

LEGAL PROTECTION OF THE STREET CHILDREN IN INDIA: A CRITICAL ANALYSIS

*Ajay**

“The worst sin towards our fellow creatures is not to hate them but to be indifferent to them, that is the essence of inhumanity.”

-George Bernard Shaw

Abstract

Millions of children in India are deprived of their basic human rights. They are forced to work in an age when they should learn as how to read and write. These children are on the streets due to loss of their family or due to the breakdown of their families, or due to the reason that they are abused by their parents or employers. Despite the fact that the Constitution of India provides rights to everyone, the harsh reality is that there is a major segment of children who is deprived of basic human rights. These children are so helpless that they cannot even raise their voice for their basic human rights or more to say they are even not aware of their basic human rights. There are international conventions and declarations on child rights which reflect the commitment of the international community to provide basic human rights to every child. At national level there is a gamut of legislations which seeks to ameliorate the condition of the children and to protect them from exploitation. But the ground reality is something else that the street children are fighting for their bare survival and the issue of development is far away from them. This article seeks to explore the causes of street(ism), the problems of the street children and attempts to critically analyze that how far the legal framework at national and international level is capable of protecting the street children. The article reflects the data on the plight of rights of the street children. Further it seeks to find out the possible measures to curb the problems of street children and thus guarantee them their human rights and necessities in life and an atmosphere in which they can develop their overall personality.

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* Assistant Professor, GD Goenka University, Gurugram.

I. Introduction

CHILDREN ARE precious and are considered as the future of the nation. Learning and play, freedom and fearless expression, love and care, health and hygiene and shelter and security are the basic needs for the physical, social, emotional, spiritual, moral and intellectual growth of a child. But millions of our children known as street children are dispossessed of their basic human rights be it rights relating to health, development, education or right against exploitation. Many of them live a life of neglect without any protection and care from family. These children are on the streets as due to parental loss or due to the breakdown of their families, or due to the reason that they are no longer able to tolerate the abuses inflicted upon them.

There is no uniform definition of street children. Street children are defined to mean those children who have taken streets as their home and sometimes have sporadic contacts with their families. They are also defined as children who are abandoned, neglected by their parents. These children live a life of extreme ignorance and apathy. These children have no nutritious food to eat, no shelter to live in, no schooling to rise intellectually, no person to care for them but they have every risk to be exploited, abused at the hand of unsocial elements that very often pull them in prostitution, begging, forced labor and other anti-social activities. All this raise a question on the role of law in the sense that where some people are enjoying their human rights, there is a vulnerable segment of society which is deprived of even the basic human rights.

At international level, there are international conventions and declarations recognizing child rights which reflect the commitment of the international fraternity to provide human rights to every child. At national level, there is Indian constitution and range of legislations to protect rights of children. There are legal provisions that seek to eradicate the exploitation of the children and to provide them the basic necessities of human life and dignified existence. Though the Constitution of India confers rights to everyone, the harsh reality is that the street children are deprived of their basic human rights of life and

survival. Besides the constitutional provisions there are legislations seeks to ameliorate the condition of the children and to protect them from exploitation. But in reality the street children are fighting for their bare survival and the issue of development is far away from them.

II. Street Children: Definition, Causes and Problems

‘Street children’, the very mention of the word creates images in one’s mind, of children with torn clothing, bare feet selling books, flowers, picking rags from the heap of garbage, often cleaning utensils, washing cars, involved in pick-pocketing, polishing shoes and cleaning rail-buggies. They are the children facing public deride and at times are deprived of any care and protection of adults.

Definition of child

Before going into the formal definition of street children it is necessary to know who is a child. There is no uniform definition of child in India. The Constitution and various legislations defines the child in different manner thereby the definition of child varies from legislation to legislation in accordance with the age prescribed by each statute according to their aims and objectives.

Some of the definitions of child given under important statutes are given below:

The Indian Constitution prohibits “*employment of children below fourteen years of age in any factory or mines or in any other hazardous employment.*”¹ The law relating to Juveniles² defines a ‘Child’ as “*a person who has not completed the eighteenth year of age.*”³ The legislation prohibiting child labour⁴ defines ‘child’ as “*a person who has not*

¹ The Constitution of India. art. 24.

² The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016).

³ *Id.*,s. 2(12).

⁴ The Child Labour (Prohibition and Regulation) Act, 1986 (Act 16 of 1986).

completed the age of fourteen years.”⁵ The IPC⁶, completely immunizes a child below the age of seven years from criminal responsibility.⁷ The Indian Penal Code (IPC) exempts a child from criminal liability who has attained the age of seven years but is below the age of twelve years and is not sufficiently mature enough to understand and judge the nature and consequences of his conduct.⁸ The Child Rights Convention⁹ (hereinafter referred as CRC) defines child as a human being under the age of 18 years unless, national law grants majority at an earlier stage.¹⁰ This definition in the Child Rights Convention tends to reduce the uniformity while allowing the national laws to grant majority at an earlier stage. Even though the Child Rights Committee¹¹ has urged the states to reconsider the age of majority if it below the age of eighteen years yet it is a mere suggestion. So the international instruments on rights of the child do not even recognize uniformity in the definition of the child. An analysis of these provisions approves that the different statutes specify different age criteria for a person to be included in category of a child. The difference in age prohibits the child from taking benefits and protection under all the legislations. So, a uniform definition of the child is very important to allow the child to take benefits under all the legislations.

Definition of street children

The term ‘street children’ lacks a uniform definition and there are different definitions given by different organizations. According to the UN ‘Street Children’ is:¹²

any boy or girl for whom he has become his or her habitual abode and/or source of livelihood and who are inadequately protected, supervised or directed by responsible adults.

⁵ *Id.*, s. 2(ii).

⁶ The Indian Penal Code, 1860 (Act 45 of 1860).

⁷ *Id.*, s. 83.

⁸ *Id.*, s. 84.

⁹ The Convention on the Rights of the Child, 1989.

¹⁰ *Id.*, art. 1.

¹¹ The Committee on the Rights of the Child.

¹² Lakshmi, G. Rao, “Street Children- The Problem, Causes and Approaches” 7(1) *Journal of Institute of Human Rights* 84 (2004).

UNICEF provides three operational categories of street children: -

Firstly, *children on the street* i.e. “those children who have their families and homes and who return to their homes at the end of each day.”

Secondly, *children of the street i.e.*, “those children who have considered the street as their home and seek shelter, livelihood and companionship on the streets and have intermittent contacts with their families.”¹³

Thirdly, *abandoned children* i.e. “those who have cut off all the ties with their families and are completely on their own.”

This category includes orphans, abandoned, runaways’ children etc. They are entirely on their own not only for their survival, material as well as psychological.¹⁴

The Street Children (Protection of Rights) Bill, 2001 sought to define street children as “the deprived with unknown parentage, abandoned and neglected children, including destitute children of sex workers.”¹⁵ So the term ‘street children’ is defined in terms of the time spent by the children on the street.

The lack of a uniform definition in turn gives rise to problems regarding the correct data of the numbers of the street children. Numbers of street children vary with definition. Variety of factors play a vital role as to the correct data of street children like the definition adopted by the organization conducting the study and whether it has been conducted by a governmental or non-governmental organization.¹⁶ Also street children moves from one place to another in search of work, such mobilization also affects the systematic counting of the numbers of street children. So, it is necessary to have a precise

¹³ K. Srinivasa Rao & K. Gajendra Reddy, “Role of NGOs for the Cause of Protecting and Promoting the Human Rights of the Street Children” 10(2) *The PRP Journal of Human Rights* 14 (2006).

¹⁴ *Ibid.*

¹⁵ The Street Children (Protection of Rights) Bill, 2001, cl. 2 (i).

¹⁶ Uche U. Ewelukwa, “Litigating the Rights of the Street Children in Regional and International Fora: Trends, Options, Barriers and Breakthroughs” *Yale Human Rights and Development Law Journal* 91 (2005).

and clear definition of the term street children so that the problems of the children can be targeted more appropriately.

Causes of street(ism) and problems of street children

Children may choose to be on streets for several reasons. There may be certain factors which either push or pull the children on the streets.

Push Factors

The push factors include parental neglect and abuse, sexual and psychological, of the child at home, sneer poverty, parents' inability to fulfill the basic needs of their children due to chronic deprivation of resources leads the children to take up street life. Further children from wrecked families either due to breakdown of family by death of either or both of the parents, displaced due to natural disasters like flood, earthquake etc. also choose street at their home. Displacement due to armed conflicts or developmental projects and the inadequate rehabilitation is a cause which pushes children and their families on streets. Other factors include the gender discrimination against the girl child where the girl as a child is considered as a burden and the resultant destitution of the girl child whereby the girl child is compelled to live in streets and also become prone to dangers like forced prostitution and beggary while remaining on street.¹⁷

Pull Factors

The pull factors include the rapid urban growth due to rural urban migration, glamorous life of cities etc. Rapid growth of cities and the resultant change in traditional family structure has given rise to the increasing numbers of street children.¹⁸ The glamorous life of cities also attracts poor children thus adding to the numbers of street children.

So chronic poverty, unemployment, overcrowded homes, parental neglect or abuse, peer group influence, failure at school and dropping out, natural disasters, armed conflicts or

¹⁷ Rashmi Aggarwal, *Street Children: A Socio-Psychological Study* 45 (Shipra Publications, 1999).

¹⁸ Hira Singh, "Street Children" 26 *Social Defence* 1 (1988).

abandoning of children by their parents and children running away from home are some of the reasons which compels a child to take streets as their place of abode and work.

Problems of street children

The problems of the street children are multi-dimensional. The street children, in most of the cases, live on streets without any love, care and protection and comfort of family life.

The problems of street children are varying in nature: -

The street children are prone to exploitation *i.e.*, physical, mental, sexual, or economic. They are exposed to health hazards and chronic diseases, vulnerable to malnutrition, hunger, and insanitation and also prone to anti-social activities. They are exploited economically by the employer by not paying adequate wages and are exposed to every type of exploitation especially the girls are more vulnerable to exploitation especially sexual. They can be exploited sexually by males on the street, sometimes even by municipal authorities and policeman affecting them physically as well as psychologically. Generally the no complaint of the abuse instances is filed because of the distrust in police which is somewhat true, that they will be humiliated and no action would be taken against the culprits.¹⁹ Anti-social elements use such children for their own material gains by forcing street children to indulge in prostitution, beggary, drug paddling etc. The street children are generally harassed by police official and municipal authorities and exploited by the employers.²⁰

The street children are exposed to many types of health hazards. The inadequate food intake and unhygienic living conditions affect the health of street children adversely. They develop anemia and other nutritional deficiencies. Respiratory and skin diseases are quite common among these children.²¹ The children indulge in rag-picking are exposed to respiratory problems and even tuberculosis. Even HIV/AIDS has been found to be a risk

¹⁹ R.A. Rajiv, "Empowering Street Children in India: Need for a Paradigm Shift" 56 *The Administrator* 121 (2004).

²⁰ *Supra* note 13.

²¹ *Supra* note 19 at 122.

through accidental contact with infected needles in refuse which has not been disposed adequately.²² The high use of tobacco results in oral cancer in the later ages.

The street children also become vulnerable and habitual to anti-social activities. As the street children lack education and parental guidance thus while living and working on street they become prone to bad habits like chewing tobacco, smoking, alcohol *etc.* which affects their health adversely. They also indulge in criminal activities like theft, drug paddling, pick-pocketing *etc.*

Street children also face psychological complexities. The street children are not seen with an eye of love and affection and considered a nuisance by the public and they live a life of neglect in the community. This attitude of neglect towards the street children fills them with complexion and hinders their mental development.

III. Street Children and Legal Safeguards- National and International Perspective

The Constitution of India and other national laws recognizes the rights of a child and provides for a legal structure for safeguarding these rights but the street children live in extreme ignorance and apathy and are unable to secure rights for themselves.

In the international arena, the UN adopted the Child Rights Convention which aims at ensuring the specific rights to the child.

International human rights law and street children

The CRC or the covenants nowhere specifically use the term street children though some General Assembly Resolutions²³ dealt with street children. The UDHR recognizes that every child is entitled to special care and protection.²⁴ The Civil and Political Rights Covenant recognizes the right of every child to be protected due to his status as a minor

²² Sandhya Venkateswaran, "A Childhood in Waste-Waste Picker Children" 44 *Social Action* 51 (1994).

²³ The General Assembly Resolution on Plight of Street Children, 1992.

²⁴ The Universal Declaration of Human Rights, 1948, art. 25.

and such measures for protecting the child are to be taken by his family and the state.²⁵ Such protection shall be granted to the child without any discrimination.²⁶ The Economic, Social and Cultural Rights Covenant obligate the states to take measures for protection for all children and the children should not be discriminated due to the reasons of parentage. It is an obligation of the state to provide protection to every child from social and economic exploitation. Further the State is obligated to make it an offence to employ children in hazardous works which may harm the health and well being of the children and may hinder their development.²⁷

Street children and the child rights convention

The CRC recognizes the child possessing rights and makes it obligatory for the state to ensure these rights to every child. It recognizes elementary human rights and reflects the indivisibility of the political, civil, economic, cultural, and social rights and emphasizes their mutual reinforcing nature as structural inequality and discrimination are equally problematic as the lack of essential services and health education food and care.²⁸

In its preamble, the CRC recognizes that every child has a right to special care and assistance and it further agrees with the fact that in many countries the children are living in exceptionally difficult circumstances and that these children need special care and protection.²⁹

The CRC makes it obligatory for the State to guarantee the rights to every child e.g. right to non-discrimination³⁰, right to life, survival and development.³¹ It recognizes that every child the right of the child to protect his name, identity and nationality without and illegal interference from any quarter.³² Every child has a right to live with his/her parents and to

²⁵ The International Covenant on Civil and Political Rights, 1966, art. 24.

²⁶ *Ibid.*

²⁷ The International Covenant on Economic, Social and Cultural Rights, 1966, art. 10.

²⁸ L. LEBLANC, "The Convention on the Rights of the Child- United Nations Lawmaking on Human Rights" *American Political Science Journal* 76 (1995).

²⁹ *Supra* note 9.

³⁰ *Id.*, art. 2.

³¹ *Id.*, art. 6.

³² *Id.*, art. 8.

be separated only when it is extremely necessary in the interest of the child and if so separated then he has a right to maintain regular family relations with his/her parents except when it is not in the best interest of the child.³³

The CRC also recognizes that every child has a right to rest and leisure and recreational activities.³⁴ Every child below the age of fifteen years has a right not to be engaged to take part in hostilities.³⁵ Every child has a right not to be tortured or inflicted with any inhuman punishment and he/she also have a right to get free and compulsory primary education.³⁶

The CRC is mainly guided by four elementary principles. These principles are the best interest of the child must be, right to life, survival and development, non-discrimination and that the child's views should be respected. It reflects the new attitude towards the child as a person in itself and not just as a member of the family.

Some rights enshrined in CRC are especially important from the point of view of the street children. The State is obligated to take necessary measures to protect the children from violence whether physical or mental or any kind of injury or abuse.³⁷ The street children are more prone to abuse, violence and negligent treatment and their easy availability on the streets make them all the more vulnerable to sexual as well as other abuses.

The CRC recognizes that it is the right of every child deprived of family environment, whether permanently or temporarily, to be protected by the State.³⁸ Generally, the street children lack family environment and parental care. The primary responsibility of protecting the child of the child is on the parents but in their absence this responsibility falls on the State to take care of these children.

³³ *Id.*, art. 9.

³⁴ *Id.*, art. 31.

³⁵ *Id.*, art. 38.

³⁶ *Id.* at art 28.

³⁷ *Supra* note 27, art. 19.

³⁸ *Id.*, at art. 20.

The CRC recognizes that every child is entitled to adequate standard of living which is necessary for the overall development be it mental, physical, moral or social. The responsibility to provide such standard of living is on the parents.³⁹ Further it is the obligation of the state that the family fulfils this responsibility and to provide the necessary assistance in case any material help is required with regard to housing, clothing and nutrition.

The CRC obligates the state to take measures in order to ensure physical and psychological memory of every child. The state is under an obligation to make efforts for the social integration of a child who has been a victim of exploitation and abuse or armed conflicts.⁴⁰ This provision is very important as far as the street children are concerned because it becomes very difficult for the street children to come out of the trauma of any such abuse given the lack of parental care and guidance.

The CRC recognizes that every child should have participation in the decision making processes which affects his/her rights. Every child has a right to be heard and that his/her views must be considered before taking any decision affecting his/her well being.⁴¹ This right is especially important for children on the street because they are not able to participate in the decision making affecting their well being as they are not heard or their views are not taken into consideration. To be given respect, to be heard and to be taken seriously reflects the core needs of the street children.

The CRC calls for protecting the children from using narcotics drugs and psychotropic substances. A duty is enjoined upon the state to prohibit the use of children in the illegal manufacturing and trafficking of such substances.⁴² The street children are more prone to indulge in anti-social habits drug addiction and also the illicit use of these children in

³⁹ *Id.*, art. 27.

⁴⁰ *Id.* at art. 39.

⁴¹ *Id.* at art. 12.

⁴² *Id.* at art. 33.

drug trafficking etc. According to the Ministry⁴³ 46,410 cases of drug abuse by street children were reported in the Delhi in 2017. Out of these children, most of them were found to be addicted to tobacco (21,770), followed by alcohol (9,450), inhalants (7,910) and cannabis (5,600).⁴⁴ So the CRC recognizes the child and recognizes that children have specific protective rights because of their physical, moral, biological, emotional and psychological vulnerability. These rights are more important for the street children because this vulnerability becomes more acute in the case of street children and separates them, on the level of vulnerability, from other children because these children in many cases lack parental care, family environment and thus more vulnerable to abuses and discrimination. Therefore, the street children require more specific attention because the phenomena of street children in itself is an infringement of a wide range of human rights and life in streets makes these children all the more vulnerable to violation of their human rights. The CRC recognizes that every child must have an identity and be entitled to preserve the same which is crucial concerning disappearance of street children.

The CRC enjoins a duty upon the states to submit reports of the measures taken to implement the provisions and the progress made in making the enjoyment of these rights possible by the people, and also if any difficulty that arose in implementing the provisions of the CRC within every two years from the date on which the convention came into force for the concerned state and thereafter to be filed after every five years.⁴⁵

Though recognizing the important rights for the child, the CRC lacks any individual complaint mechanism through which concerns of street children can directly be brought to the Child Rights Committee which hinders the effective execution of the rights of the street children. To raise voices and concerns of the street children at the international level individual complaint mechanism is a necessity so that NGOs or other human rights organizations can make individual communications on their behalf but the CRC lacks such mechanism. The activities undertaken by special rapporteurs are also become

⁴³ The Ministry of Social Justice and Empowerment. Government of India.

⁴⁴ Sana Shakil, "More than 90 percent street children in Delhi drug addicts", *The New Indian Express*, March 28 2018. Available at: <http://www.newindianexpress.com/nation/2018/mar/28/more-than-90-percent-street-children-in-delhi-drug-addicts-1793583.html> (last visited on March 28, 2018).

⁴⁵ *Supra* note 9, art. 44.

relevant and important to accurately pinpoint the problems of the street children however there is no special rapporteur on street children.⁴⁶ The appointment of a special rapporteur for street children is the need of the hour so that the problems of the street children can be kept in the mainstream on the international agenda and long term solutions can be identified and implemented. All the above recommendations/suggestions of the Committee on Rights of the Child have no binding force, the CRC gives much discretion to state to decide what to include in the state report and what not, and therefore lack of attention towards street children in the state report also attracts criticism. The world community also has disagreement on the definition of the child thereby making it difficult to implement child rights in a coherent manner.

The General Assembly Resolution⁴⁷ focused and raised concern over the growing number of street children and the drastic circumstances in which these children are compelled to live. The resolution sought to provide adequate standard of living and a life free from abuse and violence. It further reiterated that the street children require special attention, protection and assistance from their families and the community.

National perspective of rights of the street children

The Indian Constitution and various legislations in India recognize the rights and aims at protecting the same.

Street Children and the Constitution of India

The Constitution of India guarantees rights to children and made various provisions regarding the welfare of the children which are contained in Part III and Part IV.

⁴⁶ Special rapporteur appointed only on the sale of children, child prostitution and child pornography.

⁴⁷ *Supra* note 23.

- **Fundamental rights and the street children**

The Indian Constitution under recognizes right to live with human dignity and recognizes personal liberty to every person including children.⁴⁸ Though couched in a negative language⁴⁹, article 21 has become a source of many other rights.⁵⁰ Right to life means not merely an animal existence but a right to live a dignified life.⁵¹ The judiciary has interpreted Article in such a manner that it has brought many other basic human rights within the ambit of Article 21 for example right to livelihood⁵², education etc.⁵³ But street children live a life of neglect and lacks basic amenities which are necessary for a dignified human life like nutritious food, shelter, education etc.

The Constitution recognizes the right to free and compulsory education for all children who are aging between six to fourteen years.⁵⁴ In 2009, the Compulsory Education Act was enacted by the Indian Parliament which is to be implemented in the states by the state governments. But the state governments at times have showed their inability to implement this legislation due to lack of resources for creating basic infrastructure as required under the Act. Lack of proper execution of this law and poverty prevalent among the street children make them unable to get education. Article 15(3) is an enabling provision which enables the state to make special provisions for women and children.⁵⁵

The Constitution provides that every human being has a right against human trafficking and forced labour.⁵⁶ It prohibits trafficking of humans and forcing them into labour and makes the contravention of this provision a criminal offence. This provision seeks to protect persons from being forced to provide services without paying adequate remuneration to them. Traffic in Human Beings means the sale and purchase of men and

⁴⁸ *Supra* Note 1, art. 21.

⁴⁹ “Article 21: “No person shall be deprived of his life and personal liberty except according to procedure established by law.”

⁵⁰ *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

⁵¹ *Francis Coralie v. Union of India*, AIR 1981 SC 746.

⁵² *Olega Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545.

⁵³ *Unnikrishnan v. State of Andhra Pradesh* (1993) 1 SCC 645.

⁵⁴ *Supra* note 1, art. 21-A.

⁵⁵ *Supra* note 1, art. 15(3): “Nothing in this article shall prevent the State from making any special provision for women and children.”

⁵⁶ *Supra* note 1, art. 23.

women as ‘goods’ and include immoral trafficking of women and children for immoral or other purposes.⁵⁷

The Immoral Trafficking (Prevention) Act, 1956⁵⁸ (hereinafter referred as Act) is a law enacted by the Parliament under the power given to it by article 35 of the Constitution and it punishes acts which results in trafficking in human beings. But the Act nowhere defines ‘trafficking’. It only punishes a person who is found guilty of human trafficking when it is done for using the victim for prostitution. In the apex court directed the state and union territories to eradicate child prostitution and to initiate programs for the safeguarding, caring and rehabilitating the child victims of prostitution.⁵⁹

This Act is important especially for street children because of vulnerability of street children to human trafficking. However, the Act prohibits trafficking of persons for prostitution but does not take note of trafficking of human beings for other purposes like trafficking for child labour, bonded labour, removal of organs *etc.* UN Protocol⁶⁰ defines ‘trafficking in persons’⁶¹ and under this protocol, the ‘exploitation’ includes sexual exploitation as well as exploitation in form of forced labour, slavery, servitude and trafficking for the purpose of the removing organs.⁶² The UN Protocol includes trafficking for the purpose of prostitution as well as trafficking for forced labour, slavery in the definition of trafficking. On the other hand, the Act only makes trafficking an offence if the victim is used for prostitution. So the Act needs to be brought in conformity with the UN Protocol.

The Act requires amendment so as to include trafficking for the other purposes also to make it consonant with the Constitution and the protocol. Trafficking is also need to be specifically defined in the Act to know what acts amount to trafficking in persons.

⁵⁷ *Raj Bahadur v. Legal Remembrancer*, AIR 1953 Cal 522.

⁵⁸ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956).

⁵⁹ *Vishaljeet v. Union of India*, AIR 1990 SC 1412.

⁶⁰ India signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children on December 12, 2002.

⁶¹ Trafficking in persons means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force.”

⁶² *Supra* note 60.

The Constitution specifically aims at prohibiting the employment of children who are below the age of fourteen years in factories, mines or other hazardous employment.⁶³ The Indian Supreme Court held that article 24⁶⁴ “*must operate ‘proprio vigour’ even if the prohibition of the laid down in it is not followed up by appropriate legislation.*”

In *Labourers, Salal Hydro Project v. State of J & K*,⁶⁵ wherein the Supreme Court held that it is violative of article 24 to employ children below the age of 14 years in construction works. The Government of India has identified certain hazardous industries employing children.⁶⁶

- **Directive Principles of State Policy and the Street Children**

The Indian Constitution requires the state to take steps securing “that...the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength”.⁶⁷ But one can find the street children indulged in activities which are unsuited to their age like working as coolies or rag-picker. They are compelled to join such type of avocations because of the economic necessity to earn their livelihood.

Further the DPSP enjoins the state to ensure that children are provided with proper opportunities and amenities for development so that the child develops in a healthy way and that the state should make efforts to protect the youth and childhood from exploitation and moral abandonment.⁶⁸

In *Bandhua Mukti Morcha v. Union of India*⁶⁹ the Supreme Court observed that:⁷⁰

⁶³ *Supra* note 1, art. 24.

⁶⁴ *Peoples’ Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

⁶⁵ (1983) 2 SCC 181.

⁶⁶ These hazardous industries include match industry of Shivakasi, Tamilnadu, the diamond polishing industry of Surat, Gujarat, the precious stone polishing industry of Jaipur, Rajasthan, *etc*;
Satya Sundram, “Child Labour: Facing the Harsh Reality” 44 *Social Action* 42 (1994).

⁶⁷ *Supra* note 1, art. 39 (e).

⁶⁸ *Supra* note 1, art. 39 (f).

⁶⁹ AIR 1984 SC 802.

⁷⁰ *Ibid.*

This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at least therefore, it must include protection ... of the tender age of children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

Despite the Supreme Court showing its concern, millions of children living on the street in this country are abused, exploited and compelled to join work and activities not suitable to their health and strength, compelled to enter avocations endangering their health and well being.

The Indian Constitution directs the state to make endeavor to provide care and education to all the children till such children attain six years of age.⁷¹ This provision obliges the state to provide nutrition to its people including children. This provision is very crucial in respect of the street children as undernourishment can result into irreversible harm to the well being of the children. Thus, children require, more especially, nutrition for their physical growth and development.

- **Special Legislations relating to Child Rights and the Street Children**

The Juvenile Justice Act, 2000⁷²

The Juvenile Justice Act⁷³ aims at fulfilling India's international obligations towards the child. This Act was amended in 2006 and has been replaced by the Act of 2015.⁷⁴ (hereinafter referred as Act). This new Act reformulates the definition of a child in need of care and protection.⁷⁵ All street children virtually fall under this category. The Act lays

⁷¹ *Supra* note 1, art. 45.

⁷² *Supra* note 2.

⁷³ The Juvenile Justice (Care and Protection of Children) Act, 2000 (Act 56 of 2000).

⁷⁴ *Supra* note 2.

⁷⁵ *Id.*, s. 2 (14). A child who is found without any home or settled place of abode and without any ostensible means of subsistence, who is found working in contravention of labour laws is found begging or living on

down the State's responsibility to take care of the children who are delinquent, neglected, socially maladjusted, having no families or not cared by their parents due to any reason whatsoever. So, the Act becomes important for the street children because of the acute vulnerability of these children to abuse, neglect and exploitation. But this Act has certain pitfalls which affects its intended implementation.

The Act does not have an overriding clause that would have dealt with the ambiguities in the Indian legal system about who is a child? It defines "juveniles" as those individuals who have not attained the age of eighteen years; however, this Act does not specifically provide the minimum age at which a child may be confined in government homes. Even under the Act it is important to prove that the individual under inquiry is has not attained of eighteen years. This is particularly problematic when the judicial system is dealing with the street children because of the absence of any records (birth certificates etc.) that could prove their age. The Supreme Court decision in *Rajinder Chandra v. State of Chhattisgarh*⁷⁶ acquires relevance here. The court while dealing with a delinquent in this case observed:

"in case of doubt about the accused being a child or not on the date of offence, the benefit of doubt should be given to the accused child."

It is submitted that the same should be extended to the children who are "in need of care and protection" especially street children.

Particularly, on one hand the law differentiates between juveniles "in conflict with the law and child "in need of care and protection," but in practice, it institutionalizes these two categories of children by bringing them within the jurisdiction of the justice system

the street or who resides with a person and such person has injured, exploited, abused or neglected the child or has threatened to kill, injure, exploit or abuse the child ... who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him or who is missing or run away child, or whose parents cannot be found or who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts or who is found vulnerable and is likely to be inducted into drug abuse or trafficking or who is being or is likely to be abused for unconscionable gains or who is victim of or affected by any armed conflict, civil unrest or natural calamity is a child in need of care and protection.

⁷⁶ (2002) 2 SCC 287.

relating to juveniles. These two groups of children are usually housed together in Observation Homes. Children who are alleged to have committed grave offenses are housed together with those children who are of tender age and the only fault of whose is that they have been neglected. So practically the nature of their detention is quite similar.⁷⁷ The observation homes lack basic facilities and are overcrowded.⁷⁸ Most of the children in observation homes consider hunger as the worst aspect of their detention. Systematic physical abuse took place in the observation homes.⁷⁹

The Child Labour Prohibition Act, 1986⁸⁰

The Child Labour Prohibition Act (hereinafter referred as Act) aims at prohibiting employment of children who are below the age of fourteen years in perilous employment and also aims at regulating the employment of children in various non-hazardous industries.⁸¹ The contravention of the provisions prohibiting the employment of children invokes minimum three months imprisonment but it may go up to one year or may be in the form of fine between Rs. 10,000 and Rs. 20,000 or with both.⁸² Given the fact that rag-picking involve so many hazards to health, the children picking rags being self-employed fall outside the purview of the Act as it focuses on the children who are employed by others and not those who are self-employed. The Act also does not stipulate the minimum age at which the children can be employed in ventures where the child employment is not prohibited.

⁷⁷ Fedrico Ferrara & Valentina Ferrara, "The Children's Prison: Street Children and India's Juvenile Justice System", *CARE SHARE INDIA*, Oct. 2005. Available at: <http://www.careshareindia.org/OHome/OHEnglish.pdf> (last visited on June 27, 2019).

⁷⁸ *Id.* at 10. In Vijayawada Observation Home (A.P.), 130 children between 3 to 18 years of age were housed in three rooms whose combined size was below 700 sq. feet. Out of these 130, only 9 were under trial.

⁷⁹ *Id.* at 14.

⁸⁰ *Supra* note 4.

⁸¹ *Ibid.*

⁸² *Supra* note 4, s. 14 (1).

The Street Children (Protection of Rights) Bill, 2001

In 2001, a new bill⁸³ relating to street children was put on the floor of the Indian Parliament. In its statement of object and reasons it was admitted that despite various policies, programs, and legislations on the protection of children, the child remains the most exploited and abused section of the society and recognizes the necessity of laying down by law, the basic rights of the children including street children, abandoned and neglected children. The bill sought to define street children as “the deprived with unknown parentage, abandoned and neglected children, including destitute children of sex workers.”⁸⁴ The bill sought to enjoin upon government to lay down a policy for street children, and establish Commission for Street Children on the national level.⁸⁵ It recognizes that the street children have rights to proper means of living, due care, protection and security of life, basic education, training and means for free and fair development of the personality, medical care and nutrition.⁸⁶ It also provides for the establishment of a Street Child Development Fund. The Bill has not yet been passed till date.

Charter for the Children, 2001

The State recognizes that every child have the right to a better living standard which fully develops the faculties of the child.⁸⁷ For that matter, the state is obligated to prepare a social security policy for children where the state, in partnership with the community, shall try to make available this right to every child. This policy is particularly meant for children who have been abandoned by their parents and those who are on streets. This policy aims at providing these children with infra structural and material help by providing adequate nutrition, education, shelter and recreational facilities.⁸⁸

⁸³ *Supra* note 15.

⁸⁴ *Id.*, cl. 2 (i).

⁸⁵ *Id.* at cls. 3, 4.

⁸⁶ *Id.* at cl. 7.

⁸⁷ Charter for the Children, 2001, art. 4.

⁸⁸ *Ibid.*

So various laws have been formulated in India that can be utilized for the protection of the street children but due to the lack of proper implementation numerous street children remain deprived of many of their basic human rights.

IV. Street Children and Human Rights

The phenomenon of street children is global and increasing. It is becoming a worldwide phenomenon which is further nourishing. According to UNICEF (2002), there are around 100 million street children around the globe.⁸⁹ But the numbers differ from region to region due to the lack of uniformity of definition of street children.

In India itself the number of street children is more than 11 million.⁹⁰ The difficulty in ascertaining the exact numbers of street children in India arises due to lack of a uniform definition of street children. According to a study conducted in five cities of India namely, Lucknow, Mugalsarai, Hyderabad, Patna and Kolkata-Howrah, a total of 84,563 street children were found on streets. Out of these 84,563, Lucknow had 10,771, in Mughalsarai had 1399, Kolkata and Howrah had 21,907, Patna had 21,926 and in Greater Hyderabad had 28,560, street children.⁹¹ According to a study⁹² there are 37,059 street children in Mumbai alone.⁹³ Two out of five children have suffered abuse whether physical, verbal or sexual and have been starved forcefully.⁹⁴ According to a street children census⁹⁵ in Delhi, 51,000 children were found on the streets of Delhi who either

⁸⁹ Sarah Thomas De Benitez, "State of the World's Street Children: Violence" *CONSORTIUM FOR STREET CHILDREN*, 2007. Available at: <https://www.streetchildren.org/wp-content/uploads/2013/02/state-of-the-world-violence.pdf> (Last visited June 18, 2019).

⁹⁰ "Life on the Street: Street Children Survey conducted in five cities: Lucknow, Mugalsarai, Hyderabad, Patna and Kolkata-Howrah", *SAVE THE CHILDREN*. Available at: <https://www.savethechildren.in/sci-in/media/PDFs/LIFE-ON-THE-STREET-%28Final%29-Rev-4.pdf> (Last visited June 6, 2019).

⁹¹ *Ibid.*

⁹² "Making Street Children Matter A Census Study in Mumbai City", *TATA INSTITUTE OF SOCIAL SCIENCES AND ACTION AID INDIA* (2013). Available at: http://actionaid.org/sites/files/actionaid/mumbai_street_children_v3.pdf (last visited on Jan. 27, 2019).

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ R. Bhaskaran and B. Mehta, "Surviving the Streets, A census conducted by Save the Children and Institute for Human Development in Delhi" *SAVE THE CHILDREN*, Jan., 2011. Available at: <https://www.savethechildren.in/news/surviving-the-streets-a-census-of-street-children-in-delhi> (Last visited on Dec. 24, 2018).

work on street or both work or live there.⁹⁶ More than 50 percent out of these have suffered sexual, verbal or physical violence.⁹⁷

According to a study,⁹⁸ every two out of three street children have been physically abused, 53.22 per cent children are reported to have undergone sexual abuse.⁹⁹ This is the story of the reported cases excluding the cases which were not reported by the street children due to shame or intimidation.

A survey in Mumbai highlighted that the average age of children (both boys and girls) starting the use of tobacco was 11.3 years.¹⁰⁰ In a survey of street children, 70 out of 100 have been found using cigarettes or bidi (small hand rolled cigarettes), tobacco, alcohol, and injectable drugs.¹⁰¹ The high use of chewing tobacco at the young age by children may result in oral cancer when they grow up.¹⁰² Though the selling of tobacco to children below 18 years of age is prohibited yet the shopkeepers flouts this prohibition and sell tobacco products indiscriminately without considering the age of the buyer. The contravention of this legal provision requires stringent penalties and enforcement to protect children.

The street children are also abused by police. In a study¹⁰³ it was found that in India street children are illegally detained in a routine manner, are tortured and even killed by police.¹⁰⁴ The abuses of the street children take place due to factors like adverse attitude of the police authorities towards these children and rampant corruption.¹⁰⁵ Further the inadequate legal safeguards and the non-implementation of the exiting legal safeguards

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ “Study on *Child Abuse: India 2007*”, 2007. Available at: <https://www.childlineindia.org.in/pdf/MWCD-Child-Abuse-Report.pdf> (last visited on Jan. 27, 2019).

⁹⁹ *ibid.*

¹⁰⁰ Dinesh C. Sharma, “Special Report: National –Tobacco Use among India’s Street Children Raises Concern”, *DOI*, Sept 2009. Available at: [https://www.thelancet.com/pdfs/journals/lanonc/PIIS1470-2045\(09\)70248-7.pdf](https://www.thelancet.com/pdfs/journals/lanonc/PIIS1470-2045(09)70248-7.pdf) (last visited Jan. 30, 2019).

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ “Police Abuse and Killing of Street Children in India”, *HUMAN RIGHTS WATCH*, Nov. 1996. <https://www.hrw.org/legacy/reports/1996/India4.htm> (last visited Jan. 28, 2019).

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

and the impunity that the police enjoy add to the increase in abuses against street children.¹⁰⁶ Out of hundred children who were interviewed, around 60 complained that they have been victim of police abuses be it verbal abuse, beatings or illegal detentions. These children reported that they fear the police.¹⁰⁷

The data presented here is enough to show the vulnerability of the street children to abuse, exploitation and health hazards and indicative of the escalating problem in India despite the various laws and governmental policies aiming at protecting the rights of these children. These children are prone to all types of abuses whether it is physical, sexual or other, vulnerable to health hazards like HIV/AIDS, Oral Cancer. Even the Government observation homes and correction centers do not provide adequate health facilities, nutritious food and other amenities of a civic life.

V. Conclusion

In order to tackle the problems of street children there is a need to hit at the root causes of the phenomena. Poverty eradication and population stabilization is the need of the hours to tackle the problem of street children. Proper rehabilitation of the children affected by natural disasters people may help in reducing the possibilities of increasing number of street children. Non-material assistance may be more helpful than the material assistance for street children. The NGOs seriously working for the causes of street must get adequate help and support from the government. The legal safeguards concerning street children also require some changes to more accurately deal with problems of street children. The foremost thing required is to have a uniform and clear definition of the term 'Child' so as to make the child able to avail all the benefits and protection under the law in a coherent manner. There is also a need to work out on uniform and specific definition of the street children to avoid confusion so that the problems these children can be tackled in a focused manner. The disparities and lacunae in various legislations need to be removed. Compulsory primary education should be implemented properly. A check

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

must be there on the causes of the children dropping out school and the education policy must ensure that every child get compulsory primary education. Proper implementation of the policies and the government facilities provided for the street children needs changes in terms of basic infrastructure and facilities. There is a need to create awareness about the problems faced by the street children and the civil society must work hand in hand to solve these problems. The problems of the street children need to be dealt at the international level in a better way as this is a worldwide phenomenon. The state report must include information about the implementation measures of the CRC with respect to street children which can help in better monitoring of the enforcement of the rights of the street children. A special rapporteur should be appointed for street children to understand their problems in a better manner in coordination with the national authorities of the state parties. Individual complaint mechanism also needs to be there to bring the concerns of these children before the Child Rights Committee. The individual complaint mechanism can help NGOs working with street children to raise their issues at the international level. Street children may be made part of the state delegations to the UN organs and Committee on rights of the child to know their actual experiences with street life which can help in bringing more accurate solutions to the evils of streetism. Further, the participation of the street children in solving their problems can be more effectual and thus may be helpful in ensuring the effective enjoyment of their rights. For that matter the non-governmental organizations must involve the street children in solving their problems and the views of these children must be considered while formulating policies by the state. So, a holistic human rights approach can be helpful to ensure enjoyment of human rights by the street children and that can only be done when the state, individuals and the society come hand in hand in finding out the problems of these children and possible solutions. That will be helpful in creating a world worth living for them.