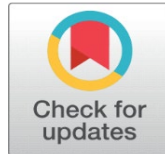
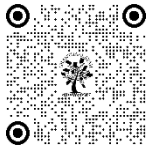


STREET CHILDREN: A QUEST FOR BASIC HUMAN RIGHTS

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ABSTRACT

The notion that children are assets and the hope of a nation reflects a widely held perspective emphasizing the importance of investing in and nurturing the well-being and development of the younger generation. Socioeconomic rights play key roles in the life of homeless kids and street children because kids are at additional risk as compared to grown up children and for a long time they have been subjected to hatred and discrimination. Therefore, street children need exceptional safeguard of their basic fundamental rights by acquiring of positive and uniform secure measures. The issue is a complex one with various factors contributing to their condition.

In this research, we examine the challenges the street children face and understand the root causes behind their situation. We also try to draw attention towards socio economic elements contributing to homeless children living a street life or societal and cultural perspectives towards street children.

Our study will also focus on case studies highlighting effective programs, community-based approaches, emphasizing the importance of a global perspective in addressing street children issues.

Lastly, this research will accord with additional steps and measures that can be taken to overcome street children's hurdles and address the struggles faced by street children.

1. INTRODUCTION

Human experience is most accurately captured in the art we create. We are an emotive society, and what we cannot put into words, we demonstrate through our art. In 2008, the rags to riches love story of a teenager from the slums of Mumbai took the world by a storm. Titled 'Slumdog Millionaire', the film traversed the life of the young boy from the less privileged side of the tracks, through the medium of a game show. The movie was a sensational hit worldwide. But while the movie, as do most Bollywood movies, has a happy ending, the same cannot be said for the situation of these street children who living their entire lives in garbage or landfills.

In October, 2022, the Economic Times¹, while reporting on the decline in poverty in India from 2005-06 to 2019-21, as reported in the Multidimensional Poverty Index (MPI) released by the UNDP and the Oxford Poverty and Human Development Initiative (OPHI), at the University of Oxford, stated that India had the largest number of poor people worldwide, and despite our progress, India's population is still vulnerable to, "the mounting effects of COVID-19 pandemic and to rising food and energy prices."²

¹ Yoshita Singh, *Number of Poor People in India fell by about 415 million between 2005-06 and 2019-21, a 'historic change': UN*, The Economic Times, 17th October, 2022, <https://economictimes.indiatimes.com/news/india/number-of-poor-people-in-india-fell-by-about-415-mn-between-2005-06-and-2019-21-a-historic-change-un/articleshow/94910830.cms?from=mdr> last accessed on 25/08/2023

² *ibid*

The Global Multidimensional Poverty Index is an international resource launched in 2010 by the Oxford Poverty and Human Development Initiative at the University of Oxford and the Human Development Report Office of the United Nations Development Programme, that measures acute multidimensional poverty across developing countries. The Global MPI advances one of the Sustainable Development Goals, of holding the world accountable in its resolution to end all forms of poverty, everywhere.³

In 2022, the Global MPI study was conducted across 111 countries, and concluded that 1.2 billion people, or 19.1 percent of the population of the countries surveyed, lives in acute, multidimensional poverty. Half of these people are under the age of 18.⁴ These circumstances were exacerbated by the Covid-19 pandemic in 2020, drastically increasing the number of people in poverty, especially in South Asia and Sub-Saharan Africa, and the MPI estimated that its poverty reduction goals had been setback by three to ten years, with latest global values indicating that the setback is likely to be on the higher end of those estimates.⁵

The global MPI measures poverty in three categories. The first, health, includes nutrition and child mortality; the second, education, includes years of schooling and school attendance; and the third, standards of living, encompasses cooking fuel, sanitation, drinking water, electricity, housing, and other assets.⁶ The MPI views poverty as a diverse concept, and studies it with the understanding that there cannot be one standard definition of a 'poor person'. The definition of 'poor' varies from country to country, and between urban and rural areas within the same country. The accurately assess the standard of living in each country, and then to quantify the number of 'poor persons' in that country, in addition to the three categories, the MPI takes into account the inter-linkages between these categories, and how a deprivation in one category may affect a person's ability in another, thereby studying poverty as a capability deprivation across multiple categories.⁷

The MPI then makes recommendations to policymakers on specific interventions that might meaningfully impact individuals and families suffering from poverty. These policies can not only lift millions out of poverty but can also help minimize burdens by helping poor people overcome at least some, if not all of their deprivations.⁸

In India, the 2022 MPI found that between 2005/06 and 2019/2021, 415 million people had exited poverty. While this data pre-dates the pandemic, and the full extent of the damage done by Covid-19 has not been assessed by this report, the Demographic and Health survey data collected prior to the pandemic indicate a significant reduction in all ten MPI categories of deprivation in India. While this data may not be accurate anymore, it nevertheless shows that the ultimate goal of eliminating poverty is feasible.⁹

Today, nearly 229 million people still living in poverty in India, and approximately half (97 million) are children. The number of children living in poverty in India are greater in number than the total number of poor people, children and adults combined, in any other country covered by the global MPI.¹⁰ In 1993, the UNDP in its *Human Development Report*,¹¹ had stated unequivocally that India has the largest population of street children in the world, who live on the streets in slums, huts, tenements, or pavement dwellings, or work on the streets, as laborers, mechanics, food vendors, street tailors, shoe polishers, garbage pickers, or rag-pickers.¹² At that time, as per the last recorded census of 1991, it was estimated that of the approximately 44 million children in India, 11 million, i.e., 25 percent, were street children. Today that number is nearly ten times higher.

The movie I mentioned at the start, which while admittedly being a dramatic portrayal of the situation, is nevertheless accurate in certain quarters. Street dwellers are generally considered as 'soft targets. They are minor, clueless about their legal rights, poor and little to no family affiliation. This makes them prime targets for human traffickers and slave traders.

³ MPI, 2022, p. 3

⁴ *Ibid*, at p. 2

⁵ *Ibid*, at p. 2

⁶ *Ibid*, at p. 3

⁷ *Ibid*, at p. 6

⁸ *Ibid*, at p. 6

⁹ *Ibid*, at p. 19

¹⁰ *Ibid*, at p. 20

¹¹ United Nations Development Programme (UNDP), *Human Development Report, 1993* (New York: Oxford University Press, 1993), p. 24

¹² *ibid*

These children are routinely abducted and sold into indentured labour, prostitution, or slavery. They are often times illegally detained, beaten, tortured, branded, and sometimes even killed by their “owners”, or by even the police in certain circumstances.

2. REPORTS AND STUDIES

In 2001, Human Rights Watch reported that in an investigation conducted by them in 1996 in Guatemala, nearly every child the organization spoke with reported experiencing regular assaults and theft by the police. *“These assaults occurred on busy city streets in broad daylight, on quiet streets in the middle of the night, in alleys and deserted areas, and in police stations. Often, they were witnessed by passersby or other police officers.”*¹³

A similar study was conducted by Human Rights Watch in 1995 and 1996 in India, which concluded that *“Indian street children are routinely detained illegally, beaten and tortured and sometimes killed by police. Several factors contribute to this phenomenon: police perceptions of street children, widespread corruption and a culture of police violence, the inadequacy and non-implementation of legal safeguards, and the level of impunity that law enforcement officials enjoy. The police generally view street children as vagrants and criminals. While it is true that street children are sometimes involved in petty theft, drug-trafficking, prostitution, and other criminal activities,¹⁴ the police tend to assume that whenever a crime is committed on the street, street children are either involved themselves or know the culprit. Their proximity to a crime is considered reason enough to detain them. **This abuse violates both Indian domestic law and international human rights standards.**”*¹⁵(Emphasis Supplied)

Therefore, there is in society overall, and amongst the regulation force in precise, a general perception that street children are vagrants or delinquents, which is compounded by their high visibility on the streets and makes them threatening in the eyes of society, and prime targets for the police.¹⁶ This is worsened further by the common public's general reluctance to involve themselves in criminal matters, or take a stand against the police, even when they are clearly committing atrocities.

We in India have developed an attitude of only seeing what is relevant to us and ignoring those things that do not directly affect us, no matter how wrong the action in question might be. It is the same logic that leads us to teach women to scream ‘fire’ instead of ‘rape’ if they are being assaulted. Because people, while willing to assist someone in need, are more ready to do so in civil matters, and are deterred from doing so in criminal matters, or generally in matters involving authorities like the police.

These factors collectively hinder a street child's ability to seek aid of any sort, while normalizing the widespread culture of police violence, worsened in part by the inadequacy and non-implementation of even the most basic safeguards for their protection.¹⁷

Indian criminal law further compounds this problem by defining anyone beyond the age of twelve as adult under the Indian Penal Code, 1860. Furthermore, ambiguity in the law with regard to the ability of a child to formulate the necessary mental intent for a criminal activity has made it possible for children at the tender age of seven to be treated as adults under the Indian Penal Code 1860. And while the Juvenile Justice (Care and Protection of Children) Act, 2015 does prohibit the detention of ‘neglected’ or ‘delinquent’ juveniles in police custody or in jail, these provisions are routinely ignored in India, resulting in many of these children being held in police custody without any justifiable cause. Added to this is the fact that the law makes no distinction at the remand stage, so once a child is placed in police custody, whatever the reasons, he is treated like a criminal.

Finally, India grants de facto immunity from prosecution to its Police forces. Any prosecution for custodial abuse cannot be initiated unless the sanction to prosecute is granted by the respective State Governments, which is a rare occurrence in and of itself, which in turn allows the police to act with impunity. In 1979, the National Police Commission

¹³ HRW, *Police Violence Against Street Children*, available at <http://www.hrw.org/reports/2001/children/5.htm>

¹⁴ It must be clarified at this juncture that the author is firmly of the opinion that these children do not choose these professions, or lifestyles, but are rather forced into them either due to some compulsion by a person in a position of authority over them, or due to a lack of other opportunities born of their lack of education.

¹⁵ HRW, <https://www.hrw.org/reports/1996/India4.htm>

¹⁶ M. Connolly & J. Ennew, *Introduction: Children Out of Place*, *Childhood* 1996 (135)

¹⁷ *ibid*

condemned custodial abuse of all kinds, especially against children, and made recommendations to remedy the situation. To date, these recommendations have not been adopted.¹⁸

At the start of the twenty-first century, a shift in the approach towards street children was notable on a global scale. With increased media coverage of their status, the problems faced by these children garnered increased attention from welfare agencies across the globe, leading to changes, both substantial and superficial. Global welfare agencies redefined the term street children to include three important elements, the time the children spend on the street, the street as a source of livelihood, and the lack of protection and care from adults,¹⁹ and attempted to devise policies on a global scale towards the end goal of curbing the abuses against them.

3. INTERNATIONAL ORGANIZATIONS APPROACH

The biggest problem in working with street children is their mobility. These are children who have no home to speak of, which by extension means they go where they can find work, or shelter, or food, or all three. Their mobility makes it hard to keep track of them, which in turn makes it difficult to keep accurate records of them, which leads to two major problems.

Firstly, their mobility, and their lack of a home, makes them easy targets for abduction and sale, either as indentured labour, or as prostitutes. And secondly, it becomes extremely difficult to estimate the magnitude of the problem with any accuracy because it becomes nearly impossible to accurately calculate how many children exactly are living in such conditions in any country. Even organizations like ILO, and UNICEF, have found it difficult to give accurate, reliable, and verifiable figures for the number of children living and working on the street worldwide, or in a particular country.²⁰ (UNICEF has stated explicitly in 2006 that, *“the exact number of street children is impossible to quantify, but the figure almost certainly runs into tens of millions across the world. It is likely that the numbers are increasing as the global population grows and as urbanization continues apace”*.²¹)

To combat these issues, and to provide a conceptual framework within which the humanitarian concerns regarding children facing such adversities, the United Nations Convention on the Rights of the Child was adopted in 1989. The Convention came into force in September, 1990. This Convention has detailed numerous rights to be guaranteed to children worldwide and formulated the principles to be applied. The legal obligation of putting these rights and principles into practice is placed on the Member States under the Convention.

The Convention marks a shift from treating the plight of these children as a humanitarian or purely societal issue, to one which places a legal obligation on any State which is party to this Convention and emphasizes that the primary concern in all actions relating to children should be the best interest of the Child.²²

This has led to conflicting viewpoints, and this focus on street children has led to a significant argument that street children as the most easily represented symbol of child poverty and social exclusion, have concentrated attention and resources on what is merely the tip of the iceberg.²³ Arguments have been advanced that making children who live on the streets, or work on the streets, the sole target group for policy makers has led to a ‘hijacking of the urban agenda, to the detriment of other groups of disadvantaged children’.²⁴ While these programs are well-intentioned, and direct the resources towards what they perceive as the most disadvantaged group, arguments have been led by numerous authors and researchers to suggest that there are compelling reasons to change this approach and to ensure economic and social support universally, encompassing all children, irrespective of particular challenges or risks they may encounter.

It is contended that this narrow approach to the problem, leads to an exclusive focus on children who face the risk of abuse or abandonment, while ignoring the larger issue of widespread violence, hunger, and disease amongst children, who may live at ‘home’, but are nevertheless suffering the effects of poverty.²⁵ Some authors have gone so far as to suggest that, *“street children have ‘hijacked’ the child agenda...the needs of more visibly and dramatically affected*

¹⁸ National Police Comm Rep. 1979

¹⁹ Definitions were formulated by the Inter-NGO Programme for Street Children and Street Youth in 1983 and by UNESCO in 1995

²⁰ Ennew, 1994

²¹ UNICEF, *State of World's Children 2006: Excluded and Invisible*, New York, UNICEF, 40-41

²² Article 31

²³ Panter-Brick

²⁴ *ibid*

²⁵ Hecht, 1998, p. 146

populations can distract attention from the basic requirements of the millions of children subjected to the more silent emergencies of routine poverty.”²⁶

While these contentions may have some merit, this author has nevertheless come to the conclusion that given the current state of Indian politics, and the lack of any significant policies made, or implemented effectively, for safeguarding the rights of street dwellers, they are certainly the more pressing problem, and need to be addressed first. And while the author concedes that a framework which takes into account, and allocates resources for, all disadvantaged children, would most certainly include street children, the author is of the belief that there would be an insufficient focus on the most pressing problem facing us today.

4. JUDICIAL PRECEDENTS

Uche U. Eweluka, writing about the decision of the Inter-American Court of Human Rights in *Villagran Morales v. Guatemala*,²⁷ wrote, “A world which abandons its children in the streets has no future; it no longer renders it possible to create and develop a project of life...it is a world that has become simply dehumanized, and which today needs urgently to awake to the true values.”²⁸

The *Villagran Morales Case*²⁹ is of great significance for two reasons. It was the first case in the history of the Inter-American Court in which the victims of the human rights violations were children. It was also the first case involving the abduction, detention, and murder of street children, where an international court awarded damages, payable by the Government, to the surviving relatives of the children.³⁰ This alone makes the treaty obligations³¹ binding on State Governments and entitles an international adjudicatory body to levy damages against a sovereign State, which is a significant departure from the existing concept that international law and treaties are merely suggestive and can only be implemented as law if the domestic law of the sovereign State makes provisions regarding the same.

However, despite this precedent, not much has changed in the plight of homeless children around the world in the two decades that have followed. This leaves international organizations, NGOs, and advocacy groups with a difficult choice. Do they pursue litigation before a regional and international tribunal, which ultimately has little to no rewards for the actual victims of the abuse, or do they divert the resources towards alternative advocacy strategies and social welfare programs. While cross border human rights litigation can be a powerful means of political expression and community mobilization for abused and victimized children³², especially in developing countries, and Eweluka makes a compelling argument in favour of such litigation, contending that the precedents set can affect the interpretation of core treaties affecting the rights of children³³, this does not address the problem on the ground level.

Street Children, in India, as well as across the globe, are subjected to underdevelopment, systemic poverty, inequitable socio-economic structures which in turn lead to increased health issues, economic disparities which are further exasperated by a lack of education, armed conflict in some cases, and discriminatory attitudes of those in positions of power over them. And the practicality of international treaties or litigation bringing about any tangible changes in their lives is laughable.

International human rights treaties are susceptible to weaknesses other international laws do not face, purely premised on the fact that they must account for the cultural, ethnic, racial, and religious differences amongst nations, and must therefore entail a wider definition, which in turn allows for a broader or narrower interpretation, depending on the State doing the interpreting. Additionally, cross border human rights litigation rarely addresses the central aspects that are the root cause of the predicament of these children, and therefore, any compensation awarded, or order passed, while effective in that specific case, is rarely treated as binding precedent, and does nothing to shape the lives of other children living in the same, or similar circumstances.

²⁶ Supra 6 (132); S Bartlett, *Children's experience of the physical environment in poor urban settlements and the implications for policy, planning and practice*, Environment and Urbanization, 1999, (64)

²⁷ *Villagran Morales v. Guatemala* (The “Street Children” Case), 2001 Inter-Am. Ct. H.R. (ser. C) No. 77, para 21 (May 26th, 2001)

²⁸ Uche U. Eweluka (2006) (Separate Opinion of Judge A.A. Cancado Trindade)

²⁹ Supra 16

³⁰ Supra 17, p. 86

³¹ The case was tried under provisions of the Inter-American Convention on Human Rights

³² Supra 17, p. 87

³³ *ibid*

Moreover, International remedies are only effective against the State Parties. If the instigator is a non-State entity, as is often the case in India, it is extremely difficult to utilize international, or even regional mechanisms, to hold them accountable. Additionally, in most third world countries, social and cultural rights are not granted identical importance that constitutional and Political rights are given, which makes it harder to enforce these rights. In India, the Supreme Court has ruled oftentimes that certain economic, or social rights, are an aspect of the inherent right to life and freedom as per Article 21 of the Indian Constitution This has afforded social and economic rights some degree of enforceability. However, this mode of addressing the issue does nothing to create the necessary mechanisms or infrastructure to prevent future abuses. It merely deals with the situation at hand, in which oftentimes the abuse has already taken place, and the compensation, if any, is of little to no use in effectively protecting children from such abuses in the future.

5. CONCLUSION

Children living on streets is a bane for any civilized society and acts as an impediment in its development process. Various studies suggest that number of children living on streets is an alarming figure for the world. As children are the future pillar of any country, we as a society need to address this concern with utmost priority.

On the basis of the research findings, below measures are suggested to save the street children from further abuse and exploitation.

6. RECOMMENDATIONS

1) Access to health and education:

Education provides the equipment to humans to develop well and make a donation towards society. Moreover, education gives a human standard healthcare, better chance to search jobs and a safe live, healthy and non-poisonous surroundings. The interlude between the present scenario of education and what is required for upcoming generation must be aqueduct by bringing some reforms in education system that provide high standard of education and fairness among into the structure and consider setting up mobile health clinics that can reach areas where street children are prevalent. These clinics can provide basic healthcare services, vaccinations, and health education.

2) Addressing protection and safety concerns:

Protecting and ensuring the safety of street children requires a comprehensive and coordinated strategy that engages diverse stakeholders, encompassing governmental bodies, non-profit organizations, and community members alike. By tackling the underlying causes and providing safety concerns every small contribution can create a significant implication in improving the lives of these vulnerable street children.

3) Reinstatement with families and mainstream society:

Reinstating street children with their families and integrating them into mainstream society is a complex process that can be done by establishing outreach programe to identify and locate the family of homeless children and to offer parenting education and support to strengthen family dynamics and relationships.