
STREET CHILDREN AND THE LAW**A SOCIO-LEGAL STUDY OF THE MYTH AND REALITY**

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ABSTRACT:-

This Article deals with the “Myths and Realities” about the Street Children. The rights they hold and the sufferings they bear. This work is conducted to focus light on the harsh reality of our society where we blindly live ignoring that a section of our own society needs our care and protection.

This Article bears the actual scenario of the subject and many other relevant issues that are closely related to the subject matter. The phenomenon of street children is existing since time immemorial though it was not a major problem at the very beginning but with the passing of time and due to population growth, the numbers of street children are increasing rapidly. This research study mainly focused on the real conditions of the street children and hence it became necessary to find out the factors accountable for their conditions and the ways to minimize those effects.

The Article further provides a brief overview of the Global and Municipal laws, Acts, Ordinances, Regulations, Conventions, Covenants, Declarations, Committees, Schemes and Programmes etc. which are enacted and enforced to protect the rights of the street children and of the children in general.

In our India, the role of the courts are very important to settle down any social issue and in child related matters there are many juvenile courts to deal those matters for speedy determination and adjudication. This paper deals with some of those important case laws for the better understandings.

The vital part of this Article is my own observations which I have realized after the analysis of the collected data.

Last part deals with the recommendations and conclusion of this Article.

INTRODUCTION:-

“Every child comes with the message that God is not yet discouraged of man.”

-- **Rabindranath Tagore**

“Child slavery is a crime against humanity. Humanity itself is at stake here.”

-- **Indian Nobel Laureate Kailash Satyarthi.**

Yes, children are the finest gift of God. Fine-grained clay that can be moulded to make it worthy. They are the wealth of every nation and of every human race. Therefore it is mandatory for every nation and every society to nourish its children to establish a strong society.

But the actual scenario is something different and most of the countries fail to provide adequate protection to their children. Hence, those children are forced to manage their own livelihood by staying under the open sky. They are called “Street Children”.

A street child in India is someone, for whom the street (in the widest sense of the word, including unoccupied dwellings, wasteland, etc.) has become his or her habitual abode or source of livelihood; and who is inadequately protected, supervised.¹

In the early years of research on street children, the term “street child” included any child that worked on the street. From research, however, different categories of children on the streets have been distinguished, while still recognizing that children’s complex experiences are difficult to define.

The term “street child” has come to refer only to the last group. UNICEF² defines a street child as, “...any girl or boy... for whom the street (in the widest sense of the word, including unoccupied dwellings, wasteland, etc.) has become his or her habitual abode and/or source of livelihood; and who is inadequately protected, supervised, or directed by responsible adults”.

It is important to distinguish the group of children that live on their own on the streets because their lives vary greatly from those of children who simply work on the streets; they thus have different needs and require targeted attention.

¹Sarah Thomas de Benitez (23 February 2009). "[State of the World's Street Children: Violence Report](#)".

²https://en.wikipedia.org/wiki/Street_children_in_India (visited on 09th March 2016).

CAUSES OF CHILD LABOR IN INDIA:-

The causes are quite similar to any other country, though with many Indian singularities. Everyone agrees that child labour is a plague but most families know they don't have much choice: not putting a child to work means there won't be enough food on the table for everyone.

HISTORICAL PERSPECTIVE:-

The phenomenon of street children has been documented as far back as 1848. Alan Ball, in the introduction to his book on the history of abandoned children, **And Now My Soul Is Hardened: Abandoned Children in Soviet Russia, 1918–1930**³, states:

Orphaned and abandoned children have been a source of misery from earliest times. They apparently accounted for most of the boy prostitutes in Augustan Rome and, a few centuries later, moved a church council of 442 in southern Gaul to declare: "Concerning abandoned children: there is general complaint that they are nowadays exposed more to dogs than to kindness."

In Tsarist Russia, seventeenth-century sources described destitute youths roaming the streets, and the phenomenon survived every attempt at eradication thereafter.

In 1848, Lord Ashley referred to more than 30,000 "naked, filthy, roaming lawless, and deserted children" in and around London, UK. By 1922, there were at least seven million homeless children in Russia due to the devastation from World War I and the Russian Civil War. Abandoned children formed gangs, created their own argot, and engaged in petty theft and prostitution.

In India, street children are found in every city of the country. There were street children before the independence and the situation is still same till this date. No exact time has been documented regarding the first existence of street children India so far.

TYPES OF STREET CHILDREN:-

UNICEF⁴ has defined three types of street children.

³ https://en.wikipedia.org/wiki/Street_children

⁴ An agency of the United Nations responsible for programs to aid education and the health of children and mothers in developing countries

1. Street living children - children who have run away from their families and live alone on the streets.
2. Street working children - children who spend most of their time on the streets, fending for themselves, but returning home on a regular basis.
3. Children from street families - children who live on the streets with their families.

LEGISLATIVE DEVELOPMENTS:-

A. Global Laws:

1. Declaration of the Rights of the Child 1959

In accordance with the declaration, a child is entitled to a name and nationality⁵, to adequate nutrition, housing, recreation, and medical services⁶. Attention is paid to the special needs of physically, mentally, and socially handicapped children⁷, and to children who are without a family⁸. The right to education is included, as is the right to play and recreation⁹

A noticeable departure from the principle of the 1924 Declaration is that the earlier Declaration lays down that children shall be 'among the first' to receive protection and relief.

2. Minimum Age Convention 1973

The aim of the Minimum Age Convention (MAC) is to establish a general instrument on the subject of the minimum age of employment with a view to achieving the total abolition of child labour. Thus, each State Party is to "pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons"¹⁰

3. U.N. Convention on the Rights of the Child 1989

The Convention on the Rights of the Child (CRC) is the most comprehensive document on the rights of children. Based purely on the number of substantive rights it sets forth, as distinct from implementation measures, it is the longest U.N. human rights treaty in force and

⁵Principle 3, DRC

⁶Principle 4 DRC.

⁷Principle 5 DRC.

⁸Principle 6 DRC.

⁹Principle 7 DRC.

¹⁰Article 1

unusual in that it not only addresses the granting and implementation of rights in peacetime, but also the treatment of children in situations of armed conflict. The CRC is also significant because it enshrines, for the first time in binding international law, the principles upon which adoption is based, viewed from the child's perspective.

4. Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights contains two articles that specifically refer to children. Article 25(2) states: "motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection." Article 26 calls for the right to education for all, and deals both with access to and the aims of education. Thus, education is to be free, at least in the elementary and fundamental stages; elementary education is to be compulsory; and education should be "directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms." Nevertheless, "parents have a prior right to choose the kind of education that shall be given to their children."

5. International Covenant on Economic, Social and Cultural Rights 1966

The Preamble to the International Covenant on Economic, Social and Cultural Rights (ICESCR), insofar as it recognizes the indivisibility of human rights, is applicable to children's rights as well.

B. Municipal laws:

1. Juvenile Justice (Care and Protection Of Children) Act 2000, As Amended In 2015:

The Government of India enacted the Juvenile Justice Act in 1986. In 1989 the General Assembly of the United Nations adopted the Convention on the Rights of a Child. India ratified the UNCRC in 1992. The convention outlines the right of the child to reintegration into society without judicial proceedings where avoidable. Hence the Government, to fulfil the standards of the convention felt a need to re-write the law. Hence in 2000 the old law was replaced by the Juvenile Justice (Care and Protection of Children) Act.

2. Child Labour (Prohibition and Regulation) Act 1986

The Child Labour (Prohibition and Regulation) Act, 1986 is one the most debated acts regarding children in India. It outlines where and how children can work and where they cannot. The provisions of the act are meant to be acted upon immediately after the publication of the act, except for part III that discusses the conditions in which a child may work. Part III can only come into effect as per a date appointed by the Central Government (which was decided as 26th of May, 1993).

3. Factories Act, 1948 (as amended in 1987)

The factories act is an extensive and lengthy act that covers an endless number of concerns for labour working in factories. The following is an overview of provisions in the act that are relevant to children ages 0-18. The act defines a child as a person who has completed his/her 15th year of age. It defines an adolescent as one who is has completed his/her 15th year of age but not completed his/her 18th year of age. A young person is defined as either a child or an adolescent.

4. The Right of Children to Free and Compulsory Education Act, 2009

In 2005 the Central Advisory Board of Education drafted the Right to Education (RTE) Bill, and sent it to the Ministry of Human Resource Development (MHRD) for review. The MHRD in turn sent it to the National Advisory Council and the Prime Minister. The bill spent three years being scrutinized by the union government, government ministers and the public. In 2008 there was a new draft placed before and in September 2009 it was passed by the Union Cabinet, and hence became The Right of Children to Free and Compulsory Education Act, 2009. The main purpose of the act is to outline the provision of quality education for all children between the ages of 6-14 as per the constitutional fundamental right awarded to children in the 86th amendment.

5. Prohibition of Child Marriage Act, 2006

According to the act a child is a male who has not completed twenty one years of age and a female who has not completed eighteen years of age. Child marriage is a contract between any two people of which either one or both parties is a child. Child marriage that took place before or after this act can be made void by the person who was a child at the time of marriage. But the marriage must be voided before the person who was a child completes their second year of maturity.

6. The Protection of Children from Sexual Offences Act 2012

The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court.

The Centre is planning to amend the POCSO Act to provide justice to male child victims of sexual assault, the Women and Child Development Ministry said, days after an ordinance promulgated by President Ram Nath Kovind provided the death penalty for rape of girls under the age of 12.

CHILD RELATED POLICIES:-

1. National Policy for Children 1974;
2. National Policy on Education 1986 (as modified in 1992);
3. National Nutrition Policy 1993;
4. National Health Policy 2002;
5. National Charter for Children 2003;
6. National Plan of Action 2005;
7. Child Rights in the Five Year Plans;

CHILD TARGETED SCHEMES AND PROGRAMMES:-

1. Mid-day Meal Scheme;
2. Integrated Child Development Scheme;
3. Integrated Child Protection Scheme (ICPS);
4. Sarva Shiksha Abhiyan (SSA);
5. Operation Blackboard;

6. Integrated Programme for Street Children;
7. Kishori Shakti Yojana;
8. Scheme for Working Children in need of care and protection.

STREET CHILDREN- JUDICIAL ACTIVISM:-

The role of the India Judiciary and the scope of judicial interpretation have expanded remarkably in recent times, partly because of the tremendous growth of statutory intervention in the present era. The judiciary plays an important role in the protection of fundamental rights of the citizen and non-citizens alike.

In this modern era Judicial Activism emerged as tool for protecting Rights of the Children including protection from sexual exploitation, child trafficking, child abuse etc. some case dealt by the Indian judiciary for the protection of child rights are as follows

CHILD LABOUR AND RIGHT TO EDUCATION:-

In **M.C. Mehta v. State of Tamil Nadu**¹¹. The Supreme Court directed that children should not be employed in hazardous jobs in factories for manufacture of match boxes and fireworks, and positive steps should be taken for the welfare of such children as well as for improving the quality of their life.

In **Goodricke Group Ltd v Center of West Bengal**¹². The Court held that it would be for the Centre and State/Union Territories to provide necessary resources to achieve the goal of providing free education. Recently Article 21A has been inserted in the India Act, 2002 which provides that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.

In **Unni Krishnan J.P. v State of Andhra Pradesh**¹³, Justice Mohan observed “in educational institutions which are seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up statesmen and soldiers, patriots and philosophers, who will determine the progress of the land.

¹¹[1996] RD-SC 1576 (10 December 1996)

¹² (1995) Supp (1) SCC 707

¹³AIR 1993 SC 2178, 1993 SCR(1) 594, 1993 SCC(1) 645

In **Rajangam, Secretary, District Beedi Workers Union Vs. State Of Tamil Nadu And Others**¹⁴, The supreme court opined that tobacco manufacturing was indeed hazardous to health. Child labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner that is to be decided by the State Government but it should be within a period not exceeding three years.

In **Bandhua Mukti Morcha**¹⁵ Vs. **Union Of India And Others**¹⁶, The court emphasized that when the allegation revealed that the workers were being held in bondage without basic amenities like shelter, drinking water, or two square meals per day, it was a violation of fundamental rights as in this country everyone has a right to live with dignity and free from exploitation. The court also ruled that its power under Article 32 is very wide and it can adopt any 'appropriate' proceedings.

CHILD LABOUR WELFARE AND THE LOCUS STANDI:-

In **Peoples Union for Democratic Rights v. Union of India**¹⁷, also known as the **Asiad Workers** case. The Supreme Court held that though the Employment of Children Act, 1938 did not include the construction work on projects because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Art.24 children under 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Art. 24 was enforceable even in the absence of implementing legislation, and in public interest proceeding.

JUVENILE JUSTICE:-

In **Sheela Barse v. Union of India**¹⁸. Ms. Sheela Barse, a dedicated social worker took up the case of helpless children below age of 16 illegally detained in jails. She petitioned for the release of such young children from jails, production of information as to the existence of juvenile courts, homes and schools and for a direction that the District judges should visit jails or sub-jails within their jurisdiction to ensure children are properly looked after when in custody. The Court observed that children in jail are entitled to special treatment. Children

¹⁴(1992) 1 SCC 221.

¹⁵Bandhuamuktimorcha is an organization working for the release of bonded labourers.

¹⁶ AIR 1984 S 802; (1984) 3 SCC 161.

¹⁷ AIR 1982 SC 1473, 1983 SCR (1) 456, 1982 SCC (3) 235

¹⁸ JT 1986 136, 1986 SCALE (2)230

are national assets and they should be treated with special care. The Court urged the setting up of remand and juvenile homes for children in jails.

ADOPTION OF CHILDREN:-

In **Lakshmikant Pandey v Union of India**¹⁹, The writ petition has been initiated on the basis of a letter addressed by one Laxmi Kant Pandey, an advocate practicing in this Court, complaining of mal-practices indulged in by social organizations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. The letter referred to a press report based on “empirical investigation carried out by the staff of a reputed foreign magazine” called “The Mail” and alleged that not only Indian children of tender age are under the guise of adoption “exposed to the long horrendous journey to distant foreign countries at great risk to their lives but in cases where they survive and where these children are not placed in the Shelter and Relief Homes, they in course of time become beggars or prostitutes for want of proper care from their alleged foreign foster parents.

SEXUAL EXPLOITATION OF CHILDREN:-

In **Bachpan Bachao Andolan v Union of India**²⁰, The writ petition filed by HRLN, Supreme Court on 18.04.2011 has ordered for implementation of suggestions put forth during the hearing of this case, which will introduce significant reforms in existing child protection regime. The petition was originally brought in 2006 on issue of abuse and exploitation of children in circus industry. Court has ordered Central Government to bring a notification prohibiting employment of children in circuses and conduct raids to rescue children already working in circuses and frame proper scheme for their restoration. During the hearing in this case, several recommendations were put forth by petitioner and respondent, aimed on reforming existing legal and procedural mechanism on child protection. This recent order is just one among the several orders which may be given by Hon’ble Supreme Court in due course of time as Hon’ble Court has made clear its intention to deal with issue of children’s exploitation in a long term and systematic manner. Assuring to deal with children’s exploitation firmly, Supreme Court has observed: “We plan to deal with the problem of children’s exploitation systematically”.

¹⁹AIR 1992 SC 118; 1991 Scr (3) 568; 1991 Scc (4) 33; Jt 1991 (3) 582; 1991 Scale (2) 321

²⁰AIR 2011 SC 3361

In Vishal Jeet v. Union of India²¹, The Supreme Court in this case deals with some seminal questions relating to the sexual exploitation of children. Here it has been observed that it is highly deplorable and heart rending to note that many poverty stricken children and girls in the prime age of youth are taken to the ‘flesh market’ and forcibly pushed into “flesh trade” which is being carried on in utter violation of all cannons of morality, decency and dignity of mankind.

COLLECTED DATAS FROM STREET CHILDREN IN KOLKATA:-

All the data have been collected through Interview Method from the Street Children with pre-arranged questionnaire prepared by me. But due to the words limit, I am bound to abstain from including those.

OWN OBSERVATIONS:-

During the survey I came across many street children and families who reside on the footpaths of Sealdah (Kolkata) area. After encountering with them that I get to know that most of the children live with their families or only with mothers. The numbers of abandon children are very few. The families which live on the street of that particular area is mainly from the suburban of Kolkata.

The main reason behind the street livelihood is economy. Most of the families belong to the poverty level and they live on the footpath to income money and spend less for their livelihood.

As they told me, sometime it becomes harder to stay on the street when the local administrations force them to vacate the footpath. Sometimes they have to change their place and roaming one corner to another of the city.

Some of the street children go to school and some of them stopped going and some of them never attained school. Some of them reside in various hostels in the city.

During the interview I came to know that many of them have own house in remote villages but they chose to lives on the street as they have no income sources at their native palaces. They go to their own homes once or two times in a year and again come back to the streets to make money or for their basic needs.

²¹ AIR 1990 SC 1412; 1990 SCR(2) 861; 1990 SCC(3) 318.

The children who live on the footpaths are very prone to drugs and alcohols. Most of the children admitted that they take various medicines and drugs with their friends. Some of them drink alcohol on daily basis.

The sad thing about the street children is their parents use them as a medium of income of money and they force them to beg or to work in various places.

Very surprisingly I have found that the children who live with their parents are under 8-10 year of old. During my study I have not found a single child who is above 10-12 years. When I asked the parents about this matter, they answered that as long as the children are under age i.e., below 10, they keep the children with them and as soon as the children become 10-12 year of age, parents engage them in various works for more income.

Therefore, in my view the children on the street are the sole victim of exploitation of their own parents. Though the scenario is something different in case of abandoned children as they are exploited by many people and the conditions of such children are very pathetic.

RECOMMENDATIONS:

TO THE GOVERNMENT OF INDIA:

1. Implement the Juvenile Justice Act in all states and Union Territories and amend the Juvenile Justice Act to provide for a complaints and prosecution mechanisms for cases of custodial abuse of children. These mechanisms should be constituted along the lines described in the National Police Commission's recommendations for the creation of civilian, judicial, and police complaints bodies for cases of police abuse.
2. Amend the Trade Union Act to allow children to form and participate in trade unions. The Convention on the Rights of the Child, which India has ratified, guarantees children the right of freedom of association.
3. Establish a high-level commission to investigate allegations of custodial abuse and killings of children.
4. Require the registration of each child taken to a police station, including the time, date, and reason for detention. The registers should be subject to frequent mandatory review by a judicial magistrate.

5. Conduct a census of street children through city-wide surveys with the assistance of nongovernmental organizations (NGOs). Without an accurate estimate of the population of street children, it is difficult to plan and implement programs for their benefit.

TO THE UNITED NATIONS:

1. The United Nations Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and the Working Group on Arbitrary Detention should visit India and investigate police abuse of street children.
2. The United Nations Committee on the Rights of the Child should investigate the abuse and killings of street children by police in India.
3. The United Nations Committee on the Rights of the Child should devote one of its theme days to police violence against street children.

CONCLUSION:-

‘Street Children’, the term says it all. Children who belong to the street are called the ‘street children’. Street Child labour as they give their labours to income money for them and for their families. There are a big gap between the ‘age’ of the children and the ‘responsibilities’ they carry. Those small shoulders are perhaps the strongest shoulders of the universe.

We have enacted many laws and regulations to prohibit child labour and protect those needy children but when reality flashes before the eyes their inhuman conditions make us blind.

The original child labour law banned employment of children below 14 in only 18 hazardous industries. The amendments also make it clear that children between 14 and 18 years will also not be allowed to work in hazardous industries. The changes in the labour law also provide for stricter punishment for employers for violation. While there is no penalty provision for parents for the first offence, the employer would be liable for punishment even for the first violation.

In case of parents, the repeat offenders may be penalized with a monetary fine up to Rs 10,000. In case of first offence, the penalty for employers has been increased up to two and half times from the existing up to Rs. 20 thousand to up to Rs. 50,000 now. In case of a second or subsequent offence of employing any child or adolescent in contravention of the

law, the minimum imprisonment would be one year which may extend to three years.

Earlier, the penalty for second or subsequent offence of employing any child in contravention of the law was imprisonment for a minimum term of six months which may extend to two years.

An official statement said that while considering a total prohibition on employment of child, it would be prudent to also keep in mind the country's social fabric and socio-economic conditions.

Justifying the amendments, it said, "In a large number of families, children help their parents in their occupations like agriculture, artisanship etc. and while helping the parents, children also learn the basics of occupations.

Therefore, striking a balance between the need for education for a child and the reality of the socio-economic condition and social fabric in the country, the Cabinet has approved that a child can help his family or family enterprise, which is other than any hazardous occupation or process, after his school hours or during vacation.

However, taking a "realistic view" of the socio-economic conditions of the parents, there would be no punishment in case of a first offence by them and in case of a second and subsequent offence, the penalty would be a fine which may extend to Rs 10,000.

The proposal also provides for the setting up of a Child and Adolescent Labour Rehabilitation Fund for one or more districts for rehabilitation of children or adolescents rescued. Thus, the Act itself will provide for a fund to carry out rehabilitation activities.

Besides all of these laws, street children are found in every cities and child labour almost in every shops and homes. Government and Non-Government organization are so called active everywhere but the picture remains the same. Sometimes it is because of the negligence on the part of the administration and sometimes because of helplessness of the parents who forced to live under the open sky with nothing secured for their children.

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