

SOCIO-LEGAL ISSUES OF THE STREET CHILDREN IN INDIA AND THEIR PROTECTION

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ABSTRACT:

Innumerable 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 became "street children" due to loss of their family or due to some other reasons. Despite the fact that the Constitution of India provides rights to everyone, the bitter truth is that there is a large section of children are deprived of basic human rights. These children are so helpless that they cannot even raise their voice for their basic human rights or are even not aware of their basic human rights. There are many international conventions and declarations on child rights which reflect the commitment of the international community to provide basic human rights to each and every child. At national level also there are various number of legislations which seeks to mitigate the condition of the children and to protect them from exploitation. But the ground reality is something else. 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 also reflects the data on the plight of rights of the street children, role of Judiciary, NGO and role of police in their protection. 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.

Keywords: Constitution, Human Rights, International, National, Street

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 shelter and security are the basic needs for the physical, social, emotional, spiritual, moral and intellectual growth of a child. But, in reality is quite opposite, millions of children are deprived 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 known as "street children".



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 of India and other 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 statutory provisions according to their aims and objectives.

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."

STREET CHILDREN: DEFINITION, CAUSES AND PROBLEMS:

By thinking the word 'Street children', the first image comes in one's mind, of children with torn clothing, bare feet selling books, flowers, picking rags from the heap of garbage, often cleaning utensils in restaurant, washing cars, involved in pick-pocketing, polishing shoes and cleaning rail-buggies.

• Definition of Street Children:

The term 'street children' lacks a uniform definition and there are different definitions given by different organizations. According to the United Nations, 'Street Children'³ are-

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

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

The Street Children (Protection of Rights) Bill, 2001⁴ sought to define street children as "the deprived with unknown parentage, abandoned and neglected children, including destitute children of sex workers." So the term 'street children' is defined in terms of the time spent by the children on the street.

• 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,

¹ The Constitution of India. art. 24.

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

³ Lakshmi, G. Rao, "Street Children- The Problem, Causes and Approaches" 7(1) *Journal of Institute of Human Rights* 84 (2004).

⁴ The Street Children (Protection of Rights) Bill, 2001, cl. 2 (i)



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.

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. 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 abandoning of children by their parents and children running away from home are someof 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 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 policewhich is somewhat true, that they will be humiliated and no action would be takenagainst the culprits. Anti-social elements use such children for their own material gains by forcing street children to indulge in prostitution, beggary, drug paddling etc. The streetchildren are generally harassed by police official and municipal authorities and exploited by the employers.

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. whichaffects 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 withan 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.



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SITUATION OF STREET CHILDREN IN INDIA:

In India, it is a very common to see childrenbegging for money and other essentials or selling things to earn minute livings in places like busstops, main roads, and railway stations. The famous case of Olga Tellis⁵ speaks loudly about the society's responsibility where an organization filed a case against the Bombay Municipal Corporation for dislodging the children in one night thus neglecting the essentials arrangements required for such eviction. The Supreme Court of India very rightly pointed and called out this action of the corporation towards the underprivileged section of the society. In the case of Bandhu Mukhti Morcha⁶, another voluntary organization was subjected to a suit against them for forcing street children to indulge inforced labor. Most of the children are not orphans; they have been just subjected to abandonment by their parents. Many have run away from their houses since they were subjected to extreme physical and psychological torture by their family. Once they are on the street, they are just like any other group of people because they are under aged and cannot form a matured opinion as to how to go about dealing with various situations. The most saddening part is that the street children are not only subjected to abuse and crime by various organizations but also by the police who supposedly should be the law keepers of our countries. There are various reasons whystreet children's rights have not been given much substance since most cases are not taken in the first place. There are hardly any cases that come to the doorsteps of the court. Before filing a case, these children are driven out of city limits and left there to starve.

LAW PROVISIONS DEALING WITH PROTECTION OFSTREET CHILDREN:

From the above discussions, it is very clear that the issue of street children and protection of theirrights is a global problem and it not only exists in India but in other countries growing economically and socially and the developed countries as well. Since the degree of the problem is at a universallevel, the I.L.O (International Legal Organization) and United Nations have attempted to analyze the situation in dept and at large and has initiated certain steps for its member to follow and abideby. Although these steps have come in handy, there is still a lot of work that needs to be done since they are also human and form a considerable part of the population.

STREET CHILDREN AND LEGAL SAFEGUARDS- NATIONAL AND INTERNATIONAL PERSPECTIVE:

• National Perspective:

Human Rights are the highest degree of rights. Section 2(1) (d) of the Protection of Human RightsAct 1993⁷ defines Human Rights as "the right relating to life, liberty, equality and dignity of individual guaranteed under the Constitution and enforceable by the Courts." The definition underthis section is not exhaustive in nature and is applicable beyond the territory of India in like the Universal Declaration of Human Rights 1948, the Geneva "Red Cross" Convention, 1949, etc.

⁵ 1985 SCC (3) 545

⁶ (1997) 10 SCC 549

⁷indiacode.nic.in

The Constitution of India⁸ 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.

The Indian Constitution provides several legislations that protect these vulnerable sections of society. Under Article 21, the State is bound to provide compulsory and free education of the age 6 to 14 years. Article 21 forms one of the basic structure of the Indian Constitution. Interestingly, as per statistics and from the above discussions, the majority of the street children belong within the range of 6 to 14 years. Hence, they should be provided with free education instead of indulging in any kind of forced labor as it is their basic Fundamental Right.

Article 24 states that no child below the age of 14 shall be employed in any factory or mine or engaged in any hazardous work. Ironically, despite such shield of legislation, most children from the streets are picked to work in such conditions as mentioned under Article 24 who range below 14 years. While the legislation is crystal clear, the implication is absent. Street children should be protected from such hazardous employment. Article 39(f) states that children should be provided with opportunities and facilities to be developed in a healthy manner and in conditions of freedom and dignity and childhood and youthare protected against exploitation and against moral and material abandonment. The majority of the street children, in spite of such legislation in force, are the very result of abandonment. Street children are not born in the streets; they are abandoned to streets and grow in very harsh conditions. They are exposed to tremendously bad health conditions since they make their living and food outof stale food from garbage and reside in very untidy places. Therefore, although the article state that children should have ample opportunity to develop in a healthy manner and should not be abandoned, the reality is entirely the opposite.

Article 51A(k) of the Indian Constitution lays Fundamental Duty on every citizen of India who is a parent or a guardian to provide opportunities to provide education to their child from 6 to 14 years. Hence, the parent who abandons their children to the streets can be held accountable for violation of their Fundamental Duties under the Indian Constitution.

Article 14, which forms a part of the basic structure of the Indian Constitution, states about Right to Equality. Street children are in no manner treated equally. Street children generally belong to the tender age when generally a child goes to school. Hence, while this vulnerable group of children isforced to work in a hazardous situation, they should be equally treated like the other children whoare provided with education and treated humanely. The street children are also liable for protectionunder Article 15 which prohibits discrimination on any grounds.

Article 23 provides the Right to be protected from being trafficked and from bonded labor. As discussed earlier, street children are most frequently subjected to trafficking and bonded labor andstreet children are trafficked in various ways be it prostitution, child labor, factory works, etc. Also, street children are majorly indulged forcefully in bonded labor to recover the debts of their fathers. Now, children performing the acts under bonded labor are of very tender age, and asking them to recover such huge debts is excessive in nature and most of them fail to do so leading them to long term slavery. Hence, this should be prevented as it violates Article 23 of the Indian Constitution.

⁸ Bare Act: Universal Publication



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The Immoral Trafficking (Prevention) Act, 1956⁹ (hereinafter referred as Act) is a law enacted by the Parliament under the power given to it by article 35 of the Constitutionand 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.

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. 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.

The Directive Principles of State Policies in Part IV of the Indian Constitutions and the Fundamental Rights under Part III of the Indian Constitution provided for the protection of children and also mentions the duty of the Government, both Centre, and State, to take important steps for growth and encouragement of these sections. Apart from these, there are several other laws that prioritize the need, scope, study, and analysis and also deal with the problems of 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". 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 Directive Principles of State Policy (DPSP) enshrines in our Constitution 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.

• International Perspective:

UN Protocol defines 'trafficking in persons'¹⁰ 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. 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.

⁹ indiacode.nic.in

¹⁰ unodc.org



Universal Declaration of Human Rights (U.D.H.R)¹¹:

The United Nations Organisation Declaration of Human Rights was the first proper body to cometo the aid of the street children and come out with proper solutions. The United Nations Human Rights Council builds the very framework to deal with the seriousness of this socio-legal issue andurged several nations to adopt the policies, rules, and regulations for the implementation of these policies to fight for the rights of this category. This effort brought results to some extent and was applauded which helped the children living on streets and fending for themselves in India and alsocaught the attention of various powerful nations. This lead to drawing up of several guidelines andseveral policies to protect and preserve the rights of the needy. Many nations, India being one of them, have taken these guidelines and policies seriously and have aimed at following them no matter what.

The United Nations Universal Declaration of Human Rights (U.D.H.R) under Article 1 states that "all human being are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood"

Article 1 of the U.D.H.R states that "all humans are born free and equal in dignity and rights." Hence, all humans include the likes of street children also. Hence, all the children who are abandoned in streets are born free and cannot be forced to any kind of labour nor cannot be subjected to any kind of abuse where their rights and dignity are damaged. Article 3 states that "everyone has the right to liberty, life, and security of person." Street children, therefore have theright to liberty, life, and security of person. They have the right to live a proper and dignified life without any hindrance or restrictions. Unfortunately, most of the streets children are subjected to various kinds of abuses while it is clearly stated under this article that every human being has the right to security of person.

Article 4 states that "No one shall be held in slavery, or servitude, and slave trade should be prohibited in all forms." This article is one of the most important articles protecting the rights of all the vulnerable groups from any kind of slavery. From the above discussion, it is very clear how often the street children are exploited for slavery especially in the case of bonded labor. They indulge in the labor to pay off the debts of their father but the debts are so large that they end up working for alarge span of time thus making them a slave. Hence, they should be provided protection under thisarticle of U.D.H.R.

Article 23 of the U.D.H.R states that "Everyone has the right to work to free choice of employment, to just and favorable conditions of work and to protection against unemployment." This article entirely protects the right of every person to work in accordance with their choice in a proper environment. As discussed earlier, it is seen how street children are forced to indulge in all varieties of child labor in places whose prevailing conditions are harmful and hazardous to health. Hence, these children should be protected under the umbrella of this article.

Article 26(1) states that "Everyone has the right to education. Education shall be free in elementary and fundamental stages." Almost the entire population of the street children are devoid of education. At the tender age, they are employed to child labor while they have the right to education. This article does not discriminate

¹¹ un.org



between classes of people. Hence, it is vivid that every person, including the street children, is very well entitled to an education. Not only that, but they are alsoentitled to free education as they are at the elementary stage of their lives.

The United Nations Conventions on the Rights of The Child (U.N.C.R.C)¹²:

The U.N.C.R.C that was ratified by the member nations on 20th November 1989 and came into effect on 2nd September 1990 was formed to deal with child-specific rights. It stated that a child until he or she attains the age of majority will come under the ambit of the term "human beings". It keeps the best interest of the child as the major priority and deals with custody and guardianship laws of the children who are subjected to abandonment or whose parents are no more alive.

These rights include basic rights, the right to be raised by parents, and have a parent-child relationship and right to life. The category of children it protects are:-

Migrant children, homeless children, orphaned and abandoned children, street and runaway children, child beggars, working children, trafficked children, children of prostitutes, children affected by conflicts, children in jail, children affected by AIDS and children affected by natural disaster.

ROLE OF JUDICIARY, NGO AND POLICE IN PROTECTIONOF STREET CHILDREN:

The Juvenile Justice Act 2015 (Care and Protection of Children)¹³ is concerned with children in twobroad classifications: those who are dire need of care, protection, and shelter, and those who standin the difference in opinion with the law. Children in the streets may fall under both categories simultaneously, as children who are not provided with care and protection may end up in disagreement with the legal system.

• Role of Judiciary:

The Seventh five-year plan (1985-90)¹⁴ aimed at taking forward the plan of development and survival of children in every sphere of life and promoting it. This thus led to kick-starting the plan by the judiciary and the Supreme Court who played an active role in endorsing the rights of the children,Social Action provided to them by the constitution of India. Litigation acts as a catalyst for judicial intervention and policy formulation. The concept of 'Social Interest Litigation' in India is basically treated as an instrument for fastening socio-economic justice for the underprivileged and ensuring an action to make everyone realize what are the constitutionally guaranteed rights. Here are the few most important scenarios depicting social action litigation for children are the following cases; these cases have indeed proved to be absolutely vital in assuring and ensuring child rights.

¹² unicef.org

¹³ indiacode.nic.in

¹⁴ niti.gov.in



• Role of Non-Governmental Organizations:

UNICEF estimated that there are at least 100 million, street children, all over the world and when it comes to India, it is a home estimated to have a range from 400000- 800000, the majority of whichbelong below the age of 18 years. Children in India come from various castes, cultures, religions, communities, and economic groups.

The issues regarding these children have grown from the very bottom to the top, earlier people were not aware of it. There are various NGOs working for this sector of children day and night in a qualitative way includes— NHRC, NCPCR, CLAN, CRY, GRACE, etc. Each of these platforms works differently but they all focus on the same motive.

The media has always been a backbone and has played a very vital role in molding public opinion as well as making an attempt in creating awareness to the citizens regarding social development and child rights protection. The Government of India and UNICEF cooperative inventiveness over the times that have gone by have shifted their attention on intensifying the power and the need of advertising and broadcasting the electronic and print media person in Ministry of Information andBroadcasting so as to combine and print the various problems regarding the rights of the childrenon the street. As a result, media has had a massive impact in creating awareness amongst the peoplein these strata.

Role of Police – Negative and Positive:

"There's more to this than meets the eye", you might have come across this proverb many a time.Exactly when we come to talk about the experiences of the Street children in our Justice system, the situation is not as simple, not as easy as it seems to be.

Taking into consideration the experiences of the children at the various stages of our Justice System:-

Role and conduct of police and private security guards on the streets:

It includes optimistic experiences, a perception of the police understanding the need and possibilities for constructive cooperation with the police. However, it mainly hovers around the various types of abuses, both physical and mental, and the lack of the system to take up complaints on these matters.

After a study done with the street children, it is clearly depicted the level up to which the children in the street have with the police and the security guards who are supposedly the abiders of the JusticeSystem. There have been a lot of experiences with the children relating to harassments, threats bypolice, and by other members of the society with either direct or indirect encouragement of the Police. The Police are therefore responsible on both sides i.e. of commuting this grievous offenceand also for failing to prevent the children who fall in this trap. They fail to do their duty being a part of this Justice System who promises to provide Justice to these street children and despite making sure that they feel like home in this society, they never fail to show them that they are not apart of us, they are homeless.

Thus there are various kinds of tortures meted out to the Children by the Police which can be shown by some of the experiences by the street children such as:-



Violence:

With the use of power, most of the policemen torture the street children – physically, mentally, psychologically and do sexual violence. Few statements of children are as follows:-

Lack of education, training, upbringing, no screening process in recruitment and many other factorscontribute to this treatment by the police and security guards.

Death Squad Experiences:

99.9% that is the majority of police have the belief that the problem of the street children is an insolvable problem and hence they refuse to pay any heed on that.

Sexual Abuse Experiences:

Girls are often asked for sexual favors on the pretext that they would be released. In most instances, the release does not take place even after giving in to the officer's demand; "The police are always calling us names, threatening us, saying we're whores, trash, homeless, and beating us. Sexual abuse happens too. It happened to me once, here in Jeevanji. Four policemen came and arrested me nearCity Market. They started taking me to the Central Police Station and brought me here to the park.One of them hit me and I fell down, and he came down on top of me. Another held me down while the policeman raped me. After he raped me, they walked me over to Central Police Station, and just let me go.

Harassment Experiences :-

The private guards from the bank also come and harass us all the time. They pull their pistols outand make us come out of the women's restroom. They push us around. They just do it to give us ahard time, to be powerful over us; we're not bothering them at all.

There are many other instances such as bribery, extortion, and corruption, round ups operations, etc., relating to which the children have given a lot of negative experiences of themselves with thePolice and shown the most horrible side of this stakeholder of our Justice System.

SOME RECOMMENDEDATIONS:

Having an advisory committee at both state and national levels with its members and stakeholders as the government, experts, legal advisors, law enforcers, NGO, other organizations that can urgeand advocate the conduct of the street children. The challenge of mainstreaming this section of society has indeed been difficult for social interventionists over the years; however, many studies are now providing promising indications that, given the present success rate of the interventionists, the task is not impossible. The outlook of parents and society is changing, with an increase in girl-child education and a reduction in gender disparities. Initiatives by the United Nations, NGOs like Save the Children India, and government initiatives like the Integrated Child Protection Scheme are not only helping in creating awareness but are also attempting to



reverse the continuing increase in the number of vulnerable children in the nation. The following are the suggestions-

- A body that will continuously keep a count on the number of street children present so that immediate steps can be taken if there is a decrease in that number.
 Just like the census, a synonymous data system has to be integrated which provides such percentile statistics so that policies and plans can be initiated.
- ii) A system of social integration has to be put into force which should aim at bringing or uniting the street children to their families so that they have particular homes to stay and essentials to live upon. If children do not have any families living or due to certain circumstances, they cannot be united, foster homes should be set up for them as a last resort.
- A dual education system has to be put into force where children, along with interning under companies as an apprentice, should be provided education in schools.
 Migration has been a major issue behind the student belonging to the streets hence Gram Sabhas should organize Migration Resource Centre's (MRC) which would prevent any kind of precarious migration.
- iv) Since bodies at State and National levels are taken care of, a body at the District level also should be set up to monitor the situation of the street children.
- v) Plan centering and counseling of these children in the case of physical and mental abuse, sexual exploitation, and behavior management.
- vi) 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.
- vii) A check 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
- viii) 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.

CONCLUSION:

In this article, we have thrown light on the meaning of street children, types of exploitations they go through, national and international legislation protecting the street children, the role of judiciary and NGO's in



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safeguarding the interest of the street children and the act and conduct of the police towards the street children. The conclusion we can draw from the above issues is that the problems of street children have been existing for a long time and despite prevailing legislation and bodies aiming to safeguard the rights of the street children, a positive and optimistic result has not been achieved as of yet. Therefore, this issue will throw light on the very recent situation of the street children along with the statistics in the major states of India.

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