

Atrocities against Children and Constitutional Remedies

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Abstract

This chapter gives an introduction to the provisions in Indian Constitution that covers the rights of children. This chapter gives an account of how the provisions in Indian laws can be effectively used in matters relating to child rights and child abuse.

Keywords: Atrocities, Indian Constitution, bullying, children, child

1. Introduction

The Directive Principles of State Policy (DPSP) as per Indian constitution are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. "They include the right to work, education and public assistance in cases of unemployment, old age, sickness etc., just and humane conditions of work, maternity relief as well as living wage, leisure and social and cultural opportunities for all workers; the enforcement of a uniform civil code throughout the country; a provision of free and compulsory education for all children below 14 years of age; (Srinivasan, 1954).

2. Definition

2.1. Bullying

“Bullying is unwanted, aggressive behaviour among school aged children that involves a real or perceived power imbalance. The behaviour is repeated, or has the potential to be repeated, over time. Both kids who are bullied and who

bully others may have serious, lasting problems. Bullying may include physical violence, sexual violence, threats, teasing, social exclusion or other psychological violence. The presence of bullying is often a sign of aggressive or violent behaviour elsewhere in children's lives and young children may be acting out at schools or elsewhere what they have observed and learned at home. Recent studies suggest that bullying in adolescence and childhood can have worse long-term effects on young adult's mental health than being subject to maltreatment during childhood" (Lereya, Copeland, Costello, & Wolke, 2015).

2.2. Child

"A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (Office of the High Commissioner for Human Rights, 1990).

3. Child and Indian Constitution

In the words of Srinivasan (1954), the Constitution of India is "not merely a constitution but also a detailed legal code dealing with all important aspects of the constitutional and administrative system of the country."

Children constitute the most vulnerable section of Indian society. The socio-economic conditions prevailing in India is mainly responsible for the violation of child rights. The practice of child protection has undergone a significant metamorphosis when beheld from a historical angle. The Indian Constitution beholds children as citizens of the country. The Constitution encompasses almost all the rights of the children included in the UN Convention on the Rights of the Child under the headings of Fundamental Rights and Directive Principles of State Policy. India has made significant commitments towards ensuring the basic rights of the children.

3.1. Constitutional Provisions for Children

There are several constitutional provisions for the protection of children in India. In the following sections the constitutional provisions will be mentioned in detail.

3.1.1. Article 14

According to Article 14 of Indian Constitution, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. (HAQ: Centre for Child Rights, 2019).

3.1.2. Article 15

According to Article 15 (1) of Indian Constitution, “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”

According to Article 15 (2) of Indian Constitution, “no Indian citizen can be discriminated against on basis of religion, race, caste, sex, place of birth.” It states that no citizen shall be denied access to shops, public restaurants, hotels and palaces of public entertainment. It also adds that no citizen shall be subject to any disability, liability, restriction or condition with the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.” (Government of India, 2019).

3.1.3. Article 19(a)

According to Article 19 (a) of Indian Constitution, “All citizens shall have the right to freedom of speech and expression” (Government of India, 2019).

3.1.4. Article 19(b)

According to Article 19 (a) of Indian Constitution, “All citizens shall have the right to assemble peaceably and without arms ” (Government of India, 2019)

3.1.5. Article 19(c)

According to Article 19 (c) of Indian Constitution, “All citizens shall have the right to form associations or unions.” (Government of India, 2019).

3.1.6. Article 19(d)

According to Article 19 (d) of Indian Constitution, “All citizens shall have the right to move freely throughout the territory of India” (Government of India, 2019).

3.1.7. Article 19(e)

According to Article 19 (e) of Indian Constitution “All citizens shall have the right to reside and settle in any part of the territory of India” (Government of India, 2019).

3.1.8. Article 20

According to Article 20 of Indian Constitution, “No person shall be convicted of any offence except for violation of a law in force at the time.” As per this article “No person shall be prosecuted and punished for the same offence more than once” and “No person accused of any offence shall be compelled to be a witness against himself”. (Government of India, 2019).

3.1.9. Article 21

According to Article 21 of Indian Constitution “No person shall be deprived of his life or personal liberty except according to procedure established by law.” (Government of India, 2019).

3.1.10. Article 21-A

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards (Government of India, 2019).

3.1.11. Article 22

According to Article 22 (1) of Indian Constitution, “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice” (Government of India, 2019).

According to Article 22 (2), “Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate” (Government of India, 2019).

3.1.12. Article 23

According to Article 23 (1) of Indian Constitution, “Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.” (Government of India, 2019).

3.1.13. Article 24

According to Article 24 of Indian Constitution, “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment” (Government of India, 2019).

3.1.14. Article 24 (A)

According to Article 24 (A) of Indian Constitution, “Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation.” (Government of India, 2019).

3.1.15. Article 29

According to Article 29 (1) of Indian Constitution, “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.” (Government of India, 2019).

According to Article 29 (2) of Indian Constitution, “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.” (Government of India, 2019).

3.1.16. Article 32

According to Article 32 (2) of Indian Constitution, “The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part” (Government of India, 2019).

A writ of mandamus lies only when the person entrusted with a duty has failed to perform his duty, it is a requirement in law that, prior to

approaching the Court, the petitioner must make an unambiguous demand that the authority must perform its duty. The chief function of the writ of mandamus is to compel the performance of public duties prescribed by statute and to keep statutory authorities and officers exercising public functions within their jurisdictions. The writ can even be issued against a private person so long as the duty sought to be enforced is a statutory duty. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the writ is sought. Finally, a writ of mandamus cannot be issued to the legislature to enact a particular legislation. The same is true as regards the executive when it exercises the power to make rules which are in the nature of subordinate legislation (Choudhry, Khosla, & Mehta, 2016).

Habeas corpus, by contrast, is a writ against illegal detention: 'The principal aim of the writ is to ensure swift judicial review of alleged unlawful detention on liberty or freedom of the prisoner or detenu.' (Choudhry, Khosla, & Mehta, 2016).

Certiorari, is a call by a superior court to an inferior court for records of its proceedings. A notable test for when certiorari may be issued was posited by Atkin LJ in *R v Electricity Commissioners*, in which he observed that 'wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs' (Choudhry, Khosla, & Mehta, 2016).

The next writ under consideration is prohibition, whose origins lie in common law courts prohibiting other courts from entertaining matters that fall within their jurisdiction. The Indian Supreme Court has held that

this writ will be issued 'to prevent a tribunal or authority from proceeding further when the authority proceeds to act without or in excess of jurisdiction; proceeds to act in violation of the rules of natural justice; or proceeds to act under a law which is itself ultra vires or unconstitutional'. A writ of prohibition will not lie unless there is an error of jurisdiction as opposed to an error of law. In practice, however, courts are less willing to grant writ of prohibition unless the exercise of jurisdiction is grossly exceeded, and prefer to relinquish the jurisdiction in favour of appellate proceedings rather than exercising writ jurisdiction (Choudhry, Khosla, & Mehta, 2016).

The final writ is quo warranto and involves the usurpation of a public office. The Supreme Court has held that this writ can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. The law distinguishes between eligibility and suitability, and the writ of quo warranto is available when a person who is ineligible is appointed to a public office. There is a major distinction between quo warranto and the other substantive writs. This distinction lies in the requirement of standing to sue. The concept of locus standi is not applicable to the petitioner approaching the court for issuance of a writ of quo warranto. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by a usurper without any legal authority, and therefore, the same can be brought to the court's notice by any person. 'The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right.' Even the doctrine of laches

has no application against a person seeking a writ of quo warranto. (Choudhry, Khosla, & Mehta, 2016)

3.1.17. Article 37 of the Directive Principles of State Policy

According to Article 37 of DPSP, “The provisions contained in this Part **shall not be enforceable by any court**, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”. Fundamental Rights are the legal obligation of the state to respect, whereas the DPSPs is the moral obligation of the state to follow. Article 38 lay down the broad ideals which a state should strive to achieve. Many of these Directive Principles have become enforceable by becoming a law. Some of the DPSPs have widened the scope of Fundamental Rights. (Government of India, 2019)

3.1.18. Article 39 (e) of the Directive Principles of State Policy

Article 39 (e) of the Directive Principles of State Policy provides that children of tender age should not be abused and that they should not be forced by economic necessity to enter vocations unsuited to their age or strength. (Government of India, 2019)

3.1.19. Article 39 (f) of the Directive Principles of State Policy

Article 39 (f) of the Directive Principles of State Policy requires children to be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth be protected against exploitation and moral and material abandonment. (Government of India, 2019)

3.1.20. Article 45 of the Directive Principles of State Policy

As per Section 45 of the Directive Principles of State Policy, “The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education

for all children until they complete the age of fourteen years.”
(Government of India, 2019).

3.1.21. Article 46 of the Directive Principles of State Policy

Article 46 recognizes the right of weaker sections of the people to be protected from social injustices and all forms of exploitation
(Government of India, 2019).

3.1.22. Article 47 of the Directive Principles of State Policy

Article 47 provides the right to nutrition and standard of living and improved public health. As per Article 47, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
(Government of India, 2019).

4. Conclusion

In order to safeguard the constitutional rights of children, the national human rights commission has taken bold steps. The Commission, first and foremost, concentrated on ending the problem of child labour, especially those employed in hazardous industries. In order to provide suitable remedies to the problem of child labour. The commission has been pro-active in the rigorous implementation of the Child Labour (Prohibition and Regulation) Act 1986, under which there have been conspicuously few prosecutions and lamentably fewer convictions. To end the scourge of child labour from the country, the Commission's efforts have also been directed towards generating greater awareness and sensitivity in the District Administration and Labour Departments of concerned States (National Human Rights Commission, 2006).

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