

# STREET CHILDREN: INTERNATIONAL & NATIONAL PROTECTIVE MEASURES

Written by *Puneet Pathak*

*Assistant Professor, Department of Law, School of Legal Studies, Central University of  
Punjab, India*

---

## INTRODUCTION

Children are the future of the society and the foundation of a strong, vibrant and dynamic nation. The physical and mental health of the country is determined largely in the manner by which children are cared for in the early stages.<sup>i</sup> Justice Subba Rao observed "Social justice must start with children unless the tender plant is properly tended and nourished, it has little chances of growing into a strong and useful tree. So the priority in the scale of social justice shall be given to the welfare of children."<sup>ii</sup> In India, millions of them are forced into labour irrespective of their tender age and the time they are supposed to be in schools.<sup>iii</sup> It is the duty of the state to provide proper care and protection to the children at each stage. According to UNICEF (2002), there are around 100 million street children around the globe.<sup>iv</sup> In India, the number of street children is more than 11 million.<sup>v</sup> India has an estimated one million or more street children in each of the following cities: New Delhi, Kolkata, and Mumbai.<sup>vi</sup> There are major difficulties in trying to count the number of street children and the degree of challenges they experience as these populations are not adequately covered by national census, educational and health data<sup>vii</sup>. It is more common for street children to be male, and the average age is fourteen.<sup>viii</sup> Various problems are being faced by street children, including lack of adequate nutrition, homelessness, health problems, deprivation of resources and opportunities and subject to exploitation.

## DEFINING STREET CHILDREN

Street-living children can be understood to mean those who sleep on the street at most times and preserve limited or no contact with their family of origin. The UK Committee for UNICEF

talks about three categories i.e. children on the street, children of the street and abandoned children. It may be said that a street child is one who lives in on the streets, does not attend school, works, if at all, in low-income jobs in the street, has no parental care and protection and is vulnerable to hazards of urban living conditions.<sup>ix</sup> In some cases, children who engaged in begging are forced by their families.<sup>x</sup> The proportion of street children is increasing swiftly in the metropolitan cities in India, and the issue of street children has become a serious social problem.<sup>xi</sup> In reality, most people conceive street children as problems rather than problematic individuals who need help and protection.<sup>xii</sup>

## INTERNATIONAL INSTRUMENTS

There are various international and regional binding as well as non-binding<sup>xiii</sup> legal instruments which provides recognition and protection to children. Some international treaties concluded under International Labor Organization prohibited child labour.<sup>xiv</sup> Apart from the international instruments, there is a considerable number of regional instruments recognizing the rights of children.<sup>xv</sup> The following instruments specifically address the special protections owed to children:

- Universal Declaration on Human Rights 1948<sup>xvi</sup>
- International Covenant on Civil and Political Rights 1966<sup>xvii</sup>
- International Covenant on Economic, Social and Cultural Rights 1966<sup>xviii</sup>
- Convention on the Rights of the Child 1989<sup>xix</sup>
- Convention on the Elimination of All Forms of Discrimination Against Women<sup>xx</sup>
- Convention on the Protection of the Rights of Migrant Workers and Members of their Families<sup>xxi</sup>

Universally child rights are defined by the United Nations Convention on the Rights of the Child, 1989 (UNCRC). According to the UNCRC, Child Rights are minimum entitlements and freedoms that should be afforded to all persons below the age of 18 regardless of race, color, gender, language, religion, opinions, origins, wealth, birth status or ability and therefore applies to people everywhere. The UN finds these rights are interdependent and indivisible, meaning that a right cannot be fulfilled at the expense of another right. The purpose of the UNCRC is to outline the basic human rights that should be afforded to children. Following are four broad

classifications of these rights covering all civil, political, social, economic and cultural rights of children:

- **Right to Survive:** A child's right to survival begins before a child is born. As per law, a child life begins after twenty weeks of conception. Hence the right to survival is inclusive of the child rights to be born, right to minimum standards of food, shelter and clothing, and the right to live with dignity.
- **Right to Protection:** A child has the right to be protected from neglect, exploitation, and abuse at home, and elsewhere.
- **Right to Participation:** A child has a right to participate in any decision making that involves him/her directly or indirectly. There are varying degrees of participation as per the age and maturity of the child.
- **Right to Development:** Children have the right to all forms of development: Emotional, Mental and Physical. Emotional development is fulfilled by proper care and love of a support system, mental development through education and learning and physical development through recreation, play and nutrition.<sup>xxii</sup>
- **Monitoring Children's Rights:** The Committee on the Rights of the Child (CRC) is the body of 18 Independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. It also monitors implementation of two Optional Protocols to the Convention, on the involvement of children in armed conflict (OPAC) and sale of children, child prostitution and child pornography (OPSC). In 2011, UN General Assembly approved a third Optional Protocol on a communications procedure (OPIC), which allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. The Protocol entered into force in April 2014.<sup>xxiii</sup>

The UN Human Right Council devoted a full day for discussing issues of street children on 9th March 2011 and adopt a UN Resolution on Street Children, the first since 1994.<sup>xxiv</sup> Consortium for Street Children (CSC) launch the International Day for Street Children on 12th April 2011.<sup>xxv</sup>

## NATIONAL INSTRUMENTS

The Constitution of India under the chapter of Fundamental Rights and the Directive Principles of State Policy provide protection for children. It includes the prohibition of child labor below the age of 14 years in any factory or mine or castle or engaged in any other hazardous employment (Article 24). The constitution also envisioned that government is under obligation to provide infrastructure and resources for free and compulsory education to all children of the age six to 14 years. (Article 21-A and Article 45).<sup>xxvi</sup>

In 1992, India accepted the obligations of the UN Convention on the Rights of the Child 1989. The Indian parliament has enacted a series of statues for the protection of children in pursuance of the spirit of the Constitution of India. Some major national legislative developments intended for the protection and promotion of the rights of children in the line of international standard are relevant for the protection of street children as well. The Factories Act of 1948 prohibits the employment of children under the age of 14 years in any factory. The law also placed rules on who, when, and how long can pre-adults aged 15– 18 years be employed in any factory. The Child and Adolescent Labour (Prohibition and Regulation) Act of 1986<sup>xxvii</sup> prohibits the employment of children under the age of 14 years in hazardous jobs identified in a list by the law. The list was expanded in 2006, and again in 2008. In 2016, the Act was amended to prohibit employment of child below 14 years in all occupation (except for helping in the non-hazardous family business and of child artists in the entertainment industry and sports). Further, adolescent between 14-18 years will not be allowed to work in hazardous industries and processes.<sup>xxviii</sup> National Commission for Protection of Child Rights (2005)<sup>xxix</sup>, Prohibition of Child Marriage Act (2006), The Right of Children to Free and Compulsory Education Act, 2009 mandates free and compulsory education to all children aged 6 to 14 years. This legislation also mandated that 25 per cent of seats in every private school must be allocated for children from disadvantaged groups and physically challenged children.

The Criminal Law (Amendment) Act, 2013 introduced several new offences under the Indian Penal Code, such as Section 376(2) (i) which punishes rape of a female under 16 years is considered an aggravated form of rape punishable with a fine and a minimum term of rigorous imprisonment for ten years, which can be extended to life imprisonment. The Juvenile Justice (Care and Protection) of Children Act of 2015 also introduced some new features as per the

international norms. The Protection of Children from Sexual Offences Act (POCSO Act) 2012 was formulated to effectively address sexual abuse and sexual exploitation of children.

## **OTHER INITIATIVES**

Apart from statutory efforts for the protection of children, the government has also taken some administrative initiatives for the protection of street children. The Ministry of Social Justice and Empowerment prepared an integrated programme for the street children. The increase in the number of street children, orphans, destitute and neglected children is a matter of great concern to the Ministry of Social Justice and Empowerment. The programme highlighted that the specific schemes are being put into effect, to provide immediate relief to these children as well as to meet their long-term developmental needs. The primary objective of the programme is to provide wholesome development of children without homes and family ties and prevent destitution. The essential components of the programme include the provision of shelter, nutrition, health care, sanitation and hygiene, safe drinking water, education, recreational facilities and protection against abuse and exploitation to destitute and neglected street children. Under the programme, grants-in-aid are provided to NGOs and other Voluntary Organizations, and there are an estimated 32,451 beneficiaries under the projects of the programme in 1991-2000. Up to 90 per cent financial assistance is being provided to NGOs as well as to other local bodies for a wide range of programme initiatives.<sup>xxx</sup>

A private bill relating to street children was introduced by Dr. Karan Singh on the 27th July, 2001 in the Parliament. The Street Children (Protection of Rights) Bill, 2001 admitted that despite various policies, programs, and legislation on the protection of children, the child remains the most exploited and abused section of the society. The bill defines street children as “the deprived with unknown parentage, abandoned and neglected children, including destitute children of sex workers.” 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. It also provides for the establishment of a Street Child Development Fund to provide help for rehabilitation in the society. The Bill has not yet been passed.

Working in collaboration with the National Commission for Protection of Child Rights (NCPCR), Save the Children (NGO) launched the Standard Operating Procedure (SOP) for

Care and Protection of Children in Street Situations in 2017. The SOP lays down a sequence of actions to be taken for the restoration and rehabilitation of street children. This includes getting them Aadhaar cards, health insurance, bank accounts and financial sponsorship for families to help meet the medical and nutritional requirements of a child.<sup>xxxii</sup>

## CONCLUSION

Investment in children is the real investment for the future of the country. If society protects a child by providing him with an education and a healthy environment, he will contribute to the prosperity of the nation. India has the largest number of street children in the world. According to the United Nations, there are 11 million street children in India-the highest number in the world. However, independent figures estimate that the number is approximately 20 million.<sup>xxxiii</sup> They are involved in various activities such as vending newspaper, food, flowers, begging, rag picking, etc. Due to the harsh environment in which they are forced to survive, street children are often characterized by stubbornness, aggressiveness, apparent selfishness, unstable emotional behaviour, lack of concentration, constant rebellion against authority, mistrust of others and sometimes, abusive behaviour towards other children, among other characteristics.<sup>xxxiii</sup> In this General Comment, the United Nations Committee on the Rights of the Child provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child.<sup>xxxiv</sup> Despite various international and national provisions for the protection of unprivileged children, street children are forced to live in miserable conditions. National Commission for Protection of Child Rights (NCPCR) should be given sufficient fund and necessary infrastructure to generate correct data of street children and rehabilitate them with the help of State Commissions. The Street Children (Protection of Rights) Bill, 2001 must be passed by the Parliament, which has a specific focus on the problem of street children. There is an urgent need for the proper implementation of the laws at the ground level, and specific government policy is required to address the issues of street children in India.

## ENDNOTES

- 
- <sup>i</sup> Deb, S. and Mitra, K. (2002). Deviance among disadvantaged children in Kolkata and reasons thereof. *Indian J. Criminal & Criminalistics*, 22 (1): 41-59
- <sup>ii</sup> Suba Rao. *Social Justice and Law* (National Publishing House, 1974) p. 110.
- <sup>iii</sup> Care and Share, Street Kids available at: <http://www.careshare.org/us/htm/menu.asp?id=2&idmodell=Street%20Kids> (accessed on May 15, 2017)
- <sup>iv</sup> Sarah Thomas De Benitez, “State of the World’s Street Children: Violence” CONSORTIUM FOR STREET CHILDREN, 2007. Available at: <https://www.streetchildren.org/wpcontent/uploads/2013/02/state-of-the-world-violence.pdf>
- <sup>v</sup> 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/sciin/media/PDFs/LIFE-ON-THE-STREET-%28Final%29-Rev-4.pdf>
- <sup>vi</sup> Child Protection & Child Rights, available at: <http://www.childlineindia.org.in/street-children-india.htm> (accessed on May 05, 2017)
- <sup>vii</sup> Deb & Mitra, *Supra* n.01
- <sup>viii</sup> Sharmila, Khwairakpam and Kaur, Sukhminder (2014). A scenario of street children in Ludhiana city. *Asian J. Home Sci.*, 9 (1) pp. 122-127.
- <sup>ix</sup> Rashmi Agrawal and B. V. L .N. RAO, “Street children Victims of poverty and Societal Neglect” in *Human Rights and Poverty in India*, in S. N. Chaudhary (ed.) Concept Publishing Company: New Delhi, 2005)
- <sup>x</sup> How children are forced into begging by Cartels (Nov. 02, 2016) available at: <https://www.savethechildren.in/resource-centre/articles/how-children-are-forced-into-begging-by-cartels>
- <sup>xi</sup> UNICEF (1993). *Street and Working Children Innocent Global Seminar, Summary Report*. Florence, p.20.
- <sup>xii</sup> Masud, A., Mustaque, A., and Sarkar, R. (1997). *Misplaced Childhood: A short study on the street child prostitutes in Dhaka city*. Dhaka: INCIDIN.
- <sup>xiii</sup> Non-binding legal instruments includes: Universal Declaration on Human Rights 1948 (Article 25 (2)); Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Article 5); United National Standard Minimum Rules for the Administration of Juvenile Justice; United Nations Standard Minimum Rules for the Treatment of Prisoners (Preliminary Observations and Article 8)
- <sup>xiv</sup> International Labor Organization Convention Concerning Indigenous and Tribal Peoples in Independent Countries (art. 28); International Labor Organization Minimum Age Convention, 1973; International Labor Organization Worst Forms of Child Labor Convention, 1999
- <sup>xv</sup> Regional Instruments includes: African Charter on Human and Peoples’ Rights (art. 18(3)); African Charter on the Rights and Welfare of the Child; American Convention on Human Rights (art. 19); American Declaration of the Rights and Duties of Man (art. 7); Arab Charter on Human Rights (Article 10, 17, 33 and 34); Cairo Declaration on Human Rights in Islam (art. 7); European Social Charter (Article 7 and 17), 9th ISPCAN Asia Pacific Conference of Child Abuse & Neglect (APCCAN 2011) conference outcome document “Delhi declaration” re-confirmed & pledged a resolve to stand against the neglect and abuse of children and to strive for achievement of child rights and the building of a caring community for every child, free of violence and discrimination. It urged and asserted the urgent need to integrate principles, standards and measures in national planning process to prevent and respond to violence against children. (Delhi Declaration. <http://www.indianpediatrics.net/delhideclaration2011.pdf>).
- <sup>xvi</sup> Article 25 (2) 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.
- <sup>xvii</sup> Article 10 (2) (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication; (3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status; Article 14 (4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation; Article 24 (1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State; (2) Every child shall be registered immediately after birth and shall have a name; (3) Every child has the right to acquire a nationality.

<sup>xviii</sup> Article 10 (3) The States Parties to the present Covenant recognize that special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law; Article 12 (1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Article 13 (1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

<sup>xix</sup> CRC has two optional protocols: First Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2002; Second Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2002

<sup>xx</sup> Article 10 necessitates equal opportunity in education for female students and encourages coeducation. It also provides equal access to athletics, scholarships and grants as well as requires "reduction in female students' dropout rates; Article 16 prohibits "discrimination against women in all matters relating to marriage and family relations.

<sup>xxi</sup> Article 29 Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality; Article 30 Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment; Article 45 (2) States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

<sup>xxii</sup> Child Line India, 2016. Available at [http://www.childlineindia.org.in/child-protection-child-rights\\_india.htm](http://www.childlineindia.org.in/child-protection-child-rights_india.htm). Accessed on 15 May, 2017.

<sup>xxiii</sup> OHCHR, 2016. Available at <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>. Accessed on 07 May, 2017.

<sup>xxiv</sup> Res. No. A/HRC/RES/16/12 (12 April, 2011); Report of the Human Rights Council on its Nineteenth Session (2012) Available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-2_en.pdf) Accessed on 20 May, 2017.

<sup>xxv</sup> Get involved in International Day for Street Children. Available at <http://streetchildren.org/get-involved-international-day-for-street-children-12th-april/> (accessed on April 25' 2017)

<sup>xxvi</sup> By 86th Amendment, 2002 two new Articles were inserted and Article 45 was modified: Article 21A provided 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 directive principle of state policy under article 45 is substitution of this article regarding free and compulsory education and Article 51A (k) provided that who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

<sup>xxvii</sup> India has a federal form of government, and labor being a subject in the Concurrent List, both the central and state governments can and have legislated on child labor. (Entry No.23 & 24)

<sup>xxviii</sup> The Child Labour (Prohibition and Regulation) Amendment Act, 2016 has completely banned employment of children below 14 in all occupations and enterprises, except those run by his or her own family, provided that education does not hampered. The 1986 act prohibited the employment of children under 14 years in certain occupations like bidi-making, mines, domestic work, power looms, automobile workshops, carpet weaving etc. Addition of a new category of persons called "adolescent". It defines children between 14 to 18 years as adolescents and bars their employment in any hazardous occupations. The act makes child labour a cognizable offence. Employing children below 14 years will attract a jail term between 6 months to two years (earlier 3 months to 1 year) or a penalty between twenty-thousand to fifty thousand rupees or both for the first time. Repeat offenders will attract imprisonment between 1 year to 3 years (6 months to 2 years). In case, the offender is a parent, it provides a relaxed penal provision and proposes a fine of Rs. 10,000 for repeat offence committed by parent.

<sup>xxix</sup> NCPDR was established by the Government of India in March 2007 by an Act of Parliament, with a wide mandate and considerable powers. The Delhi Commission for protection of child rights was started in July 2008. Similar bodies at State level have been pursuing various matters concerning child rights and protection. Telephonic help lines (CHILDLINE 1098) and Child Welfare Committees (CWC) have been established, where reports of child abuse or a child likely to be threatened to be harmed can be made and help sought.



---

<sup>xxx</sup> Ministry of Social Justice and Empowerment, Annual Report - 1999. The programme includes the following initiatives: Contact programme offering counselling, guidance and referral services to destitute and neglected children; Establishment of 24-hour drop-in-shelters for street children with facilities for night stay, safe drinking water, bathing, latrines, first aid and recreation; Non-formal education programmes imparting literacy, numeracy and life education; Programmes for reintegration of children with their families; Programmes for enrolment of these children in schools including full support for subsistence, education, nutrition, recreation, etc; Programmes providing facilities for training in meaningful vocations; Programmes for occupational placement; Programmes for capacity building of NGOs, local bodies and state governments to undertake related responsibilities; Programmes for advocacy and awareness-building on child rights.

<sup>xxx</sup><sub>i</sub> Save the Children, available at: <https://www.savethechildren.in/policy-and-advocacy/>

<sup>xxx</sup><sub>ii</sub> Child Protection & Child Rights, *Supra* n. 6; Deb & Mitra, *Supra* n.01;

<sup>xxx</sup><sub>iii</sub> Masud, Mustaque, & Sarkar, *Supra* n.12

<sup>xxx</sup><sub>iv</sub> General Comment No. 21 (2017) on Children in Street Situations, <https://www.streetchildren.org/resources/general-comment-no-21-2017-on-children-in-street-situations/>

