived experience of disempowerment and is unlikely to be assertive? Anita Rampal has argued that the instrument reinforces the Western predilection⁴⁰ of insulating children from participative avenues under the garb of protection. A pervasive saviour complex often reduces the UNCRC's autonomy rights to mere concessions. The idea of children's autonomy could be rooted in myriad conceptions of dignity that transcend the predominant Western liberal paradigm.⁴¹ However, it would be a travesty to delegitimise the child rights paradigm based on these criticisms. Scholars from the Global South are not

³⁶ Brian Milne, *supra* note 32 at 11.

³⁷ Anita Rampal, “Scaffolded Participation of Children: Perspectives from India” (2008) 16:3 *International Journal of Children's Rights* 313–325 at 313; Elizabeth A Faulkner & Conrad Nyamutata, “The Decolonisation of Children's Rights and the Colonial Contours of the Convention on the Rights of the Child” (2020) 28:1 *International Journal of Children's Rights* 66–88 at 72.

³⁸ Vasanthi Raman, “Politics of Childhood: Perspectives from the South” (2000) 35:46 *Economic and Political Weekly* 4055–4064 at 4059.

³⁹ Faulkner & Nyamutata, *supra* note 37 at 68.

⁴⁰ Rampal, *supra* note 38 at 314.

⁴¹ Boaventura de Sousa Santos & Bruno Sena Martins, “Conclusion” in Boaventura de Sousa Santos & Bruno Sena Martins, eds, *The Pluriverse of Human Rights: The Diversity of Struggles for Dignity* (Routledge, 2021) 256 at 256.

dismissing child rights but are seeking a pluralistic discourse inclusive of contrarian perspectives from non-Western parts of the world.⁴² The rights enshrined in the UNCRC are not static, and an attempt could be made to resolve these contradictions by holistic interpretation. Thus, the Committee's General Comments have sought to reinvigorate the document's latent emancipatory potential.

IV. SHOULD 'BEST INTERESTS' TRUMP PARTICIPATION RIGHTS?

Without a concrete normative foundation, the child rights discourse could be co-opted for oblique purposes.⁴³ On the issue of political participation, there is an inherent scepticism about the viability of participation rights. Minors are situated in a subordinate position vis-à-vis the adult-centric state. Their location within a skewed power structure creates a presumption of limited agency.⁴⁴ According to Hart's participation model,⁴⁵ the question of manipulated involvement arises when children are the passive recipients of adult direction or are showcased ornamentally as props in agitations. Children, however, have agency of their own and are not subservient objects presumed to be inevitably tutored by adults. Minors, too, have self-expression, which is independent of adult influence. They can initiate social change or stand shoulder-to-shoulder with adults in the process.⁴⁶

How does the recognition of political participation as an entitlement foster a minor's right to be heard? There is a pronounced dearth of literature on

⁴² Raman, *supra* note 38 at 4062.

⁴³ John Tobin, "Justifying Children's Rights" (2013) 21 *International Journal of Children's Rights* 395 at 398.

⁴⁴ John Eekelaar & John Tobin, "Art. 3: The Best Interests of the Child" in John Tobin, ed, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019) 73 at 76.

⁴⁵ Roger A Hart, *Children's Participation: From Tokenism to Citizenship* (UNICEF, 1992).

⁴⁶ Children's History Society, "Strikes, protests and rebellions: A timeline", online: <<https://www.histchild.org/resources/children-s-protest-activism-a-thread>>.

formulating a child-centric approach to the freedom of assembly⁴⁷, which is concomitant to international or regional instruments and liberal democratic constitutions worldwide. Moreover, the scholarship on children's rights originates mainly from the Western world; Third World concerns have been incorporated only in a few instances.⁴⁸

The involvement of children in protest congregations is often perceived to be contrary to their best interests. Enshrined in Article 3 of the UNCRC, the best interests doctrine requires the state to take care of the 'well-being'⁴⁹ of children. The problem with the best interests' test lies in the use of the phrase 'primary consideration'⁵⁰ – it reflects an underlying tendency to infiltrate the domain of a minor's participation rights, as outlined in this paper.

The posited lack of capacity for self-expression cannot justify the denial of rights to children. Children are no longer regarded as passive objects or 'becomings'⁵¹ who have yet to step into adulthood and become responsible community members by increasing biological age. With the recognition of children's entitlements under the international human rights law paradigm, adults cannot be the sole determiner of their best interests to the absolute exclusion of minors' voices.⁵² However, it must be acknowledged that identifying 'best interests' can be a dynamic process contingent upon social context.⁵³ Reposing absolute trust in a 'universal' charter of autonomy rights,

⁴⁷ Claire Breen, "Art.15: The Rights to Freedom of Association and Peaceful Assembly" in John Tobin, ed, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019) 517 at 549.

⁴⁸ Faulkner & Nyamutata, *supra* note 37; Rampal, *supra* note 37; Arce, *supra* note 14.

⁴⁹ Article 3(2): "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures." See *Convention on the Rights of the Child*, *supra* note 21.

⁵⁰ Article 3 (1): "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." See *Ibid.*

⁵¹ John Tobin, *supra* note 43 at 403.

⁵² *Ibid* at 416.

⁵³ *Ibid* at 409.

which positions a minor's right to be heard at the core, can thus be challenging.

Under Article 12 of the UNCRC, children 'capable' of forming their views have the "right to express their views freely in all matters"⁵⁴ which affects them. The provision is considered the backbone of the UNCRC. It reflects an unequivocal commitment to conferring upon children a participative right to engage in 'transformational processes.'⁵⁵ Notably, the provision does not enumerate a restrictive list of matters. The inclusion of Article 12 marked a radical departure from erstwhile endeavours to institute child welfarism.

Article 12 enables the UNCRC to go beyond the welfare prism and constitutes one of the building blocks of a rights-based vocabulary.⁵⁶ It recognises the 'evolving' agency⁵⁷ of children to participate in societal affairs which have a bearing on their lives. As clarified by the Committee, the evolving capacities principle in Article 5⁵⁸ must not be interpreted as 'authoritarian'⁵⁹ terms to justify a denial of participative expression⁶⁰ but it must provide scope for self-determination. Children's civil and political rights extend the right to participation.⁶¹ An 'interpretive approach' would enable child rights researchers to understand several participative

⁵⁴ Article 12, *Convention on the Rights of the Child*, *supra* note 21.

⁵⁵ Perpetua Kirby & Rebecca Webb, "Taking Part, Joining In, And Being Heard?: Ethnographic Explorations of Children's Participation" in Jonathan Todres & Shani M King, eds, *The Oxford Handbook of Children's Rights Law* (477-494: Oxford University Press, 2020) at 490.

⁵⁶ Laura Lundy, John Tobin, & Aisling Parkes, *supra* note 12 at 398.

⁵⁷ *Ibid* at 399.

⁵⁸ "Article 5: States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.", See *Convention on the Rights of the Child*, *supra* note 22.

⁵⁹ *General Comment No. 7: Implementing Child Rights in Early Childhood*, CRC/C/GC/7/Rev.1 (Committee on the Rights of the Child, 2005) at para 17.

⁶⁰ John Tobin & Sheila Varadan, "Art. 5 The Right to Parental Direction and Guidance Consistent with a Child's Evolving Capacities" in John Tobin, ed, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019) 159 at 169.

⁶¹ Aisling Parkes, *Children and International Human Rights Law: The Right of the Child to Be Heard* (Routledge, 2013) at 39.

dimensions.⁶² According to this approach, the child's autonomy must be evaluated by being sensitive to the surroundings where expression is manifested. The fruitful dialogue begins with the presumption that the minor can articulate his views. However, the right to participate under Article 12 is not unqualified. Children's views are afforded 'due weight'⁶³ in consonance with their age and maturity. The caveat appears anomalous if viewed in concurrence with Article 3 of the UNCRC,⁶⁴ which incorporates the 'best interests'⁶⁵ principle. Furthermore, the indeterminacy⁶⁶ of the provision virtually provides a new lease of life to state paternalism and overrides the autonomy of children. Does 'due weight' to children's views imply unfettered adult discretion, even to the extent of overriding the agency of minors?⁶⁷ Article 12 has been the subject of stringent criticism owing to its failure to problematise the adult prerogative of assessing a child's maturity to form his views.⁶⁸

To resolve the issue, the Committee has furnished a clarification in General Comment No. 14. If a decision concerning children disregards their views, it has been conclusively held to preclude any "determination of their best interest."⁶⁹ On this basis, the best interests of a minor can only be determined by a holistic reading of Article 13 of the UNCRC,⁷⁰ which gives effect to

⁶² Nishiyama, *supra* note 7 at 14.

⁶³ Article 12, *Convention on the Rights of the Child*, *supra* note 21.

⁶⁴ Henaghan, *supra* note 10 at 541.

⁶⁵ Article 3, *Convention on the Rights of the Child*, *supra* note 21.

⁶⁶ John Eekelaar & John Tobin, *supra* note 44 at 76.

⁶⁷ Wyness, *supra* note 3 at 198.

⁶⁸ Arce, *supra* note 14 at 375.

⁶⁹ *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration* (Committee on the Rights of the Child, 2013) at para 53; John Eekelaar & John Tobin, *supra* note 44 at 85.

⁷⁰ Article 13: 1. "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of the child's choice. 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (*ordre public*), or of public health or morals." See *Convention on the Rights of the Child*, *supra* note 22.

their right of expression. An expansive interpretation does not render participation rights nugatory.

The state's resort to the best interests principle for shielding minors from political participation misses a crucial point, i.e., the marginalisation of children's views. An overarching focus on the vulnerabilities of children leads to an anachronistic interpretation of Article 12. It would allow the state to infantilise them⁷¹ in the garb of protection. Furthermore, the right to be heard does not necessarily imply that the views of minors should be decisive in the outcome of matters affecting them.⁷² What Article 12 demands is the inclusion of children in dialogue.⁷³ If children demonstrate an evolving agency, their best interests could be ascertained per their expressed views.⁷⁴ The “internal system coherence”⁷⁵ principle necessitates that the notion of best interests should not be employed to dilute the self-determination rights available in the UNCRC. Instead, the right of minors to be heard must be reinvigorated.

Moreover, the 'maturity' assessment must be context-specific in light of the child's social environment, as observed in General Comment 12.⁷⁶ There is no universal benchmark for detecting maturity since its attainment is influenced by the social setting that a child is exposed to. Maturity is thus outcome-oriented. While transplanting a universal standard would be counter-productive as it would deprive children of their voice, necessary adjustments with reference to the location-specific context should be made.

Recognising autonomous spaces and encouraging children can proportionately stimulate their decision-making ability.⁷⁷ As General Comment No. 12 of the Committee outlines, the onus is on state parties to

⁷¹ Kirsten Sandberg, “The Convention on the Rights of the Child and the Vulnerability of Children” (2015) 84:2 *Nordic Journal of International Law* 221–247 at 222.

⁷² Henaghan, *supra* note 10 at 541.

⁷³ *Ibid* at 549.

⁷⁴ John Eekelaar & John Tobin, *supra* note 44 at 87.

⁷⁵ *Ibid* at 88.

⁷⁶ General Comment No. 12: The child's right to be heard, CRC/C/GC/12 (Committee on the Rights of the Child, 2009) at para 30.

⁷⁷ Laura Lundy, John Tobin, & Aisling Parkes, *supra* note 12 at 400.

provide an inclusive platform where children can articulate their concerns.⁷⁸ Children need not have ‘comprehensive knowledge’ of the matter affecting them; ‘sufficient understanding’ has been deemed the requisite standard for facilitating participation.⁷⁹

While General Comment No. 12 does not delineate the scope of ‘sufficient understanding’, it has been used in contrast to ‘comprehensive knowledge,’ thereby suggesting that the maturity required cannot be elevated to a sophisticated pedestal or equated to that of adults. However, the observation of the UNCRC could also be critiqued. The indeterminacy provides leeway to state parties for the imposition of a stringent “qualitative test”,⁸⁰ for a top-down assessment of children’s competency from an adultist standpoint.

By employing the best interests paradigm, the state must not impose an onerous burden on children to prove their competency or demonstrate that they are on par with adult sensibilities. Children's vulnerabilities should not be weaponised through adult-centric lenses to trump democratic aspirations. A paternalistic approach would only facilitate the stigmatisation of minors and contribute to their subordination.⁸¹ Instead, state parties must proceed with the presumption that children have the necessary potential to ‘form their own views’ and express their opinion.⁸²

V. EVALUATING THE PARTICIPATION OF CHILDREN IN INDIA’S POLITICAL ARENA

The National Commission for Protection of Child Rights (NCPCR) has disapproved of the presence of children in protest sites during the citizenship agitation before the Delhi High Court.⁸³ On the contrary stance, the Delhi

⁷⁸ General Comment No. 12, *supra* note 76 at para 12.

⁷⁹ *Ibid* at para 21.

⁸⁰ Laura Lundy, John Tobin, & Aisling Parkes, *supra* note 12 at 405.

⁸¹ Sandberg, *supra* note 71 at 223.

⁸² Sheila Varadan, “The Principle of Evolving Capacities under the UN Convention on the Rights of the Child” (2019) 27 *International Journal of Children’s Rights* 306 at 323.

⁸³ Live Law, “Children From Harsh Mander Associated Children Homes Taken To CAA Protest Site, Prima Facie Violation Of Child Rights: NCPCR Tells Delhi HC”,

Commission for Protection of Child Rights (DCPCR) has decried the observations of the NCPCR as it undermines the agency of children.⁸⁴ Following the unfortunate death of an infant at Shaheen Bagh, the cradle of the NRC-CAA demonstrations, a plea was filed before the Supreme Court to challenge the mere presence of children at protests against the ruling dispensation.⁸⁵ However, activists pointed out that the infant's death, attributable to cold climatic conditions and poverty, was being weaponised to restrict children's freedom of expression.⁸⁶ The police have also charged organisers of anti-CAA protests in Goa for "psychological abuse"⁸⁷ meted out to minors owing to their political exposure.⁸⁸ Following the staging of an anti-CAA play, the prolonged interrogation of children by the police in Karnataka also drew the condemnation of the state child rights institution.⁸⁹

Live Law (28 July 2021), online: <<https://www.livelaw.in/news-updates/ncpcr-tells-delhi-hc-children-from-harsh-mander-children-homes-taken-to-caa-protest-site-178336>>.

⁸⁴ *The Wire*, "Reckless': DCPCR Slams NCPCR's Take on Children's Homes Associated With Harsh Mander" (29 July 2021), online: <<https://thewire.in/rights/ncpcr-dcpcr-harsh-mander-childrens-homes-caa-protests>>.

⁸⁵ See *In Re to Stop Involvement of Children and Infants in Demonstrations and Agitations in View of Death of an Infant*, 2020; *Live Law*, "'We Have Highest Concern For Children', SC Issues Notice On Suo Moto Case On Children In Protests" (10 February 2020), online: <<https://www.livelaw.in/top-stories/shaheen-bagh-infants-death-sc-issues-notice-on-suo-moto-case-on-children-in-protests-152548>>.

⁸⁶ Enakshi Ganguly, "The Supreme Court Also Needs to Protect the Rights of Children Who Protest", *The Wire* (2 November 2020), online: <<https://thewire.in/rights/the-supreme-court-also-needs-to-protect-the-rights-of-children-who-protest>>.

⁸⁷ *Hindustan Times*, "Goa organisers booked for the presence of children in the anti-CAA rally" (30 January 2020), online: <<https://www.hindustantimes.com/india-news/goa-organisers-booked-for-presence-of-children-in-anti-cao-rally/story-Vy7hDubraPjQo9Z7D8tDmJ.html>>.

⁸⁸ *Ibid.*

⁸⁹ *Scroll.in*, "Bidar sedition case: Karnataka child rights body says police violated norms by questioning children", online: <<https://scroll.in/latest/952531/bidar-sedition-case-karnataka-child-rights-body-says-police-violated-norms-by-questioning-children>>.

Interestingly, an apex court bench took a dim view⁹⁰ of children's participation⁹¹ in the farm laws agitation. According to the court, the children were "exposing themselves to serious health hazards posed by cold and Covid."⁹² The intervention by the Supreme Court has been criticised⁹³ as it arbitrarily restricts the participation rights of children in political demonstrations. The author believes the apex court's paternalism undermines children's agency. The court's preoccupation with ascertaining the children's best interests restricts their freedom of expression; such an infantilising approach sounds like the death knell for children's civil and political rights in the long run as they are not envisioned as serious social agents capable of affecting political transformation. Simultaneously, instances of illegal detention of minors⁹⁴ during the citizenship protests or

⁹⁰ The Wire, "CJI's Remarks on Women Farmers Are an Assault on Human Agency and Constitutional Rights" (14 January 2021), online: <<https://thewire.in/women/cji-bobde-women-farmers-protest-remarks-rights>>.

⁹¹ The Hindu, "Dilli Chalo: Children, too, among farmer families protesting at Singhu border" (17 December 2020), online: <<https://www.thehindu.com/news/national/children-too-among-farmer-families-protesting-at-singhu-border/article61937685.ece>>; Hindustan Times, "Farmers' children protest in the day, study at night" (2 December 2020), online: <<https://www.hindustantimes.com/cities/protest-in-the-day-study-at-night-farmers-children-pitch-in-at-delhi-s-borders/story-1RSwVh1xVSs5Q10HOFZzmN.html>>; The Indian Express, "At Tikri, many bring children to the protest" (31 December 2020), online: <<https://indianexpress.com/article/cities/delhi/at-tikri-many-bring-children-to-the-protest-7126901/>>.

⁹² *Rakesh Vaishnav v Union of India*, [2021] Writ Petition Civil No 1118/2020.

⁹³ Rakshitt Bajpai, "Indian Supreme Court Arbitrarily Limits Children's Right to Protest" (28 May 2020), online: *Oxford Human Rights Hub* <<https://ohrh.law.ox.ac.uk/indian-supreme-court-arbitrarily-limits-childrens-right-to-protest/>>; The Hindu, "Protecting children's right to protest" (18 February 2020), online: <<https://www.thehindu.com/opinion/op-ed/protecting-childrens-right-to-protest/article30846374.ece>>.

⁹⁴ Live Law, "Anti-CAA Protests : Detention Of Minors In Police Station Illegal, Orders Magistrate In Delhi; Police Asked To Allow Detainees To Meet Lawyers, Provide Medical Aid" (21 December 2019), online: <<https://www.livelaw.in/news-updates/anti-cao-protests-detention-of-minors-in-police-station-illegal-orders-magistrate-in-delhi-daryaganj-lawyers-meet-150991>>; Scroll.in, "UP police detained 41 children during CAA protests, some were tortured, says citizens' report" (13 February 2020), online: <<https://scroll.in/article/952964/up-police-detained-41-children-during-cao-protests-some-were-tortured-says-citizens-report>>.

the imprudent resort to the colonial-era sedition law,⁹⁵ highlights the shrinking democratic space for children.

Recently, the restriction on wearing the hijab at state educational institutions in Karnataka,⁹⁶ they sparked protests by minors.⁹⁷ It prompted the state government to sanitise the public sphere at schools or colleges of headscarves and saffron shawls.⁹⁸ Even though the High Court later affirmed the restriction on hijab,⁹⁹ children-led protests have reinvigorated public discourse on essential religious practices and the extent of permissible state encroachment on the right to education,¹⁰⁰ thereby underscoring the lacunae in the NCPCR's condescending approach. The hijab matter is presently

⁹⁵ The Wire, “‘Sedition’ for School Play on CAA: Student’s Dialogue ‘Insult to PM’; Parent, Official Arrested” (30 January 2020), online: <<https://thewire.in/government/bidar-karnataka-anti-kaa-play-school-sedition>>.

⁹⁶ The Indian Express, “Karnataka: As row goes on, many students in hijab sent back by schools, parents protest” (16 February 2022), online: <<https://indianexpress.com/article/cities/bangalore/karnataka-hijab-row-students-parents-protest-7775553/>>.

⁹⁷ The Wire, “Karnataka Hijab Row: Now, School Students in Saffron Scarves Chant ‘Jai Shri Ram’ in Protest” (5 February 2022), online: <<https://thewire.in/communalism/karnataka-hijab-row-now-school-students-in-saffron-scarves-chant-jai-shri-ram-in-protest>>.

⁹⁸ The Indian Express, “No hijab, saffron scarves in our schools, colleges: Karnataka Minority Welfare Dept” (18 February 2022), online: <<https://indianexpress.com/article/cities/bangalore/no-hijab-saffron-scarves-in-our-schools-colleges-karnataka-minority-welfare-dept-7779050/>>.

⁹⁹ The Hindu, “Hijab not an essential practice of Islam, rules Karnataka High Court” (15 March 2022), online: <<https://www.thehindu.com/news/national/karnataka/wearing-of-hijab-is-not-an-essential-practice-as-per-islamic-faith-karnataka-high-court/article65226798.ece>>.

¹⁰⁰ The Indian Express, “Over 1,000 Muslim girls dropped out of PU colleges in Karnataka during hijab controversy: PUCL report” (9 January 2023), online: <<https://indianexpress.com/article/cities/bangalore/pucl-releases-report-on-impact-of-hijab-ban-on-muslim-girl-students-in-karnataka-8371485/>>; The Indian Express, “How hijab controversy made Muslim women students in Karnataka leave public institutions, and move to private colleges they can ill afford” (9 January 2023), online: <<https://indianexpress.com/article/opinion/columns/hijab-controversy-muslim-women-karnataka-public-institutions-move-private-colleges-ill-afford-8370722/>>.

pending before the Supreme Court,¹⁰¹ after an initial split verdict proved to be inconclusive.¹⁰²

Popular agitations on the streets are visualised as the exclusive domain of adults. The involvement of children is viewed as an outlier – their vulnerability compared to adults in protest situations on the streets may be highlighted. In addition to physical safety concerns that emerge from violent crackdowns, the civic engagement of minors poses the risk of manipulation¹⁰³ or tutoring¹⁰⁴, particularly in an incendiary political climate. However, the deployment of an adultist lens to demand a nebulous standard of 'informed' participation from children is misconceived since minors' capabilities to express themselves are negated.

Significantly, the NCPCR ordered a local magistrate to counsel the children involved in the citizenship protests in Delhi.¹⁰⁵ It reveals the patronising outlook of a national institution that has been ironically entrusted with safeguarding child rights as a part of its legislative mandate.¹⁰⁶ The underlying premise is that an overly protective state must insulate children from the vagaries of political movements. Having a global child rights framework has failed to alter popular attitudes drastically. As a result, the political participation of children is viewed as tokenistic.

State institutions in India, such as the NCPCR, are not aloof from the prevailing social outlook¹⁰⁷ and they continue to paint children with the same

¹⁰¹ The Hindu, “Karnataka hijab ban | SC to consider listing Muslim students’ plea before three-judge Bench” (23 January 2023), online: <<https://www.thehindu.com/news/national/karnataka-hijab-ban-sc-to-consider-listing-muslim-students-plea-before-three-judge-bench/article66422770.ece>>.

¹⁰² See *Aishat Shifa v State of Karnataka*, Civil Appeal No 7095 of 2022.

¹⁰³ Aoife Daly, *supra* note 1 at 777.

¹⁰⁴ The Hindu, “Provocative sloganeering: Boy at the PFI rally traced to Palluruthy”, (26 May 2022), online: <<https://www.thehindu.com/news/cities/Kochi/provocative-sloganeering-boy-at-the-pfi-rally-traced-to-palluruthy/article65462977.ece>>.

¹⁰⁵ Scroll.in, “CAA: National child rights body says children protesting at Shaheen Bagh need counselling” (22 January 2020), online: <<https://scroll.in/latest/950715/caa-national-child-rights-body-says-children-protesting-at-shaheen-bagh-need-counselling>>.

¹⁰⁶ *The Commissions for Protection of Child Rights Act, 2005*.

¹⁰⁷ John Tobin & Aisling Parkes, *supra* note 4 at 436.

brush. They dismiss children's agency as minors are presumed to lack the capacity to understand political issues' nuances. There has been a glaring lack of communication with children involved in political agitations - despite being the apex child 'rights' body, the NCPCR, as discussed in the paper, has been swayed by the adultist tendency of judging the best interests first without engaging in constructive dialogue with protesting children. Top-down orders objecting to the 'use of children' at agitations have been issued instead.¹⁰⁸

After the failure of Supreme Court-appointed interlocutors to resolve the 'deadlock' at the Shaheen Bagh protests, the question of child rights also appears to have eluded the apex court in its scathing assessment of public demonstrations which cause 'inconvenience to commuters.'¹⁰⁹ Notably, an expert team comprising 'academicians and psychologists' who visited Shaheen Bagh refuted the apprehensions of the NCPCR that children are being traumatised or misled.¹¹⁰ Instead, they observed that the protests were participative sites of 'constructive' learning experiences for minors, thereby underscoring children's expressive potential.

At the same time, bal panchayats, modelled after the bottom rung of India's Panchayati raj regime, have been historically advocating critical issues concerning the well-being of children,¹¹¹ such as the improvement of educational facilities and participation in community-level decision-making.¹¹² The Bhima Sangha, a working-class children's union, has also

¹⁰⁸ The Hindu, "Haldwani protests | NCPCR objects to 'use of children'" (5 January 2023), online: <<https://www.thehindu.com/news/national/other-states/haldwani-protests-ncpcr-objects-to-use-of-children/article66341411.ece>>; note 105.

¹⁰⁹ *Amit Sabni v Commissioner of Police & Ors*, [2020] Civil Appeal No 3282.

¹¹⁰ Scroll.in, "Full text: Shaheen Bagh environment 'constructive' for children, expert team rebuts NCPCR's claims" online: <<https://scroll.in/latest/951444/full-text-shaheen-bagh-environment-constructive-for-children-experts-team-rebuts-ncpcrs-claims>>; The Hindu, "Report admonishes NCPCR for its Shaheen Bagh directive"(10 February 2020), online: <<https://www.thehindu.com/news/national/report-admonishes-ncpcr-for-its-shaheen-bagh-directive/article30782170.ece>>.

¹¹¹ Times of India, "No child's play: Bal Panchayat raises real issues" (8 April 2019), online: <<https://timesofindia.indiatimes.com/city/delhi/no-childs-play-bal-panchayat-raises-real-issues/articleshow/68769434.cms>>.

¹¹² Sandberg, *supra* note 71 at 247.

played an instrumental role in alleviating the plight of child labourers in Karnataka.¹¹³ Political parties and allied mass organisations across the ideological spectrum involve children's participation. Remarkably, Arya Rajendran became the newly elected mayor of the municipal corporation of Thiruvananthapuram in 2019 at the tender age of twenty-one.¹¹⁴ She rose through the ranks of her political party by starting her journey as an activist in its children's wing.¹¹⁵

Much like the liberal tradition in Western societies,¹¹⁶ the prevalent discourse in India unfortunately, yet, depicts children as innocent and helpless objects who require protection. The state often rationalises its saviour complex by projecting itself as the benevolent custodian of minors. As a result, the avowed incompatibility¹¹⁷ of minors with politicisation has emerged as a subject of contention. The hegemonic perception overlooks how children in the Global South, including India, have traditionally been political collaborators as part of its social fabric. For instance, street children in Yogyakarta, Indonesia, have participated in a movement to overturn a draft law that had imposed an outright ban on vagrancy.¹¹⁸ Localised children's parliaments have also attempted to address social issues or be involved in consultative law-making in India, Bolivia or Brazil.¹¹⁹

In light of the spirited engagement of minors in Indian politics, their right to protest would have to be viewed through the prism of rights enumerated in the UNCRC. At the same time, children in India may be stifled by the

¹¹³ Wyness, *supra* note 3 at 200.

¹¹⁴ The Hindu, "21-year-old Arya Rajendran, youngest Mayor in the country, sworn in" (28 December 2020), online: <<https://www.thehindu.com/news/national/kerala/21-year-old-arya-rajendran-youngest-mayor-in-the-country-sworn-in/article61745540.ece>>.

¹¹⁵ *In line To Become India's Youngest Mayor, Arya Rajendran Spells Out a Plan for Trivandrum* (2020).

¹¹⁶ Aoife Daly, *supra* note 1 at 775.

¹¹⁷ Svetlana Erpyleva, *supra* note 29 at 1217.

¹¹⁸ Edward van Daalen, Karl Hanson & Olga Nieuwenhuys, "Children's Rights as Living Rights: The Case of Street Children and a new Law in Yogyakarta, Indonesia" (2016) 24:4 *The International Journal of Children's Rights* 803–825 at 810.

¹¹⁹ See Anandini Dar & John Wall, "Children's Political Representation: The Right to Make a Difference" (2011) 19:4 *The International Journal of Children's Rights* 595–612 at 597–598.

hierarchical social setting in which they grow up. As an adult-run institution, the state expects children to be obedient and not challenge its decisions.¹²⁰ It also explains why no express guarantee of freedom of expression is available for children in the constitution or legislative enactments.

VI. EXERCISING CHILDREN'S AUTONOMY RIGHTS IN THE POLITICAL SPHERE

The autonomy rights in the political arena, i.e., freedom of expression and assembly, cannot be scrutinised in isolation from the foundational principle of “evolving capacities”¹²¹ which is variable across different cultures.¹²² According to this principle, as children reach the stage of adolescence,¹²³ adult supervision is expected to be gradually withdrawn as minors transition from a stage of 'dependency' to 'autonomy'.¹²⁴ It is a crucial component towards balancing out the entitlements of children as autonomous agents capable of acting on their own accord and being subject to protective supervision from adult caregivers, including the state, commensurate to their maturity.¹²⁵

As a minor grows up, the state has to progressively concede more space for them to exercise participative rights in accordance with their “increasing levels of agency” as mandated in General Comment No. 20. While parental guidance has to be relative to the ‘evolving capacities’ of the child, minors’ freedom of expression cannot be compromised. The obligation of the state

¹²⁰ Aisling Parkes, *supra* note 61 at 62.

¹²¹ See Article 5: "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention." *Convention on the Rights of the Child*, *supra* note 22.

¹²² Aoife Daly, *supra* note 1 at 771.

¹²³ Adolescence has no fixed definition or age threshold, varying across contexts and environments. See Para 5 of *General Comment No. 20 (2016) on implementing the child's rights during adolescence*, CRC/C/GC/20 (Committee on the Rights of the Child, 2016).

¹²⁴ *Ibid* at para 9.

¹²⁵ Varadan, *supra* note 82 at 310.

to facilitate children's right to protest without the threat of inflicting violence is thus reaffirmed.¹²⁶ The State of World's Children Report, published by UNICEF in 2003, observed that the participation of young people enables them to address the oppression they experience.¹²⁷ Even though it conceded that political activism of minors would be desirable subject to the prevalence of 'stability' in a country,¹²⁸ it may not be feasible in some "social and political contexts."¹²⁹

The rationale is that children's exercise of free speech could aggravate their vulnerabilities if confronted by "repressive public authorities" in certain countries.¹³⁰ However, the proposition made in the report is problematic as it implicitly infantilises minors. The problem aggravates in states plagued by shrinking participative spaces for children, as in the case of India. Governments could advance an identical protectionist argument to crush the dissenting voices of children and deny them their right to participation.

The UNCRC does include a provision for free speech by minors under Article 13. It has a much broader ambit than Article 12.¹³¹ Children can express themselves even in matters that do not concern them. The hierarchy inherent to Article 12, of the state giving 'due weight' to children's views only in matters affecting them, has been done away with under Article 13. The provision effectively deconstructs the idea of political maturity. From a theoretical perspective, it fulfils the aspirations of children to express themselves¹³² on par with adults; by imparting their diverse worldviews, minors can broaden their horizons and enrich a democratic society. As children acquire a comprehensive understanding of political affairs incrementally, the necessity of parental guidance gradually diminishes.¹³³

¹²⁶ Children's right to protest forms a part of freedom of expression under Article 13, See *Convention on the Rights of the Child*, *supra* note 21; See also Aoife Daly, *supra* note 1.

¹²⁷ *The State of the World's Children Report* (UNICEF, 2003) at 14.

¹²⁸ *Ibid* at 56.

¹²⁹ *Ibid*.

¹³⁰ *Ibid*.

¹³¹ John Tobin & Aisling Parkes, *supra* note 4 at 438.

¹³² Sylvie Langlaude, "On How to Build a Positive Understanding of the Child's Right to Freedom of Expression" (2010) 10:1 Human Rights Law Review 33–66 at 36.

¹³³ *Ibid* at 38.

The freedom of expression extends to matters which may cause ‘political’ discomfort¹³⁴ for the state or are contrary to a majoritarian worldview subscribed to by adults.

The failure of the Committee to set out a roadmap for the implementation of Article 13 in the context of political participation is conspicuous by its absence. To overcome the stumbling block, the Committee read the freedom of expression in conjunction with children's entitlement to hear their views as per Article 12 of the UNCRC. It creates a window for transcending the negative connotation of freedom of expression, i.e., limiting state interference. By forming a linkage between Articles 12 and 13, as envisaged in UNCRC's General Comment No. 12, the author argues that the state has a correlative duty to create a safe environment enabling minors to exercise their right to protest.

An expansive view is also supported by the positive obligation enshrined in Article 4 of the UNCRC.¹³⁵ It puts the onus on state institutions to implement children's civil and political rights.¹³⁶ In its concluding observations adopted for the Republic of Korea in 2003, the Committee had urged the state party to facilitate children's political activities outside the remit of schools.¹³⁷ The Committee's viewpoint was expressed in response to regulations instituted by school authorities to restrict children's freedom of expression when outside the school premises.¹³⁸ The safeguards expected from the state would involve a slew of exceptional measures,¹³⁹ such as sensitising the police forces deployed for law enforcement.

In its General Comment No. 37, even the Human Rights Committee (‘HRC’) has reiterated the need to promote awareness¹⁴⁰ among law

¹³⁴ John Tobin & Aisling Parkes, *supra* note 4 at 467.

¹³⁵ Article 4, *Convention on the Rights of the Child*, *supra* note 21.

¹³⁶ Aisling Parkes, *supra* note 61 at 46.

¹³⁷ *UN Committee on the Rights of the Child: Concluding Observations on the Republic of Korea*, CRC/C/15/Add.197 (Committee on the Rights of the Child, 2003) at para 36.

¹³⁸ *Ibid.*

¹³⁹ Langlaude, *supra* note 132 at 66; Laura Lundy, John Tobin, & Aisling Parkes, *supra* note 12 at 402.

¹⁴⁰ *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, digitallibrary.un.org (Human Rights Committee, 2020) at para 80.

enforcement authorities for catering to the specific needs of children participating in peaceful assemblies.¹⁴¹ When the HRC had sought comments on the draft, its child rights counterpart put the onus on states to create an ‘enabling’¹⁴² atmosphere for minors to participate in protests. It also barred states from imposing arbitrary age restrictions on the right of peaceful assembly.¹⁴³ The cavalier resort to criminal sanctions for children or their parents was also frowned upon.¹⁴⁴

An outright dismissal or deliberate negation of minors’ views would be an obstructionist approach against the tenets of the UNCRC. Children’s opinions have to be nurtured. Since the state has a monopoly over inflicting violence¹⁴⁵, minors must not feel threatened to articulate their views. Moreover, institutional structures have to be envisaged at the behest of the state such that children can have a representative voice to influence policy-making.¹⁴⁶

As observed before, the UNCRC also includes an explicit right to ‘freedom of association’¹⁴⁷ and ‘peaceful assembly’¹⁴⁸ Article 15 reiterates the corresponding right available to adults under Article 21 of the International Covenant on Civil and Political Rights.¹⁴⁹ The ‘collective’ dimension of participative rights holds immense value. Not only does it enable children to reflect upon their shared experiences in the face of adversity, but they can also learn alongside their peers.¹⁵⁰ It provides a platform of togetherness for

¹⁴¹ *Ibid.*

¹⁴² *Committee on the Rights of the Child: Comments on Human Rights Committee’s Revised Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights* (2020) at 8.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ Andreas Anter, “The Modern State and Its Monopoly on Violence” in Edith Hanke, Lawrence Scaff & Sam Whimster, eds, *The Oxford Handbook of Max Weber* (Oxford University Press, 2020) 226.

¹⁴⁶ Dar & Wall, *supra* note 119 at 597.

¹⁴⁷ Article 15, *Convention on the Rights of the Child*, *supra* note 21.

¹⁴⁸ Article 15, *Ibid.*

¹⁴⁹ Article 21, *International Covenant on Civil and Political Rights*, 1966.

¹⁵⁰ Bijan Kimiagar & Roger Hart, “Children’s Free Association and the Collective Exercise of Their Rights” in Martin D Ruck, Michele Peterson-Badali, & Michael

the eventual pursuit of political actions. The specific inclusion of the autonomy right for all children affirms that age is not a barrier to minors' participation in mass political demonstrations.¹⁵¹

It would be unrealistic to demand a standard of cognitive development in protesting children equivalent to an average adult. Such a requirement subverts the right to vent their concerns in public forums as adults become the exclusive arbiter of their interests.¹⁵² The Committee has adopted an operative presumption that children could enjoy a right to protest on an equal pedestal with adults.¹⁵³ General Comment No. 21 makes a compelling case against the indiscriminate state crackdown on public spaces, which has a detrimental impact on children's right to political participation on the streets.¹⁵⁴

There are not many forums at the community level where children can take part in dialogue with the government¹⁵⁵, owing to their limited political clout.¹⁵⁶ Children are disenfranchised from any formal electoral process in major democratic states, including India, despite scholarly affirmation for communicative political representation.¹⁵⁷ It severely constrains their bargaining power to influence the election manifestos of political parties for encompassing minors' perspectives. Their exclusion from the mainstream political process has prompted scholars to call for recognising children's

Freeman, eds, *Handbook of Children's Rights: Global and Multidisciplinary Perspectives* (Routledge, 2017) 498 at 499.

¹⁵¹ Claire Breen, *supra* note 47 at 519.

¹⁵² Aoife Daly, *supra* note 1 at 773.

¹⁵³ *Ibid* at 765. UN Committee on the Rights of the Child: Concluding Observations: Japan, 2004

¹⁵⁴ *General Comment No. 21 (2017) on children in street situations* (Committee on the Rights of the Child, 2017).

¹⁵⁵ Manfred Liebel, "Economic and Labor Rights of Children" in Jonathan Todres & Shani M King, eds, *The Oxford Handbook of Children's Rights Law* (Oxford University Press, 2020) 349 at 359.

¹⁵⁶ Aisling Parkes, *supra* note 61 at 181.

¹⁵⁷ Dar & Wall, *supra* note 119 at 603.

"citizenship from below"¹⁵⁸ such that they can stake claim to being political participants despite their position of subordination.

There are arguments for reimagining the dynamics of participatory rights by adding the dimension of children's suffrage.¹⁵⁹ The active role of children in prominent civil disobedience movements, not restricted to the Global North, could be legitimised based on their 'unjustified' exclusion from formal political processes.¹⁶⁰ The Committee has implored state parties to accede to children's choice to associate freely in public rallies, taking due cognisance of the lack of political avenues for minors to express their views.

The state can only curb autonomy rights belonging to the political space in specific instances by law. The grounds envisaged under the UNCRC for the overlapping rights of 'freedom of expression' and 'peaceful assembly' are distinct. However, commonality can be identified – safeguarding national security and maintaining public order are the foremost considerations.¹⁶¹ In the Indian context, the condescending tone in the responses of state institutions cannot be ignored here. The objections to children's political participation in India have yet to be articulated by drawing upon these exceptions incorporated under the UNCRC provisions but by taking an infantilising stance. Public authorities must not resort to intimidatory tactics to dissuade children from joining protests.

Additionally, states have been urged by the Committee to “counter co-optation and manipulation by adults.” However, the contours of this exception have not been specified. The Committee has also pinpointed its concern about the participation of street children in protests who may have been incentivised to join by pecuniary rewards for showcasing numerical strength.¹⁶² Identifying a uniform threshold to ascertain genuine

¹⁵⁸ Manfred Liebel, “Children’s Citizenship – Observed and Experienced” in Manfred Liebel et al., eds, *Children’s Rights from Below: Cross-Cultural Perspectives* Studies in Childhood and Youth (Palgrave Macmillan UK, 2012) at 186–187.

¹⁵⁹ Dar & Wall, *supra* note 119 at 599–602.

¹⁶⁰ Nikolas Mattheis, “Unruly kids? Conceptualising and defending youth disobedience” (2020) *European Journal of Political Theory* 1474885120918371 at 2–3.

¹⁶¹ Articles 13 and 15, *Convention on the Rights of the Child*, *supra* note 21.

¹⁶² Nicholas McMurry, “The Right for Protest to Be Heard” (2019) 21 *The Whitehead Journal of Diplomacy and International Relations* 93 at 95.

participation is thus an uphill task. A perfunctory reliance on the 'universal' blueprint of participation rights proposed by the Global North fails to consider the nature of children's assertions in other parts of the world.¹⁶³ The Committee has unequivocally barred the arbitrary suppression of children's civil and political rights in the public sphere to ensure that state authorities do not take advantage of the leeway provided.

While adults may not always be on a collaborative pedestal with children in the decision-making sphere, a channel for guided mobilisation of minors in protests alongside their families or peers does offer a fillip to children's autonomy. By recognising participatory engagement as the manifestation of agency, an alternative model of citizenship can transcend liberal paternalism. The incapacity of children to make 'rational' choices or assume 'responsibility' like adults makes no difference under this framework.¹⁶⁴

Children have the agency to make sense of their lived experiences and articulate their grievances through diverse forms of expression. Further, the right to protest is not limited to street demonstrations or blockades. However, it extends inter-alia to non-confrontational acts of resistance, such as painting workshops, poetry reading, music sessions, movie screenings, or even boycotting school classes. When children participate in political demonstrations with adults, it allows them to contemplate the injustices confronted by them. It could also be argued that adult family members are acceding to the evolving agency of children by facilitating their participation in protest spaces.¹⁶⁵ In the process, children can further engage in dialogue with peers at a similar disadvantage.¹⁶⁶

The exercise of political rights in a collectivist space is the precursor to obtaining "*conscientizacao*,"¹⁶⁷ as located in Paulo Freire's seminal 'Pedagogy of the Oppressed.'¹⁶⁸ Participative engagement is thus the key to children obtaining a holistic consciousness of compelling issues that affect them.

¹⁶³ Brian Milne, *supra* note 32 at 10.

¹⁶⁴ Moosa-Mitha, *supra* note 16 at 380–381.

¹⁶⁵ John Tobin & Sheila Varadan, *supra* note 60 at 161.

¹⁶⁶ Bijan Kimiagar & Roger Hart, *supra* note 150 at 500.

¹⁶⁷ Paulo Freire, *Pedagogy of the Oppressed* (Continuum, 2000) at 36.

¹⁶⁸ Paulo Freire, *supra* note 178.

Political participation thereby stimulates the critical faculties of minors¹⁶⁹ and allows them to challenge the status quo. In the process, children are familiarised with the rights-based vocabulary. To suggest that political participation is an exclusive sphere of adult engagement is misconceived.

The demand for 'political maturity' is misplaced as it diminishes the space available for children to express themselves¹⁷⁰ – it reinforces the adultist hierarchy inherent to a lacklustre welfare approach. Therefore, the onus is on the state to first listen to children's views and proceed with the operative presumption that a child can express his views. The next step would be to understand their plight on a case-to-case basis and venture into the domain of rights restrictions thereafter by applying the best interests principle if required.

The emerging political movements in India thereby provide an avenue for the "scaffolded" participation of children wherein they can inculcate democratic values.¹⁷¹ Minors can be full citizens without formal voting rights who join protests on their own accord in a communitarian social setting because the issues highlighted at the demonstrations resonate with them. Disregarding children's agency without soliciting their feedback on issues affecting them and their families, such as the looming spectre of statelessness, invisibilisation of religious identities or displacement, would be contrary to the spirit of UNCRC participation rights. Despite ratifying the UNCRC, state institutions in India appear to be a prisoner of the past, wherein the welfare model was the predominant approach toward alleviating the plight of children. Recognising the evolving capacities principle in Article 5 of the UNCRC creates an autonomous sphere for children to make their presence felt as active political stakeholders, albeit under limited adult supervision.¹⁷² The purpose of such guidance is not to infringe upon children's autonomy rights but to nurture participatory activism in light of their "relative immaturity."¹⁷³

¹⁶⁹ Bijan Kimiagar & Roger Hart, *supra* note 150 at 500.

¹⁷⁰ Mattheis, *supra* note 164 at 12.

¹⁷¹ Rampal, *supra* note 37 at 318–319.

¹⁷² Article 5, *Convention on the Rights of the Child*, *supra* note 21.

¹⁷³ Varadan, *supra* note 82 at 309–310.

The vulnerabilities of children cannot be assessed under a universal scale but have to be ascertained by reference to their developing capabilities in respective social settings. From a democratic standpoint, children can undeniably demonstrate an awareness of contemporary issues and demand a medium for expressing their views. In such a scenario, the gaze of the adult-centric state should not become a euphemism for reprimanding non-conformist or supposedly ill-disciplined minors.

India's apex child rights body adopted a deplorable stance that disempowers children and makes a mockery of their personhood, contrary to its legislative mandate¹⁷⁴ of effectively implementing the UNCRC. National rights institutions for children must strive to be independent bodies rather than align with the political executive.¹⁷⁵ There has been no concerted endeavour to ascertain children's viewpoints since they are merely considered as human beings¹⁷⁶ and incapable of being serious political actors. Instead, unfounded claims of manipulation have become the basis for the systemic exclusion of children from political movements. In the garb of conferring protection, the freedom of children to express their views cannot be negated.

VII. CONCLUSION

Minors can be conscientious 'political' activists against ostensibly draconian laws or flawed state policies. They could be seeking participation channels for dismantling entrenched power structures that are oppressive. For children from marginalised social groups, the feeling of disempowerment owing to their identities could be the genesis for more assertive self-determination. The active participation of minors in protests fosters their reflective potential and holds democratic institutions accountable to an enhanced standard of scrutiny. The NCPDR's preoccupation with safeguarding the innocence of children is misplaced. An overly protectionist stance engenders docility in

¹⁷⁴ *The Commissions for Protection of Child Rights Act, 2005*, *supra* note 106.

¹⁷⁵ Gerison Lansdown, "National Human Rights Institutions for Children" in Jonathan Todres & Shani M King, eds, *The Oxford Handbook of Children's Rights Law* (Oxford University Press, 2020) 495 at 500.

¹⁷⁶ Wyness, *supra* note 3 at 210.

the Foucauldian sense¹⁷⁷ as children are reduced to objects in the eyes of a speciously benevolent state. A disciplinarian state quells children's right to dissent in the process. Writing off minors' participation in the political domain as tokenism or misguided adventurism would be detrimental to their agency as rights-bearers.

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CONFLICT OF INTEREST

The author declares no competing interests.

ETHICS APPROVAL

The author states that no human participants or animals are involved in this research.

INFORMED CONSENT

The author states that no human participants are involved in this research; therefore, informed consent is not required.

¹⁷⁷ Michel Foucault, *Discipline & Punish: The Birth of the Prison*, 2nd ed (Vintage Books, 1995) at 128.

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